

ORDINANCE NO. 1859

**AN ORDINANCE ADOPTING NEW SOLICITOR/PEDDLER REGULATIONS;
REPEALING ORDINANCE 1135; AMENDING DAYTON MUNICIPAL CODE (DMC)
TITLE 3 CHAPTER 5; ESTABLISHING SEVERABILITY AND EFFECTIVE DATE**

WHEREAS, the city council finds that persons and organizations have been visiting and continue to visit private residential properties for the purposes of soliciting goods, wares, merchandise or services;

WHEREAS, under-regulated door-to-door solicitation constitutes a serious concern for the city;

WHEREAS, the city has a substantial interest in preventing fraudulent or criminal activities which may result from unregulated solicitation;

WHEREAS, the city has a substantial interest in protecting individuals' safety and privacy by reasonably limiting the hours of solicitation and requiring permits in a content neutral manner;

WHEREAS, the city has a substantial interest in allowing individuals to determine their level of comfort with privacy and whether or not they want to receive solicitation; and

WHEREAS, the City desires to protect the health, safety, and welfare of the residents of the city.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON,
WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Repealing Ordinance. Ordinance 1135 is hereby repealed in its entirety.

Section 2. Amending Title 3 Chapter 5 of the Dayton Municipal Code. Title 3 Chapter 5 of the Dayton Municipal Code is hereby amended as follows:

Chapter 3.5
Peddlers/Solicitors

Sections:

3-5.005	Purpose.
3-5.010	Definitions.
3-5.020	License required—Exemptions.
3-5.025	Unlawful acts.
3-5.030	License—Application.
3-5.040	Investigation of applicant—Issuance and denial of license.
3-5.050	License and photo identification to be carried.
3-5.060	License expiration.
3-5.070	License revocation.
3-5.080	Appeals.
3-5.090	Use of streets.

- 3-5.100 Hours of Operation.
- 3-5.110 Enforcement.
- 3-5.120 Severability

3-5.005 Purpose.

The purpose of this chapter is to establish reasonable restrictions on peddling/soliciting activities within the city limits to protect and promote public safety, privacy, and welfare. This chapter is intended to be reasonable as to time, place, and manner restrictions and is not intended to infringe upon any constitutionally protected right.

3-5.010 Definitions.

1. *"Peddler/Solicitor"*. The terms "peddler" and "solicitor," and the terms "peddle" and "solicit" are used interchangeably in this chapter. A "peddler/solicitor" is defined as follows:
 - A. All persons, both principals and agents, as well as employers and employees, who shall sell, offer for or expose for sale, or who shall trade, deal or traffic in any personal property or services in the city by going from house to house, from place to place, or by indiscriminately approaching individuals from a location on any street, alley, sidewalk or other public thoroughfare.
 - B. Any person, both principals and agents, as well as employers and employees, who, while selling or offering for sale, any goods, wares, merchandise or anything of value, stands in a doorway or on any unenclosed vacant lot, parcel of land, or in any other place not used by such person as a permanent place of business. This definition is not intended to apply to yard sales or other selling related activities by the owners of property where such sales are being conducted.
2. *"Breach of the Peace"* means a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or disturbing noise.
3. *"Charitable"* means the purpose of an organization which has received a letter of determination approving tax exempt status under Title 26 of the United States Code Section 501(c)(3) or the purpose of a school club, recognized and affiliated with a public or private school, having a program with annual campaigns to support the public or private school club.
4. *"Moral turpitude"* means an act or behavior that gravely violates the moral sentiments or the accepted moral standards of the community. Crimes of moral turpitude include, but are by no means limited to, misdemeanor offenses involving the following sorts of conduct, namely, assault, false advertising, false representation, fraud, harassment, theft, sexual exploitation of children, swindles and unlawful possession of a firearm.
5. *"Fraud"* means a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.

3-5.020 License required—Exemptions.

