

STATE OF INDIANA
BEFORE THE TOWN COUNCIL OF SELLERSBURG, INDIANA

ORDINANCE NO. 2023 – OR – 005

AN ORDINANCE REPEALING AND REPLACING §§ 110.15 – 110.20 OF THE CODE OF ORDINANCES FOR THE TOWN OF SELLERSBURG, INDIANA.

WHEREAS, pursuant to Ind. Code § 36-5-2 *et seq.*, this Town Council of Sellersburg, Indiana (this “Council”) is the town legislative and fiscal bodies for Sellersburg, Indiana (the “Town”) and the President of this Council is the Town Executive; and,

WHEREAS, pursuant to Ind. Code § 36-5-2-9, the legislative body may adopt ordinances and resolutions for the performance of functions of the Town; and,

WHEREAS, this Council has determined a need to repeal and replace the Peddler, Solicitors, and Transient Merchants section of the Code of Ordinances for the Town.

NOW THEREFORE BE IT ORDAINED by this Town Council of Sellersburg, Indiana as follows:

1. Sections 110.15 – 110.20 of the Code of Ordinances are hereby repealed and replaced with the Sections 110.15 – 110.29 that are attached hereto as **Exhibit A**, including the Transient Merchant Permit Application.
2. This ordinance shall be in full force and effect thirty (30) days after its passage and promulgation as evidenced by the affirmative signatures of the undersigned as the majority of the duly elected and serving members of this Council and its publishing in the News and Tribune or another acceptable publication.
3. The Executive Secretary is hereby charged with the responsibility of causing said ordinance to be published per Indiana law.

So Ordained this 27th day of February, 2023.

“Aye”

“Nay”

Brad Amos
Brad Amos
Council President

Brad Amos
Council President

Scott McVoy
Scott McVoy
Council Vice President

Scott McVoy
Council Vice President

Terry Langford
Terry Langford
Council 2nd Vice President

Terry Langford
Council 2nd Vice President

Present
Matthew Czarnecki
Council Member

Matthew Czarnecki
Council Member

Randall Mobley
Randall Mobley
Council Member

Randall Mobley
Council Member

Michelle D. Miller
Attested by: Michelle Miller
Sellersburg Clerk-Treasurer

FIRST READING

DATE: 2/27/23

MOTION: McVoy

SECOND: Mobley

VOTE: 4 AYE 0 NAY 0 ABSTAIN

SECOND READING

DATE: 2/27/23

MOTION: McVoy

SECOND: Mobley

VOTE: 4 AYE 0 NAY 0 ABSTAIN

PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

§ 110.15 Definitions

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

HOA: Abbreviation for Homeowner Association. A homeowner association (HOA) is an organization in a subdivision, planned community, or residential building that makes and enforces rules for the properties and residents. Those who purchase property within an HOA's jurisdiction automatically become members and are required to pay dues, which are known as HOA fees.

Non-commercial door-to-door advocate: A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purposes of this article the term door-to-door advocate shall not fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

Peddler. A person who goes from house to house, door to door, business to business, street to street, any other type of place-to-place movement, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale the goods, wares, products, merchandise, other personal property, or services that the person is carrying or otherwise transporting.

Person: Any natural individual, group, organization, corporation, partnership, or similar association.

Personal Fundraiser. Any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, political, social, or other charitable organization.

Solicitor. A person who goes from house to house, door to door business to business, street to street, or any other type of place-to-place movement, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur later. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. For purposes of this article, the term solicitor shall have the same meaning as the term canvasser.

Transient Merchant: A person who temporarily sets up business out of a vehicle, trailer food truck, boxcar, tent, other portable shelter, or empty storefront for the purpose of exposing or displaying for sale, selling, or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property and who does not remain in any one location for more than three (3) consecutive days.

§ 110.16 Exceptions to Definitions

For the purpose of this chapter, peddler and solicitor, shall not apply to non-commercial door-to-door advocates. Nothing within this article shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Persons engaging in non-commercial door-to-door advocacy shall not be required to register as a solicitor under this ordinance.

- a) Any person selling or attempting to sell wholesale any goods, wares, products, merchandise, or other personal

property to a retail seller of the items being sold by the wholesaler.

