

ORDINANCE NO. 3815

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKLIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, CHAPTER 271, PEDDLING AND SOLICITING.

SUMMARY

An ordinance amending Chapter 271, Peddling and Soliciting, change term “nonprofit vendor” to “nonprofit organization or vendor”; add definition of “solicitation” and revise the definition of “solicitor”; amend the purpose of the chapter; provide additional exemption; add nonprofit organization clause and amends license requirements.

BE IT ORDAINED by the Township Council of the Township of Franklin, Somerset County, New Jersey, that the Code of the Township of Franklin be and it is hereby amended as follows:

SECTION I

Chapter 271: PEDDLING AND SOLICITING

§271-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

MOBILE RETAIL FOOD ESTABLISHMENT – Any movable truck, van, trailer, bicycle or other movable unit, including hand-carried, portable containers in or on which food or beverage is transported, stored or prepared for retail sale or given away at temporary locations.

MULTIPLE TRANSIENT MERCHANT FACILITY – A facility in which groups of transient merchants as defined herein band together to conduct functions commonly known as trade show, craft shows and similar functions within the facility for the same dates and times.

NONPROFIT ORGANIZATION OR VENDOR – An organization, person or entity possessing a tax-exempt status which shall be evidenced by furnishing to the Township tax exempt number provided by the State of New Jersey and/or the Government of the United States.

PEDDLER – A person, commonly referred to as a “peddler” or “hawker” or “itinerant merchant”, who goes from place to place or house to house by traveling on the streets and carries with him goods, wares, merchandise or other things of value for the purpose of selling and delivering them to consumers.

SOLICITATION – To go in or upon private property in the Township of Franklin without having been invited to do so by the owner or occupant, for the purpose of (1) advertising, promoting, campaigning, advocacy, education, proselytizing, hand bill distribution, canvassing or selling any product, goods, wares, merchandise, service or other things of value or (2) conducting market research or a market or opinion survey regarding commercial products or services.

SOLICITOR – A person, commonly referred to as a “solicitor” or “canvasser”, who [~~goes from house to house selling or buying goods, wares, merchandise or other things of value by sample or by taking orders for future delivery or selling a service, with or without accepting an advance payment for the goods, wares, merchandise or other things of value or service.~~] engages in solicitation within the Township.

TRANSIENT MERCHANT – A person who, whether a resident of the Township of not, engages in temporary business within the Township of selling and delivering goods, wares, merchandise or services within the Township and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad, boxcar or boat, public room in hotels, lodging houses, apartments or shops, parking lot, sidewalk, street, alley or other place within the Township, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction.

§271-2. Purpose.

The purpose of this chapter is to protect the safety and welfare of the residents of the Township, to prevent fraud and dishonest business practices from being perpetrated upon them and to protect their privacy while balancing such interests against the opportunity for commercial, political, religious, charitable and nonprofit organizations to exercise their rights of free speech, and to provide for traffic and pedestrian safety by regulating the use of the streets and property adjacent thereto by itinerant or transient merchants, to prevent extended parking or trespassing on private or public property, to prevent violations of Chapter 112, Land Development, and in the case of mobile food vendors, to prevent violations of the State Sanitary Code, to protect traffic and pedestrian safety and prevent violations of the Motor Vehicle Code [~~and to generally provide for the safety of the residents of this community in the best interest of its welfare~~].

§271-3. Exemptions.

- A. Except as otherwise provided herein, the license requirements of this chapter shall not apply to:
- (1) Any person conducting a sale pursuant to statute or court order.
 - (2) Any person soliciting a vote or support for any political candidate or program.
 - (3) Any person engaged in delivering goods, wares, merchandise or other articles or things in the regular course of business to the premises of a person ordering or entitled to receive same.

