

ORDINANCE 2023-3

AN ORDINANCE REGULATING SOLICITORS, TRANSIENT MERCHANTS, AND PEDDLERS

WHEREAS: the Town of Edinburgh, Indiana ("Town") desires to regulate the solicitors, transient merchants and peddlers within the Town; and

WHEREAS: Indiana Code 25-37-1-11 and 36-8-2-11 permits municipalities to regulate solicitors, transient merchants and peddlers and to charge a fee for a license

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Edinburgh, Indiana, as follows:

Section 1. Purpose. The purpose of this ordinance is to provide for the regulation of solicitors, transient merchants and peddlers and to impose penalties for violations of this ordinance.

Section 2. Definitions. For the purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (a) "Peddler" is defined to be any person who goes from house to house, from place to place or from street to street, conveying or transporting goods, wares or merchandise or offering or exposing the same for sale, or making sales and delivering articles to purchasers.
- (b) "Solicitor" is defined to be any person who goes from house to house, from place to place, or from street to street, soliciting or taking orders for sale of goods, wares or merchandise, including magazines, books, periodicals, or other personal property, for immediate or future delivery, or for services to be performed immediately or in the future. Such definition includes any person who, for himself or another, leases, uses or occupies any building, vehicle, trailer, tent, railroad car, hotel room, booth, public marketplace or part thereof, or other place in the Town for the primary purpose of exhibiting sales and taking order for future delivery.
- (c) "Transient Merchant" is defined to be any person who engages in a temporary business of selling and/or delivering goods, wares, merchandise or food within the Town, and who in furtherance of such purpose leases, uses or occupies any building, vehicle, trailer, tent, railroad car, hotel room, booth, public marketplace or part thereof, or other place in the Town, for the exhibition and sale of such goods, wares or merchandise or food.
- (d) "Public Marketplace" is defined to be an area or location within the Town where peddlers, solicitors, transient merchants or others gather for the display, sale and/or delivery of goods, wares, merchandise or food.
- (e) "Person in Charge" is defined to be the individual present at a Public Marketplace (or who manages a Public Marketplace) who is responsible for the operation at the time of inspection.
- (f) "Person" is defined to be any of the following:
 - i. An association;
 - ii. A corporation;
 - iii. A limited liability company;
 - iv. A trust;
 - v. An individual;
 - vi. A partnership;
 - vii. Any other legal entity.

Section 3. License.

- (a) No person shall engage in the business of peddler, solicitor or transient merchant in the Town without first obtaining a license from the Office of the Clerk-Treasurer.
- (b) A person who wishes to engage in business as a solicitor, transient merchant or peddler in the Town shall file a verified license application with the Office of the Clerk-Treasurer and pay the necessary license fee. The application must be submitted at least seven (7) days before the applicant begins business. The application must include the following information:
 - i. Business name (if applicable);
 - ii. The names, ages, permanent address, telephone number, Social Security Number and criminal history for the past seven (7) years of each person

- selling goods or soliciting business under the license. Each person shall submit a criminal history check authorization form with the application;
- iii. A brief description of the nature of the business and the goods, wares, merchandise, or food to be sold;
 - iv. The length of time for which the right to do business is desired;
 - v. If the employer is an association, corporation, limited liability company, partnership or other legal entity, the state of its incorporation or other formation or organization, whether it is authorized to do business in Indiana and evidence that the legal entity has designated a resident agent in the State of Indiana upon whom legal service may be made and that the legal entity will be responsible for the acts of its employees in the Town.
- (c) Upon receipt, the Clerk Treasurer shall refer all applications to the Town's Police Department for review or investigation of the representations made in the applications.
- (d) Before any license shall be issued in the Town under this Ordinance, the applicant shall file with the Clerk Treasurer of the Town a surety bond with guarantees running to the Town in the sum of Five Thousand Dollars and No Cents (\$5,000.00) executed by the applicant, as principal, with good and sufficient sureties upon which service of process may be made in the State. Such bond shall be conditioned upon the undertaking that the applicant shall comply fully with all of the provisions of the ordinances of the Town and the statutes of the State of Indiana, regulating and concerning the sale of food, goods, wares, merchandise, and services, and payment of all judgments rendered against the applicant for any violation of the ordinances or statutes, or any of them, together with all judgments and costs that may be recovered against him/her by any person for damage growing out of any misrepresentation or deception practiced on any person transacting business with such applicant, whether such misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the food, goods, wares, merchandise, or services sold or any part thereof. Action on the bond may be brought in the name of the Town to the use of the aggrieved person, by the Town if for the collection of fees, or by the person aggrieved and for whose benefit, among others, the bond is given. Such bond must be approved by the Clerk Treasurer, both as to form and as to the responsibility of the sureties thereon. The bond shall be in full force and effect for a one (1) year period after application. In such bond, the applicant and surety shall appoint the Clerk Treasurer of the Town in which the bond is filed, the agent of the applicant, and the surety for the service of process. In the event of such service of process, the agent on whom such service is made shall, within five (5) days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he has been served, addressed to the last known address of such party. Failure to mail the copy shall not, however, affect the court's jurisdiction.
- (e) If business will be conducted door to door, the application must be accompanied by copies of identification cards as well as background checks for each individual that will be conducting business within the town.
- i. The license shall be kept in a visible place on the person and presented to the homeowner at the time of arrival.
- (f) If goods to be sold are foodstuffs, the application must also be accompanied by a Permit from the Johnson County Health Department.
- (g) The Clerk Treasurer shall issue a license upon receiving the surety prescribed herein and upon receipt of:
- i. The report of the Police Department finding that no person selling for such applicant has, within seven (7) years previous to the application, been convicted of violating any law or ordinance based upon charges concerning the use of sales, subscription or soliciting methods involving, trespass to land, undue pressure, misrepresentation and false or misleading statements or any ordinances related to licensing; or within ten (10) years for convictions related

