

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 110: SOLICITATION

WHEREAS, Indiana Code § 36-1-3-4 provides a municipality all powers necessary to conduct its affairs, even if not expressly granted by statute;

WHEREAS, the Town of Dayton, Indiana, (hereinafter the “Town”) adopted Chapter 110: Solicitation in Ordinance No. 92-3 on November 2, 1992; and

WHEREAS, the Council believes it is in the best interest of the Town to amend Chapter 110 to provide updates as to the requirements of solicitors within Town limits.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAYTON, INDIANA, AS FOLLOWS:

1. The Town of Dayton, Indiana, Code of Ordinances is hereby amended by amending Chapter 110 as follows:

§ 110.01 REGISTRATION REQUIRED

It shall be unlawful for any direct seller to engage in direct sales within the Town without being registered for that purpose as provided herein. Registration shall not constitute a permit to enter privately policed areas or private property.

§ 110.02 DEFINITIONS

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHARITABLE ORGANIZATION. Includes any benevolent, philanthropic, or patriotic partnership, association, or corporation, or one purporting to be such.

DIRECT SELLER. Any individual who, for himself or herself, or for a partnership, association, or corporation, sells goods, wares, or merchandise, or takes sales orders for the later delivery of goods, wares, or merchandise, at any location other than the permanent business place or residence of said individual, partnership, association, or corporation, and shall include, but not be limited to, peddlers, solicitors, and transient merchants. The sale of goods includes donations required by the Direct Seller for the retention of goods by a donor or prospective customer. Direct Sellers are those which go door to door to sell products to consumers.

GOODS, WARES, AND MERCHANDISE. Includes personal property of any kind, and shall include goods, wares, or merchandise provided incidental to services offered or sold.

PERMANENT MERCHANT. A direct seller who, for at least one year prior to the consideration of the application of this subchapter to said merchants, has continuously operated

an established place of business in this Town or has continuously resided in this Town and now does business from his or her residence.

§ 110.03 EXEMPTIONS

The following shall be exempt from the licensing provisions of this Chapter.

- (A) Any person delivering newspapers, fuel, dairy products, or bakery goods to regular customers on established routes;
- (B) Any person selling goods at wholesale to dealers in such goods;
- (C) Any person selling agricultural products which such person has grown or produced in the county and is being sold by a resident of the county;
- (D) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within the Town and who delivers such goods in their regular course of business;
- (E) Any person who has an established place of business where the goods, wares, or merchandise being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by said person;
- (F) Any person who has had, or one who represents a company which has had a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;
- (G) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;
- (H) Any employee, officer, or agent of a charitable organization as defined within this Chapter;
- (I) Local Chamber of Commerce seeking additional memberships; and
- (J) Any student in grades preschool through twelfth grade who sells goods or performs services as part of a fundraiser for such school or a fundraiser for a related extracurricular organization in which such students participate.

§ 110.04 REGISTRATION

(A) Applicants for registration must complete and return to the Clerk-Treasurer before such applicant shall be authorized to do business, a registration form furnished by the Clerk- Treasurer which shall require the following information:

- (1) Name, permanent address, and telephone number, and temporary address, if any;
- (2) Age, height, weight, color of hair, and color of eyes;
- (3) Name, address and telephone number of the person, firm, association, or corporation that the direct seller represents or by whom he or she is employed, or whose merchandise is being sold;
- (4) Temporary address and telephone number from which business will be conducted, if any;
- (5) Nature of business to be conducted and a brief description of the goods offered, and any services offered;
- (6) Proposed method of delivery of goods, if applicable;
- (7) Make, model, and license number of any vehicle to be used by applicant in the conduct of his or her business;
- (8) The last three previous cities, villages, or towns where applicant conducted similar business;
- (9) The contact information for the applicant which shall be valid for at least seven (7) days after leaving the Town;
- (10) A statement as to the period during which the applicant intends to solicit orders; and
- (11) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five (5) years; the nature of the offence; and the place of conviction.

(B) Such application shall be accompanied by a bond in the sum of \$1,000 executed by a surety company, or by two responsible freeholders residing within the corporate limits of the Town, or a cash bond of equal amount, said bond condition that all goods, wares, merchandise, or articles sold by such applicant will be as represented by him or her, and that he or she will refund the purchase price of any goods, wares, merchandise, or articles sold by him or

her which are not as represented. Any person aggrieved by the action of a licensed direct seller hereunder shall have a right of action on the bond or other surety for the recovery of money or damages or both. In the event a cash bond is deposited, the same shall be retained by the Town for sixty (60) days after the expiration of any license issued upon said bond or surety.

(C) Such application shall also be accompanied by a \$100 application fee.