- (4) Any person delivering or soliciting newspapers.
- (5) Any person conducting a sale within a multiple transient merchant facility as defined in §271-1.
- (6) Any person representing any entity who engages in Solicitation and which (a) qualifies for tax-exempt status under the Internal Revenue Code; (b) qualifies for exemption from property tax under N.J.S.A. 54:4-3.6; (c) qualifies for exemption from sales tax under N.J.S.A. 54:32B-9, or (d) was created under or is otherwise subject to the provisions of Title 15A of the New Jersey Statutes.

B. Prior to engaging in Solicitation in the Township, any person, nonprofit organization or vendor who meets the requirements for license exemption set forth in this section, shall present to the Township Clerk, documentation which verifies that the person, nonprofit organization or vendor, satisfies the criteria for exemption. Upon presentation of such documentation, the Township Clerk will issue a Certificate of Exemption, which shall be kept in the possession of the entity while engaged in Solicitation in the Township.

§271-6. Solicitation by children.

- A. Any nonprofit organization or vendor conducting peddling or solicitation projects by children under the age of 14 shall designate the custodial parent or guardian as the designated representative for each child peddling or soliciting for the organization. The designated custodial parent or guardian shall be notified in writing of such designation by the organization ~~and written confirmation from the designated representative shall be submitted to the Township Clerk as part of application submission.~~
- B. The following additional regulations shall apply to peddling or solicitation by children under the age of 14:
 - (1) An adult over the age of 18 must accompany any child under the age of 14 who engages in public peddling or solicitation in accordance with this chapter.
 - (2) The term “public peddling or solicitation” used in this section shall be both door-to-door as well as peddling or solicitation in shopping centers.
 - (3) Penalties. Violation of this section shall, in the first instance, result in a written warning to the designated representative of the organization and such child from the Franklin Police Department. Upon a second offense, either by the same child or designated representative, the Chief of Police or his designated representative shall call the child and the designated representative of the organization to a meeting. The refusal or failure to attend such meeting requested by the Chief of Police or his designee shall constitute a third offense under this section.
 - (4) Exception. This section shall not apply to children’s activities on Halloween.

§271-7. Solicitation by Exempt Persons; Nonprofit Organizations and Vendors.

Any person, nonprofit organization or vendor, exempt under Section 271-3, who conducts canister drives at commercial establishments shall be limited to two persons per ingress and/or egress doorway and shall not involve any structures, displays or furniture.

§271-[7]8. License required.

~~A. It shall be unlawful for any transient merchant, itinerant vendor, itinerant merchant, peddler, hawker, or solicitor to sell, buy, dispose of or offer to sell or dispose of any goods, wares, merchandise or other things of value or services or to solicit contributions, gifts, pledges or subscriptions of money, goods without first obtaining a license therefor.~~

Except as otherwise provided in this chapter, no person or entity shall engage in solicitation within the Township without first having obtained a license pursuant to the provisions of this chapter. Failure to obtain a license prior to solicitation shall constitute a violation of this chapter. Each day of solicitation without a valid license shall constitute a separate violation of this chapter.

~~B. Any nonprofit organization may acquire a single license for the sole purpose of conducting door to door solicitation of the organization upon submission of a list of all dates for such solicitation and the names and addresses of all solicitors and upon compliance with all other terms of this chapter. The license shall be valid until December 31 of the year of its issuance.~~

~~C. Any nonprofit vendor may acquire a single license for the sole purpose of conducting canister drives at commercial establishments upon submission of a list of all dates and locations for such solicitation and the names and addresses of all solicitors and upon compliance with all other terms of this chapter. Such solicitation is limited to two persons per ingress and/or egress doorway and shall not involve any structures, displays or furniture. The license shall be valid until December 31 of the year of issuance.~~

§271-[8]9. Application for license.

A. Applicants for a license under this chapter shall file a written, sworn application signed by the individual if an individual, by all partners if a partnership, by the president if a corporation, and by the highest two officers if any association, society or other form of organization, with the Township Clerk, showing:

- (1) The name or names of the person or persons having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the Township; the local address or addresses of such person or persons while engaged in such business; the permanent address or addresses of such person or persons; the capacity in which the person or persons will act (that is, whether as proprietor, agent or otherwise); the name and address of the person, firm or corporation for whose account the business will be carried on, if any, and if a corporation, under the laws of what state the same is incorporated.