- b) Any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk.
- c) Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.
- d) Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.
- e) Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.
- f) Any person conducting an auction as a properly licensed auctioneer.
- g) Any officer of the court conducting a court-ordered sale.
- h) Exemption from these definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirement provided by this or any other Town ordinance.

§ 110.17 License or Registration Required

- a) State or County license required: No person shall conduct business as a peddler, or solicitor in the Town limits without first having obtained the appropriate license from the State of Indiana or Clark County, including the Health Department that may be necessary, if the state or county issues a license for the activity.
- b) Town license required: Except as otherwise provided for by this article, no person shall conduct business within this jurisdiction as either a peddler, or solicitor without first having obtained a license from the Town.
 - 1) *Exceptions:*
 - a. The license requirement shall not apply to a non-commercial advocate.
 - b. No license shall be required of any person going from house to house, door to door, business to business, street to street, or other type of place to place movement for the primary purpose of exercising that person's state or Federal Constitutional rights such as the freedom of speech, press, religion, political, or the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
 - c. No license shall be required of any transient merchant operating at a Town-sanctioned carnival, fair, festival, fundraiser, or other special event.
 - d. No license shall be required of any transient merchant operating less than 8 hours within a 24-hour period on a privately owned parcel with express written permission from the property owner operating.

§ 110.18 Application and Procedures

Peddlers/Solicitors

- 1. Application: Application for a Town license to conduct business as a peddler or solicitor shall be made at least ten regular business days before the applicant desires to begin conducting business. Each individual person conducting business as a peddler or solicitor make application for a Town license. A license will

not be granted in the name of a business or other entity. The applicant must appear in person and show proper identification. Application for a license shall be made on a form approved by the Town Attorney and available at the Town of Sellersburg Police Department. All applications shall be signed by the applicant. All applications shall include the following information:

- Applicant's full legal name and any other names under which the applicant conducts business or to which applicant officially answers.
- A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features and the like).
- Full address of applicant's permanent residence.
- Full legal name of all business operations owned, managed, or operated by applicant, or for which applicant is an employee or agent.
- Full address of applicant's regular place of business (if any).
- All business-related telephone numbers of the applicant.
- The type of business which the applicant intends to conduct.
- The dates during which the applicant intends to conduct business.
- A statement as to whether the applicant has been convicted within the last five (5) years of any felony, gross misdemeanor, or misdemeanor for the violation of any state or federal statute or any local ordinance, other than non-moving vehicle traffic offenses.
- A statement as to whether the applicant has any pending criminal charges.
- A list of the three (3) most recent locations where the applicant has conducted business as a peddler or solicitor transient merchant.
- Proof of any requested state or county license.
- A general description of the items to be sold or services to be provided.
- The applicant's driver's license or other acceptable form of government-issued identification.
- The license plate number, registration information and vehicle identification number, and physical description for any vehicle to be used in conjunction with the licensed business operation.
- All additional information deemed necessary by the Town of Sellersburg Police Department.

2. Non-Refundable Fee: All applications shall be accompanied by a non-refundable fee, payable to the Town of Sellersburg Police Department by certified or cashier check as follows:

Duration	Fee
Per Month	\$100
Per 3 Months	\$150
Per 6 Months	\$200
Per 12 Months	\$300

3. Background Check: The Town of Sellersburg Police Department is required to do an investigation into the criminal record, driving record, business reputation, and personal character on all applicants for peddler or solicitor permits and the company represented by the applicant. In conducting the criminal history background investigation to screen such license applicants, the Police Department shall request a criminal history and driving record of the applicant through a third-party vendor. The applicant shall pay a separate, non-refundable background check fee of \$100.00 to the Town of Sellersburg Police Department as reimbursement for the third-party criminal and driving record check. Acceptable forms

of payment are money orders and certified checks, payable to the Town of Sellersburg.

4. **Approval:** Upon receipt of the completed application and payment of the licensee, the Town of Sellersburg Chief of Police or their designee, within two (2) regular business days, will determine if the application is complete. An application is determined to be complete if all required information is provided and the applicant has included a signed consent form authorizing a background check through the Town of Sellersburg Police Department and/or any third-party vendor. If the Chief of Police or their designee determines that the application is incomplete, they must inform applicant of the required necessary information that is missing. If the application is complete, the Chief of Police or their designee must order an investigation including a criminal history and wanted persons check with the Town of Sellersburg Police Department and other background checks necessary to verify the information provided with the application. In the case of questioned identity, where we cannot confirm if a record exists based on name and date of birth alone, fingerprint verification will be required.