(D) The applicant also shall submit for inspection and examination the following:

(1) A driver's license or some other proof of identity as many be reasonable required;

(2) A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;

(3) A State Health Officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than ninety (90) days prior to the date the application for license is made;

(4) A limited criminal history in accordance with the following requirements;

(a) If the solicitor applicant has been an Indiana resident for One Thousand Ninety-five (1,095) consecutive days immediately preceding the submission date of the application, the limited criminal history shall be obtained from the Indiana State Police at: Indiana State Police, 100 N. Senate, Room 302, Indianapolis, Indiana, (317-233-5424, <http://www.in.gov/ai/appfiles/isp-lch/>)

(b) If the solicitor applicant has not been an Indiana resident for One Thousand Ninety-five (1,095) consecutive days immediately preceding the submission date of the application, the limited criminal history shall be from the state(s) in which said person was a resident during the One Thousand Ninety-five (1,095) days immediately preceding the submission date of the application.

§ 110.05 LICENSE

(A) Upon compliance by the applicant with the provisions of § 110.02, the Clerk-Treasurer shall thereupon issue a license to the applicant, which license shall set forth the name and address of the applicant and of his or her employer, if any, the nature of the goods, wares, or merchandise from which orders are to be solicited, and the period during which the applicant may solicit orders, which shall not exceed one month. If the applicant desires to continue in

business after the expiration of such license, a new license must be secured in the same manner, and upon the same terms as the original license.

(B) The Clerk-Treasurer shall refuse to register the applicant if it is determined that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received and proven against the applicant by authorities in the three previous cities, villages, and towns, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation, or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any provisions of this Chapter.

§ 110.06 INVESTIGATION BY TOWN MARSHAL

Upon receipt of each application, the Clerk-Treasurer shall refer it immediately to the Town Marshal who may make and complete an investigation of the statements made in the application. The original limited criminal history must be attached to the original application and will be submitted to the Town Marshal for review. The Town Marshal or Deputy Town Marshal shall review the application and associated documents and approve or deny the license application within twenty (20) business days of submission. Any application which has not been properly completed shall not be given further consideration.

§ 110.07 DENIAL OR REVOCATION OF LICENSE

The Town Marshal shall deny and/or revoke any license and/or any identification card if:

- (A) The applicant has had any convictions of a misdemeanor or felony within fifteen (15) years of the date of the application for an offense of dishonesty, fraud, theft, and/or moral turpitude.
- (B) An application is incomplete, false, or intentionally misleading.
- (C) A solicitor is charged with or convicted of a felony or misdemeanor crime before the expiration of the license or identification card.
- (D) A solicitor fails to properly display their identification card which engaged in solicitation.
- (E) Two or more sworn complaints have been made to the Town Marshal regarding allegedly untruthful or illegal conduct concerning the solicitor.
- (F) Failure to follow any of the rules or regulations or items outlined in this ordinance.

All license and/or identification card denials or revocations shall be in writing and include the date and reason for the denial and/or revocation.

The limited criminal history check provided shall be valid six (6) months from issue.

§ 110.08 NON-TRANSFERRABLE

The licensed issued as provided herein shall be non-transferrable and non-assignable and shall entitle the holder thereof, for the period indicated therein, unless revoked, to solicit orders within the Town for goods, wares, or merchandise specified in the license. The holder must have his or her license in his or her possession at all times while soliciting orders and shall provide inspection of such license at any time upon request by an officer of the Town or prospective purchaser.

§ 110.09 CONDUCT OF SOLICITOR

Any person soliciting within the Town shall conform to the following regulations.

(A) The solicitor shall conduct himself or herself at all times in an orderly and lawful manner.

(B) The solicitor shall give a written receipt of all orders taken within the Town, which receipt shall be signed by the solicitor and shall set forth a brief description of the goods, wares, or merchandise ordered, the total purchase price thereof, and the amount of the down payment received by the solicitor from the purchaser.

§ 110.10 NON-TRANSFERRABLE

This Chapter shall not apply to any solicitations during public activity at specific locations, so long as such solicitations are approved by resolution of the Town Council to take place at the public activity and at the specific locations addressed within such resolution.

§ 110.11 PENALTY

Any person violating any of the provisions of this Chapter or making any false statements of fact for the purpose of obtaining permission to solicit orders shall be guilty of an infraction and upon conviction shall be fined in the sum of \$500. Upon registered person being convicted of any crime or misdemeanor or infraction under this Chapter or involving moral turpitude, the licenses of the person shall be delivered to the Town Marshal and the licenses shall be cancelled, and the person shall not thereafter solicit orders in the Town without re-registering.

2. This amendatory ordinance shall be effective upon passage and posting in accordance with Indiana law.

Adopted _____, 2022.

**TOWN COUNCIL OF THE TOWN OF
DAYTON, INDIANA**

President

Member

Member

Member

Member

ATTEST:

Clerk-Treasurer

APPROVED AS TO FORM AND LEGALITY:

Alicia K. Albertson, Town Attorney