- A. No person, corporation, partnership or other organization shall engage in the business of a peddler within the corporate limits of the city without first obtaining a license to do so. If an individual is acting as an agent for or employed by another individual, a corporation, a partnership or other organization, both the individual and the employer or principal for whom the individual is peddling must obtain a license to conduct business. The applicant must present a letter from the organization on company letterhead authorizing the applicant to solicit on its behalf.
- B. The following persons are exempt from the license requirement and fee provisions of this chapter upon establishing proof of exempt status:
 - 1. Newspaper carriers who deliver door-to-door on an established route(s);
 - 2. Any person selling, delivering, or peddling any agricultural, horticultural, or farm products which they may grow or raise (RCW 36.71.090);
 - 3. Any person who, as an agent, acts as a peddler/solicitor on behalf of a regulated utility;
 - 4. Any minors engaged in baby-sitting, lawn mowing, car washing, or other similar independent activities, unless the minor is acting on behalf of a person not a minor;
 - 5. Any person who is specifically requested to call upon others for the purpose of displaying goods, literature or giving information about any article, service or product;
 - 6. Charitable, religious or nonprofit organizations or corporations which have received tax exempt status under 26 U.S.C. 501(c)(3) or other similar civic, charitable or nonprofit organizations. Such organizations must notify the city of campaigns underway, dates of solicitation and prove exempt status; and
 - 7. Bona fide candidates, campaign workers and political committees campaigning on behalf of candidates or on ballot issues and persons soliciting signatures of registered voters on petitions to be submitted to any governmental agency.

3-5.025 Unlawful acts.

- A. It is unlawful for any peddler to:
 - 1. Make untrue, deceptive, or misleading statements about the product or services sold for the purpose of procuring a sale or offer for sale;
 - 2. Make any untrue, deceptive, or misleading statement regarding the purposes of his/her contact with a potential customer;
 - 3. Sell before 8:00 a.m. or after 7:00 p.m. of any day without the specific prior consent of the prospective buyer;
 - 4. Attempt to gain admittance at any residence at which a sign bearing the words “no peddlers,” “no solicitors,” “no trespassing,” or words of similar import is posted, unless at the invitation or with the consent of the occupant thereof; or

5. Remain at any location after the prospective buyer has asked the peddler/solicitor to leave.

3-5.030 License—Application.

- A. Applicants for a license under this chapter must be at least 18 years of age and must file with the city clerk, or designated representative, an application in writing on a form furnished by the city. At the time of application or renewal, the applicant shall present picture identification from one of the following sources:
 1. A valid motor vehicle operator's license issued by a state agency, bearing applicant's photograph, date of birth and signature; or
 2. A state issued identification card bearing the applicant's photograph, date of birth and signature; or
 3. A valid U.S. passport.
- B. All applicants shall provide, at minimum, the following information on the application:
 1. Full name (first, middle and last), description of applicant and date of birth.
 2. Permanent home address and local address of applicant.
 3. Telephone number(s), which must include business, home, cell phone and message phone.
 4. A brief description of the nature of the business and the goods or services to be sold.
 5. If employed by another, the address and name of the employer and a statement of the exact relationship between the applicant and the employer.
 6. If a vehicle is to be used, a description of the same, including the license number.
 7. A statement as to whether or not the applicant has been convicted of any crime within the last ten years, including misdemeanors, or violations of any municipal ordinance; the nature of the offense; and the punishment or penalty assessed therefore.
 8. A statement that a license, if granted, will not be used or represented as an endorsement by the city for solicitations thereunder.
 9. For all sales occurring on a parcel of private property, the following must accompany the application:
 - a) The name and signature of the property owner authorizing the use of the parcel.
 - b) Other such information as may be required by the city.
 10. Signed Authorization for Release or Personal Information Agreement for the applicant.
 11. Other information as may be required by the city.
- C. Any individual, corporation, partnership or other organization which acts as the principal or employer for individual peddlers shall obtain a license as provided herein and shall provide the following information on the application in addition to any information required as set forth above:

1. The applicant's full name (first, middle and last), address and telephone number, date of birth and the names and addresses of all individuals who are employed by or acting as an agent for the applicant.
 2. If a corporation, the full names (first, middle and last), dates of birth, addresses and telephone numbers of the corporation's board of directors, principal officers and registered agent.
 3. If a partnership, the full names (first, middle and last), dates of birth, addresses and telephone numbers of the partners.
 4. A list of any criminal convictions during the past ten years for the applicant, any owners of the business, if a corporation, the board of directors and officers, and/or individuals who are employed or acting as an agent for the applicant.
 5. Full name (first, middle and last), date of birth, address and telephone numbers (business and home) of the individual, if applicable, acting as the manager for the applicants.
 6. A list of all other cities, towns, and counties where the applicant has obtained a peddler's license or similar license or permit within the past five years.
 7. Signed Authorization for Release or Personal Information Agreement for each individual who is employed by or acting as an agent for the applicant.
 8. Other information as may be required by the city.
- D. At the time of filing, each applicant and/or individual will have his or her photo taken by the city clerk or designated representative. Such photo will show the applicant's head and shoulders in a clear and distinguishing manner.
- E. At the time of filing, each applicant shall pay a nonrefundable fee the amount of which shall be established by an approved resolution of the city council.

3-05.40 Investigation of applicant—Issuance and denial of license.

- A. The city clerk, or designated representative, shall conduct an investigation into the background of the applicant and/or individuals who are employed or acting as an agent for the applicant.
- B. Upon completion of the investigation, the city clerk, or designated representative, shall approve or deny the license(s) based on the information received within ten (10) days of receipt of an application.
- C. If, as a result of the investigation, the moral character of the applicant or individuals who are employed or acting as an agent for the applicant is found to be satisfactory, the city clerk or designated representative shall issue a license to the applicant. Consistent with RCW 9.96A.020, an applicant and/or individuals who are employed or acting as an agent for the applicant shall not be denied a license solely because of a prior conviction, however, the city clerk or designated representative shall consider the following factors in ascertaining whether the applicant or each individual is of good moral character:

1. Whether he or she has committed any act involving fraud or misrepresentation within the past ten years.
 2. Whether he or she has committed any act within the past ten years which, if committed by a license holder, would be grounds for suspension or revocation of a license.
 3. Whether he or she has been convicted within the previous ten years of a felony, of any crime directly relating to the occupation of peddler or of any crime involving moral turpitude, fraud or misrepresentation.
 4. Whether he or she has been released from a penal institution or from active supervision or parole within the previous ten years as a result of a conviction for a felony.
 5. Whether he or she made any false or misleading statement in the application.
- D. The denial of a license to an applicant, individual, corporation, partnership or other organization that serves as the employer or principal for individual peddlers, shall be a sufficient basis to deny a license to the individual applicants who are employed by or acting as an agent for the applicant.

3-05.050 License and photo identification to be carried.

The license shall be carried at all times by each solicitor for whom issued, when soliciting or canvassing in the city, and shall be exhibited by any such solicitor whenever he or she shall be requested to do so by any officer of the law, city employee or any person solicited.

3-05.060 License expiration.

All licenses issued pursuant to this chapter are nontransferable and expire on December 31st of each year unless otherwise revoked or suspended. License fees shall not be prorated for any portion of the year.

3-05.070 License revocation.

- A. The city clerk, or designated representative, may revoke any license under this chapter where one or more of the following conditions exist, provided, however, a license shall not be revoked solely because of a criminal conviction:
1. The license was procured by fraud, by a materially false or misleading representation of fact in the application, or in any report or record required to be filed with the city clerk.
 2. Fraud, misrepresentation, or false statements made in the course of carrying on the business as a peddler.
 3. Violation of any provision of this chapter.

4. Conviction, after submission of the application for a peddler's license, of a felony, any crime related to the occupation of peddler or any crime involving moral turpitude, fraud or misrepresentation.
 5. Conducting the business of peddling in any unlawful manner or such manner as to constitute a breach of the peace or to constitute a menace to the health, safety and general welfare to the public.
 6. The revocation of any license held by an individual, corporation, partnership or other organization which serves as the employer or principal for individual peddlers shall constitute a basis for revoking the licenses issued to individual applicants who are employed by or acting as agents for such individual, corporation, partnership or organization.
 7. The revocation of a license for three or more persons who are employees or agents of an individual, corporation, partnership or organization shall constitute a basis for revoking the license issued to the employer or principal, as well as the licenses issued to all other employees or agents of that employer or principal.
- B. The city clerk or designated representative shall immediately suspend a peddler license for any violation of this chapter. This suspension shall be subject to appeal in the manner hereafter provided, but until such appeal is resolved in favor of the applicant, he or she will not continue to operate as a peddler.
 - C. Upon determination that grounds for revocation of a license exist, the city clerk or designated representative shall send the license holder a notice of revocation by certified mail, return receipt requested.