Within ten regular business days of receiving a complete application the Chief of Police or their designee must issue the license unless there exist grounds for denying the license application under this ordinance, in which case the Chief of Police or their designee must deny the request. If the Chief of Police or their designee denies the license, the applicant must be notified in writing of the decision, the reason for the denial, and the applicant's right to appeal the denial by requesting, within 30 days of receiving notice of the rejection, the applicant may petition the Town of Sellersburg Town Manager for review. The Town Manager shall review the decision of the Chief of Police within 20 days of the date of the request to either confirm or reverse the decision. The decision of the Town Manager can be appealed by petitioning the Circuit Court within 30 days of the final decision.

5. **Duration:** A license granted under this chapter shall be valid through December 31 of the current calendar year. On January 1st of each year, the license shall automatically expire and be null and void.
6. **Professional fundraisers not exempt:** A professional fundraiser working on behalf of an otherwise exempt person shall not be exempt from the licensing requirements of this section.

§ 110.19 License Ineligibility

The following shall be grounds for denying a license under this chapter:

- a) The failure of an applicant to obtain and show proof of having obtained any required county license.
- b) The failure of an applicant to provide completely and truthfully disclose any of the information requested by the Town as a part of the application, failure to sign the application, or the failure to pay the required fee at the time of application.
- c) The entry of a plea of guilty by the applicant or the conviction of the applicant within the past five (5) years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in a professional, honest, and legal manner. Such violations include, but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threat of physical harm against another person.
- d) The revocation or cancellation within the past five (5) years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant from any other local

government unit, i.e. city, township, or county.

- e) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to; the existence of more than three (3) complaints against the applicant with the Better Business Bureau, related industry business association, the Attorney General's office, civil adjudication in a court of this state of a violation of state or federal consumer protection laws, or other similar business or consumer rights office agency, within the preceding 12 months, or three (3) complaints filed against the applicant within the preceding five (5) years upon which a finding of fault has been determined by that agency or the governmental unit.
- f) An applicant that has been denied can reapply in the next calendar year. All competent evidence of rehabilitation will be considered upon reapplication.

§ 110.20 Suspension and Revocation

- a) Generally: Any license issued under this section may be suspended or revoked at the discretion of the Chief of Police for violation of the following:
 - 1) Subsequent knowledge by the Town of fraud, misrepresentation, or incorrect statements provided by the applicant on the application form.
 - 2) Fraud, misrepresentation, or false statements made during the licensed activity.
 - 3) Subsequent conviction of any offense for which granting of a license could have been denied under this ordinance.
 - 4) Engaging in any prohibited activity as provided under this ordinance.
 - 5) Violations of any of the provisions of this ordinance.
- b) Notice: Prior to revocation or suspension of any license issued under this ordinance, the Town of Sellersburg Police Department shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.
- c) Hearing: Upon receiving the notice provided in subsection (b) of this section, the licensee shall have the right to request a review by the Town of Sellersburg Town Manager. If no request for a review is received by the Chief of Police within 10 days following the service of the notice, the Town may proceed with the suspension or revocation. If a review is requested within the stated time frame, a review shall be completed within 20 days from the date of the request for the review. Within 10 regular business days of the conclusion of the Town Manager's decision, the licensee shall be notified the final decision.
- d) Emergency: If, in the discretion of the Chief of Police or Town Manager imminent harm to the health or safety of the public may occur because of the actions of a peddler licensed under this chapter, the Chief of Police or Town Manager may immediately suspend the person's license and provide notice of the right to hold a subsequent review as prescribed in subsection (c) of this section.
- e) Appeals: Any person whose license is suspended or revoked under this section shall have the right to appeal that decision to the Circuit Court within 30 days.

§ 110.21 Transferable

No license issued under this chapter shall be transferred to any person other than the person to whom the

license was issued.