- (2) The place or places in the Township where it is proposed to carry on the applicant's business and the length of time during which it is proposed that the business shall be conducted. In furtherance hereof, the applicant shall be required to submit a sketch depicting the exact location on the property wherein the activities will be conducted and the distance from said location to the right-of-way line.
 - (a) In the event that during the life of the license the applicant desires to amend the location on the property wherein the activities will be conducted, the applicant shall be required to submit an amended sketch depicting the new location and obtain approval thereof, with all distances from said location to the right-of-way line.
- (3) The place or places, other than the permanent place of business of the applicant, where the applicant, within the six months preceding the date of the application, conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted.
- (4) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by the applicant in the Township; the invoice and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or from stock in possession and by sample, at auction, by direct sale or by direct sale and taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced; and where such goods or products are located at the time the application is filed.
- (5) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers; and, if required by the Township Clerk, copies of all such advertising, whether handbills, circulars, newspaper advertising or otherwise, shall be attached to the application as exhibits thereto.
- (6) Whether or not the person or persons having the management or supervision of the applicant's business have been convicted of a crime, misdemeanor or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefor.
- (7) Credentials from the person, firm or corporation for which the applicant proposes to do business, authorizing the applicant to act as such representative.
- (8) Such other reasonable information as to the identity or character of the person or persons having the management or supervision of the applicant's business or the method or plan of doing such business as the Chief of Police may deem proper to fulfill the purpose of this chapter in the protection of the public good.

- (9) ~~In addition to any other requirements of this section hereof, application for a license to make a public solicitation of funds by nonprofit vendors, including charitable and philanthropic organizations, shall be made to the Township Clerk upon forms provided by the Township. Such application shall include the name and address of the designated representative(s) of the nonprofit vendor to be responsible for the supervision of any public supervision.~~

In the case of application for a license as a mobile retail food establishment, the application shall clearly state if any cooking is done in or on the mobile equipment or vehicle. If any grease-laden vapor cooking operations are conducted, the cooking equipment shall be protected by an automatic fire suppression system and manual fire extinguishers as required by the Fire Prevention Department.

- B. All such applications shall be filed at least 30 days from the scheduled date of the activity for which an application is sought.

§271-~~9~~10. Investigation; records of license; restrictions

- A. The Township Clerk shall forward the application to the following departments:
- (1) Mobile retail food establishment or other peddling or solicitation of food items: Police Department, Health Department.
 - (2) Door-to-door peddling or solicitation: Police Department.
 - (3) Canister drive with no tables, displays or other such equipment associated therewith: Police Department.
 - (4) Peddling or solicitation from a temporary location within or adjacent to another building and/or business with the use of tables, displays or other such equipment associated therewith: Police Department, Zoning Officer, and Division of Fire Prevention. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV).
- B. Investigation.
- (1) The police shall make investigation of such person and such person's business responsibility and character deemed necessary for the protection of the public good. Further, the police shall examine such place or places to determine whether such place or places are likely to create traffic congestion or traffic hazards as a result of the location thereof or as a result of pedestrians or operators of motor vehicles utilizing such place or places.
 - (2) The Health Officer shall make investigation of the application to determine whether any applicable state statutes, regulations or municipal ordinances or

regulations pertain to the operation and determine compliance of said operation with such statutes, regulations, and/or ordinances.