3-05.080 Appeals.

- A. Any person whose application for a peddler's license has been denied or any person whose peddler's license has been revoked shall have the right to appeal such action by filing a notice of appeal within ten calendar days of the date such person was notified that his application was denied or his license revoked. In computing the time prescribed for perfecting an appeal, the day upon which notification was given shall not be included, but the last day of the period for an appeal shall be included unless it shall fall upon a Saturday, Sunday or local holiday as prescribed in RCW 1.16.050. Such notice of appeal shall be filed with the city clerk or designee, 111 S. 1st Street, Dayton, Washington 99328, and shall state the particular reasons upon which the appeal is based.
- B. Upon the timely filing of a notice of appeal, the city clerk shall set a date for hearing the appeal. Such appeal shall be heard by the city council. .
- C. The hearing shall be conducted at the next regularly scheduled meeting of the city council from the date the notice of appeal was filed, unless an extension is agreed to by the petitioner. The city clerk shall notify the petitioner of the time and place of the hearing.
- D. Within 14 (fourteen) business days, excluding legal holidays, from the date of the hearing on an appeal under this section, the Mayor or designated representative shall issue a written decision. The decision of the city council shall be final. Any person desiring to appeal must file an appropriate action in Columbia County superior court within 14 days of the city council's decision.

3-5.090 Use of streets.

No peddler shall have any exclusive right to any location in the public streets or publicly owned right-of-way, or be permitted a stationary location, or be permitted to operate in any congested area where operations might impede or inconvenience the public. For purposes of this section, the judgment of the Sheriff, or designated representative, exercised in good faith, shall be conclusive as to whether the area is congested or the public impeded or inconvenienced.

3-05.100 Hours of Operation.

No solicitor shall sell before 8:00 a.m. or after 7:00 p.m. of any day without the specific prior consent of the prospective buyer.

3-05.110 Enforcement.


Any person found to have violated the provisions of this ordinance shall be guilty of a class 1 civil infraction; provided, however, the following offenses shall constitute misdemeanors punishable by a fine up to \$1,000.00 and imprisonment in the county jail for a period not to exceed 90 days, or by both such fine and imprisonment.

- A. Soliciting after license has been suspended by either the police department or the municipal court judge.
- B. The second or subsequent violation for soliciting without a license within a period of 12 consecutive months.
- C. Knowingly or intentionally submitting false or misleading information on the application.


Section 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body shall take effect five (5) days after passage and publication of an approved summary thereof.

PASSED by the City Council of Dayton, Washington, this 9th day of June, 2014.



Craig George, Mayor



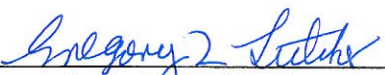
6/9/14

Attested by:



Trina Cole, City Clerk-Treasurer

Approved as to form:



Gregory L. Lutch, City Attorney

ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES

ORDINANCE NO. 1859

AN ORDINANCE ADOPTING NEW SOLICITOR/PEDDLER REGULATIONS; REPEALING
ORDINANCE 1135; AMENDING DAYTON MUNICIPAL CODE (DMC) TITLE 3
CHAPTER 5; ESTABLISHING SEVERABILITY AND EFFECTIVE DATE

The full text of Ordinance 1859, adopted the 9th day of June, 2014 is available for examination at the City Clerk's Office, 111 S. 1st St., Dayton, WA during normal business hours, 9:00 a.m. to 4:00 p.m.

Section 1. Repealing Ordinance.

Section 2. Amending Title 3 Chapter 5 of the Dayton Municipal Code.

Section 3. Severability.

Section 4. Effective Date.

By: /s/ Craig George, Mayor

Attest: /s/ Trina Cole, City Clerk-Treasurer

Approved as to form: /s/ Gregory L. Lutchter, City Attorney

Published: 06/19/2014

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