to disorderly conduct, assault, battery fraud, or felonies involving bodily harm or theft, or any other violent crimes.

- ii. Confirmation that a transient merchant applicant complies with all ordinances applicable to the premises, including but not limited to all zoning and building safety requirement, in addition to the Police report.

- (h) Such license shall not be transferable and shall be valid only in the Town of Edinburgh, Indiana. No license shall be good for more than one (1) person, unless such persons shall be copartners or employees of a firm, limited liability company, or corporation obtaining such license. No license shall be good for more than one (1) location in said Town, if said transient merchant is transacting business in a building or structure in said Town.

Section 4. License Fee.

- (a) The fee for such license is \$25.00 per day, \$100.00 per week, \$250.00 per month, \$350.00 per six months, or \$500.00 per year.
- (b) For peddlers and solicitors, the license fee applies to each individual that will be conducting business in the town.

Section 5. Exceptions. This ordinance shall not apply to the following:

- (a) To merchants or their employees in delivering goods in the regular course of business;
- (b) To vendors of milk, bakery products, groceries or ice who distribute their products to regular customers on established routes;
- (c) To farmers on their own real estate or on real estate they farm pursuant to a lease who vend, sell or dispose of, or offer to sell, vend, or dispose of the products of the farms or gardens occupied and cultivated by them;
- (d) The sale of goods or services to benefit a charitable cause or charitable organization provided that each person who engages in the sale of good or services has in his or her possession a document or other proof that identifies that person as being authorized by the organization to engage in such sales;
- (e) The sale of goods or services at an event that is sponsored or run by a 501(c)(3) non-profit organization or other charitable/non-profit organization;
- (f) Any sale required by statute or by order of any court;
- (g) The sale of goods at a business or commercial property;
- (h) Garage sales or yard sales; or
- (i) Any person or business participating in a Town sponsored event or an event allowed by the Town on Town property or other public property.

Section 6. Enforcement and Penalties. It shall be the duty of each law enforcement officer of the Town to determine that persons engaged as solicitors, transient merchants or peddlers are licensed with the Town and otherwise in compliance with the provisions of this article.

- (a) If not in compliance, a law enforcement officer shall issue a complaint and summons.
- (b) A law enforcement officer who issues a complaint and summons ticket form to a person for a violation of this article, and who has reason to believe the violation will continue after issuance of the ticket, may take possession of any tangible goods being offered for sale. Such goods may be retained by the Town until the License Administrator issues the person a license under this article or the enforcement action is concluded, whichever occurs first.
- (c) A person who violates Section 3 of this Ordinance shall be subject to a fine of not less than two hundred and fifty dollars and no cents (\$250.00), and each day that an offense continues shall constitute a separate violation.

Section 7. Responsibility of Owner Operating a Public Marketplace.

- (a) It shall be the duty of both the owner of a Public Marketplace and the person-in-charge of a Public Marketplace to ensure that persons engaged as solicitors, transient merchants or peddlers that are selling goods, wares, merchandise, or food at the Public have a valid a license from the Town of Edinburgh. The lack of a valid license from the Town of Edinburgh to a solicitor, transient merchant or peddler is a violation of this Ordinance by both the owner of a Public Marketplace and the person-in-charge of a Public Marketplace.
- (b) A person that violates any provision of this article shall be subject to a fine of not less than two hundred and fifty dollars and no cents (\$250.00) for each unlicensed person that sells goods, wares, merchandise, or food at their event.