- (3) The Zoning Officer shall examine such application to determine compliance with any applicable provision of Chapter 112, Land Development, as well as compliance with applicable provisions of this Code.
 - (4) The Division of Fire Prevention shall examine such application to determine compliance with all applicable statutes, codes and regulations pertaining to fire safety.
- C. No license shall be issued to any transient merchant or mobile retail food establishment where the location of any activity or activities forming a part of the applicant's business shall be closer than 25 feet to the right-of-way line of any street in the Township of Franklin.
- D. If, as a result of such investigation, the applicant's character and business responsibility are found to be satisfactory or if it is determined that such place or places do not create a traffic safety hazard, the Chief of Police shall so certify in writing to the Township Clerk. Further, as a result of such investigation, the Health Officer shall determine that the activity is not regulated by any applicable state statute, regulation, or local ordinance regulating health matters or, if so regulated, that the activity complies with all applicable statutes, regulations or ordinances, he shall so certify in writing to the Township Clerk. Finally, if as a result of such investigation, the Zoning Officer shall determine that the proposed activity complies with all applicable provisions of Chapter 112, Land Development, and this chapter of this Code, he shall so certify, in writing, to the Township Clerk. The Township Clerk, upon receipt of all such written certifications, shall then issue a license. The Township Clerk shall keep a full record in his/her office of all licenses issued. Such records shall contain the number of the license, the date the same is issued, the nature of the business authorized to be carried on, the amount of the license fee, the expiration date of such license, the place where said business may be carried on under said licenses and the name or names of the person or persons authorized to carry on same.
- E. Any license issued herein for door-to-door solicitation shall prohibit such activity before the hour of 9:00 a.m. and after 9:00 p.m.

§271-~~10~~11. License fee; ~~exception~~.

Licenses under this chapter shall pay a fee of \$350, which fee shall be paid upon the application being made. ~~Nonprofit vendors shall not be required to pay any fee.~~

§271-~~11~~12. Display of license or badge, tampering.

The license issued under this chapter shall be posted conspicuously in the place of business named therein. In the event that such person or persons applying for the license desire to do

business in more than one place within the Township, separate licenses may be issued for each place of business. Every person who is required to hold a license under this chapter shall carry the same when engaged in the business for which the license is issued. Any alterations, erasers or mutilations shall void the license.

§271-~~[12]~~13. Expiration and renewal of license.

~~Other than a license issued to a nonprofit organization for the purpose of conducting door-to-door solicitation and pursuant to the provisions of §271-7 hereof~~ All licenses issued under the provisions of this chapter to ~~a nonprofit vendor,~~ a transient merchant or solicitor shall be valid only for a four-day period. Each additional four-day period shall be the subject of a separate license, and no applicant shall be issued more than four licenses in any one calendar year. The fee for the four four-day periods in a calendar year, however, shall be the annual fee set forth in §271-10. All other licenses issued under the provisions of this chapter shall expire each December 31.

§271-~~[13]~~14. Revocation or denial of license; appeal

A. The applications for and licenses issued pursuant to this chapter may be denied or revoked by the Township Clerk or her designee for any of the following causes:

- (1) Any fraud, misrepresentation or false statements contained in the application for license.
- (2) Any fraud, misrepresentation or false statements made in connection with the selling of goods, wares or merchandise.
- (3) Any violation of this chapter.
- (4) Conviction of the licensee for any felony or misdemeanor involving moral turpitude.
- (5) Conducting the business licensed under this chapter in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.

B. An appeal from any such denial or revocation may be made to the Township Manager within 10 days of the date of the denial or revocation. The Township Manager shall forthwith review the application record and evidence presented on behalf of the aggrieved party. The Township Manager shall render his decision within two days after completion of the hearing.

§271-~~[14]~~15. Record of violations.

The Township Clerk shall deposit the license number with the Chief of Police. The Chief of Police shall report to the Township Clerk any complaints against any person licensed under the

provisions of this chapter. The Township Clerk shall keep a record of all such licenses and of such complaints and violations.

§271-~~15~~16. Violations and penalties.

Any violation of the provisions of this chapter shall be punishable as provided in Chapter 1, Article II, General Penalty.

SECTION II

Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION IV

This ordinance shall take effect immediately upon adoption and publication according to law.

Ordinance No. 3815

This is a true and correct copy of an ordinance adopted by the Township Council, Township of Franklin, Somerset County, NJ.

Introduced: January 27, 2009

Public Hearing: February 24, 2009

Adoption:

Notice of Adoption:

Effective Date:

Ann Marie McCarthy, Township Clerk