§ 110.22 Badges and Identification

- 1) Peddlers/Solicitors: Any person who shall exercise the vocation of a peddler or solicitor shall keep on their person the Town issued permit, issued in their name, containing a number to correspond to the number of the license, and license expiration date issued by the Town of Sellersburg Police. The license holder shall be worn in a conspicuous place on the person's outer garment or clothing or produce the license immediately upon request. Solicitors and peddlers shall also have on their person a government-issued identification containing a current photograph.
- 2) Transient merchants: Transient merchants shall post conspicuously in his or her place of business the license issued hereunder which license shall be shown at the request of any citizen or police.

§ 110.23 Prohibited Activities

Peddlers, solicitors, transient merchants, non-commercial door-to-door advocate, and other persons engaged in similar activities shall not:

- a) Call attention to their business items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise to be unreasonably audible within an enclosed structure.
- b) Obstruct the free flow of either vehicular or pedestrian traffic on street, alley, sidewalk, or other public right-of-way.
- c) Conduct business in a way to create a threat to the health, safety, and welfare of any individual or the general public.
- d) Conduct business before 8:00 a.m. or after 8:00 p.m. or has received special permission from the Town Council. Said restriction shall not apply to a non-commercial advocate.
- e) Fail to provide proof of license or registration, and identification, when requested.
- f) Use the license or registration of another person.
- g) Allege false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the Town solely based on the Town having issued a license or certificate of registration to that person.
- h) Remain on the property of another when requested to leave.
- i) Conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.
- j) Solicit funds or anything of value on the public streets of the Town. The active fire department contracted with the Tri-Township Fire Board is the only group exempted from this provision.

§ 110.24 Exclusion by Placard

- a) Any resident who wishes to exclude peddlers or solicitors from premises occupied may place upon or near the usual entrance to such premise a printed placard or sign bearing the following notice: *"Peddlers and Solicitors Prohibited."* Any signage to the same, placed within a neighborhood public right of way by an active HOA with permission from the Town, shall cover all dues paying properties within

said HOA.

- b) Unless specifically invited by the property owner or tenant, no peddler or solicitor or other person engaged in other similar activities shall enter onto the property of another for the purpose of conducting business as a peddler or solicitor, or similar activity when the property is marked with a sign or placard.
- c) No person other than the person occupying such premises shall remove, deface, or otherwise tamper with such placard or sign.

§ 110.25 Additional Transient Merchant Requirements

- a) Transient merchants are prohibited from operating in any Town right-of-way, Town owned parking lots, parks, other Town property unless part of a Town-sanctioned event which is utilizing said space or given written permission by the Chief of Police and/or the Town Manager.
- b) No advertising shall be allowed on the street or sidewalk.
- c) The area in which the merchant operates shall be always kept clean and orderly and the transient merchant must provide their own refuse container.
- d) Transient merchants are prohibited on residential zoned properties unless part of a sanctioned special event hosted by an HOA and upon the prior written approval of the Chief of Police and/or the Town Manager. Any approval requests must be made within five (5) business days prior to the special event and placement shall not last longer than 8 hours.
- e) The Town reserves the right to limit the number of transient merchants operating simultaneously on any single property, regardless of property zoning. The Director of Planning & Zoning shall determine the allowable number based on the size of the property; the needs of the public, the general flow of traffic on the site, and any other relevant factors necessary to preserve the intent of the district in which the property is located.
- f) All transient merchants must comply with all applicable Clark County Health Department requirements.

§ 110.26 Trespass

It is hereby declared to be unlawful and shall constitute trespass for any person to go upon any premises and ring the doorbell upon or near any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence for the purpose of securing an audience with the occupant and engage in soliciting or peddling in defiance of the notice exhibited at the main entrance of the residence or entry of a neighborhood where the HOA has elected to erect signage prohibiting solicitation pursuant to this ordinance.

§ 110.27 Nuisance

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence for the purpose of securing an audience with the occupant and engage in soliciting or peddling in unless invited to do so by the owner of the property.

§ 110.28 Penalty

Any individual found in violation of any provision of this article shall be subject to the penalty provisions of the Town of Sellersburg Code of Ordinances Section 110.99. Each act in violation of this article shall constitute a separate punishable violation.

§ 110.29 Severability

If any provision of this article is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.