Section 8. Refusal to Issue; Suspension; Revocation

- (a) Imputed liability. Every act or omission constituting a violation of any of the provisions of this Ordinance by any officer, director, manager, agent or employee of any Licensee shall be imputed to such Licensee. The Licensee may be subject to punishment as if the act or omission had been done or omitted by the Licensee personally;
- (b) Causes for Suspension or Revocation. In addition to provisions elsewhere in this Ordinance and other ordinances, the Clerk Treasurer may suspend or revoke a License for any one or more of the following reasons:
- i. Material fraud, misrepresentation or false statements in connection with the application for a License;
 - ii. Material fraud, misrepresentation or false statements in connection with the offer to sell or the sale of food, goods, wares, merchandise or services which are the subject of the License;
 - iii. Material violation of this Ordinance;
 - iv. Violation by the licensee of this Ordinance or other ordinances related to the License, the subject matter of the License, or to the premises, if any, occupied by the Licensee in connection with the License;
 - v. Conducting business, activity or enterprise for which the License is issued in a manner so as to constitute a nuisance as defined by this Code, other ordinances, or the laws of this State;
 - vi. Failure to meet the qualifications required of a Licensee;
 - vii. Any conviction of the licensee for a violation of the laws of the United States, this State or any of its political subdivisions, or any other state or political subdivision thereof substantially related to the subject matter of the license, or to the premises, if any, occupied by the licensee in connection with the license.
- (c) Causes for Denial. The Clerk Treasurer may refuse to issue a license for any of the reasons for which a license could be suspended or revoked;
- (d) Notice of Denial, Suspension, or Revocation, Hearing. Except as provided in subsection (e), no license subject to the provisions of this Ordinance shall be denied, suspended, or revoked, except when at least ten (10) days' written notice shall be served on the applicant or Licensee. The notice shall set forth a date, time and place at which the Licensee or applicant may appear to show cause before the Clerk Treasurer why the License should be issued or not suspended or revoked and shall state the facts which constitute the reasons for the suspension or revocation hearing. Service of the notice shall be made in one of the following ways:
- Certified mail, return receipt requested, at the Licensee's business or home address indicated on the Licensee's application for the License;
- Personal Service on the Licensee, the manager or agent of a Licensee, or any employee of the Licensee, who is eighteen (18) years of age or older at the time of service; or
- any other method of service effective under Indiana law.
- (e) Emergency Suspension. If the Issuing Clerk Treasurer has reason to believe that the continued operation of a particular Licensee will immediately threaten the health, safety or welfare of the community, the Clerk Treasurer may, upon the issuance of a written order stating the reason for the conclusion and without notice or hearing, order the License suspended for not more than ten (10) days. A hearing shall be held within the ten (10) day period. Such period shall begin on the date of suspension. The hearing shall give the Licensee the opportunity to be heard on the matter;
- (f) Hearings. The Clerk Treasurer shall make findings of fact and a decision, and impose a suspension or revocation of license, if any, in writing;
- (g) Fines. In addition to the suspension or revocation of a License, a Licensee is subject to imposition of fines in accordance with this Ordinance;
- (h) Appeal. The decision of the Clerk Treasurer is final action for the purposes of judicial review;
- (i) No Refund of Fees. In a case of a refusal to issue a License, a suspension of License, or revocation of License, no portion of the application fee or any renewal fee shall be returned to the Licensee.

Section 9. Refusing to Leave; Posting of Premises for No Solicitation; Duty of Solicitor

- (a) It shall be unlawful for any peddler or solicitor to enter or attempt to enter or fail to immediately leave a property in the Town after the owner or occupant thereof has requested such person to leave;
- (b) Express prior consent shall be required for peddlers and solicitors on residential properties. Consent shall not be implied by lack of signage or notice of a prohibition;
- (c) For non-residential properties, any person who desires to exclude the presence of commercial peddlers and solicitors from the premises which he or she occupies may give notice to such peddlers and solicitors by posting an easily readable notice on or near the main or front entrance to the property. Such notice may exclude all peddlers and solicitors or a class of peddlers and solicitors;
- (d) For non-residential properties, it shall be the duty of each peddler and solicitor to examine and look for, on or near the main entrance to each premises, the notice that all peddlers and solicitors or a class of solicitors are prohibited from the premises;
- (e) For non-residential properties, no peddler or solicitor shall ring the doorbell or knock on any door or window for the purpose of securing personal contact with the occupant of a property or attempt any sale or solicitation when the owner or occupant thereof has prominently displayed a "No Peddlers/Solicitors Invited" sign or sign to that effect on or near the main or front entrance to such premises.

Section 10. Repealer. All ordinances or parts of ordinances in conflict with provisions of this ordinance are hereby repealed.


Section 11. Severability. Should this section or provision of this ordinance be declared the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be unconstitutional or invalid.

Section 12. Effective date. This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

ADOPTED this 13th day of February, 2023.

Edinburgh Town Council

Ryan Piercefield, Council President




Dawn Graham, Vice President



Debbie Buck, Member

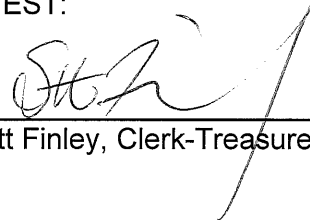


Miriam Rooks, Member



Jeff Simpson, Member

ATTEST:



Scott Finley, Clerk-Treasurer