

ORDINANCE NO. 707

AN ORDINANCE PROTECTING THE HEALTH, SAFETY AND WELFARE OF RESIDENTS OF THE CITY OF REXBURG, IDAHO; PROTECTING ITS CITIZENS FROM CRIME AND UNDUE ANNOYANCES BY MEANS OF REGULATION OF PEDDLERS, SOLICITORS OR CANVASSERS, AND TRANSIENT MERCHANTS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE AND FOR SEVERABILITY; AND PROVIDING WHEN SAID ORDINANCE SHALL TAKE EFFECT.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF REXBURG, IDAHO:

SECTION 1: DEFINITIONS.

PEDDLER: Any person, whether a resident of the City or not, traveling by foot, motor vehicle or any other type of conveyance, however propelled, drawn, pushed or moved, from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares, merchandise, food or farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or who, without traveling from place to place shall sell or offer the same for sale from a wagon, vehicle, railroad car, or any other type of conveyance. The word "peddler" shall include the words "hauler" and "hucksters."

SOLICITOR OR CANVASSER: Is defined as an individual whether resident of the City or not, traveling either by foot, motor vehicle or any other type of conveyance, from place to place, from house to house or from street to street, taking or attempting to take, whether in person or by telephone, orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether he is collecting advance payments on such sales or not. Such definitions shall include any person who, for himself, or for another person hires, leases, uses or occupies any building, structure, tent, railroad box car, boat, hotel room, lodging house, apartment, shop or any other place within the

City for the sole purpose of exhibiting samples and taking orders for future delivery.

TRANSIENT MERCHANT, ITINERANT MERCHANT,

ITINERANT VENDOR: Is defined as any person, whether owner or otherwise, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares, and merchandise within the City, and who, in furtherance of such purpose, hires, leases, uses or occupies any building structure, motor vehicle, tent, railroad box car, public room in a hotel, lodging house, apartment, shop, or any street or other place within the City for the exhibition and sale of such goods, wares and merchandise.

TEMPORARY: Is defined as thirty (30) days or less.

SECTION 2: LICENSES REQUIRED. It shall be unlawful for any peddler, solicitor or canvasser, transient merchant, itinerant merchant or itinerant vendor as the same are herein defined, to engage in such business within the corporate limits of the City without first obtaining a license therefor in compliance with the provisions of this ordinance.

SECTION 3: EXCEPTIONS. The provisions of this ordinance shall not apply to:

- A. Any sales under court order;
- B. A bona fide auction sale;
- C. Traveling salespersons, commercial travelers or the like who exclusively or primarily sell to, or solicit orders for future delivery, from local retailers, local businesses, local governments, local schools, or local wholesale firms;
- D. The sale of farm or garden products by the person producing the same;
- E. The sale of a newspaper subscription in which the seller is a person engaged in both the delivery and sale of the newspaper;

F. Contribution solicitation where the person being solicited to contribute personally knows the identity of the person soliciting the contribution, the name of the group or organization he represents, and the nature of the services performed or offered by the group or organization;

G. The occasional sale of admission by local school students to a function of their school; or fund raising sales by local service clubs or groups such as Elks, Kiwanis, Lions, Boy or Girl Scouts, etc.;

H. Any political group seeking funds or membership;

I. Garage, yard, or similar sales by individuals at their residence or place of business not exceeding twice in one (1) calendar year, which sales shall not include business inventory;

J. Any solicitation of information for a telephone book or a City directory by a company representative;

K. Any organization exempt from taxation as provided by 26 U.S.C. 501 and meeting all the requirements for the exemptions provided by 26 U.S.C. 503;

L. A sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location in Madison County where goods or services are offered or exhibited for sale;

M. A sale of goods, wares, merchandise and personal property of any nature whatsoever for resale to or by a business establishment at a fixed location where goods or services are offered or exhibited for sale;

N. A sale of services to be furnished or performed in the future to or by a business establishment at a fixed location in Madison County.

SECTION 4: APPLICATION FOR LICENSE AND APPLICATION FEE. Applicants for a license under the provisions of this ordinance must file with the City Clerk an application

furnished by the City Clerk, which shall contain, but not necessarily be limited to, the following information:

A. Name and description of the applicant; if the applicant is an association, company or corporation, then it shall state its name along with the names and descriptions of the persons who will be soliciting in the City;

B. Address, both legal and local;

C. A brief description of the nature of the business and the goods to be sold and in the case of products of farm or orchard, whether produced or grown by the applicant;

D. If employed, the name and address of the employer, together with credentials establishing the exact relationship between the employer and the applicant;

E. The length of time for which the right to do business is desired;

F. If a vehicle is to be used, a description of the name, together with license number or other means of identification;

G. Has a permit or license to the applicant been revoked during the past five (5) years, and if so, where and when;

H. Proposed method of operation;

I. Social security number and/or driver's license number of applicant and birthdate of applicant;

J. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal laws, the nature of the offense and the date, and the punishment or penalty assessed therefor;

K. The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, the proposed method of delivery, and also written permission from the property owner where the goods or property are to be sold;

L. A two inch by two inch (2" x 2") photograph of the applicant, showing the head and shoulders of the applicant in a clear and distinguishable manner;

M. Except as provided in Section 5-12-6A, at the time of filing an application an investigation fee shall be paid to the City Clerk as follows:

1. For an investigation in Madison County only, twenty-five dollars (\$25.00);

2. For an investigation in the State of Idaho only, but outside Madison County, fifty dollars (\$50.00);

3. For an investigation outside the State of Idaho, two hundred fifty dollars (\$250.00).

N. No license issued hereunder shall be transferable.

SECTION 5: INVESTIGATION OF APPLICANT; ISSUANCE OF LICENSE.

A. Upon receipt of such application, or application for renewal, the City Clerk shall refer it to the Chief of Police, who shall cause an investigation to determine the validity and completeness of the information presented on the application. The Chief of Police shall endorse upon the application the findings of the investigation and return it to the City Clerk within five (5) working days. Provided, where application for renewal of a license is involved, and the City Clerk has received no complaint or allegation of any violation of this ordinance or other laws by the applicant, the City Clerk may waive payment of the investigation fee and issue the renewal license, upon payment of the license fee, without referral of the application to the Chief of Police.

B. If the applicant or his employer has been convicted of any crime, misdemeanor or violation of any municipal laws, except for minor traffic violations, in the previous five (5) years; or if the applicant has made a false statement on the application, then it shall be disapproved.

C. The City Clerk shall notify the applicant whether his license request is approved and upon payment of the prescribed license fee, shall issue a license. Such license shall show the name, address, photograph of said licensee, the type of license issued, and the kind of goods to be sold or type of sales to be solicited thereunder, the amount of fee paid, the date of issuance and the date of expiration.

D. The City Clerk shall notify the applicant if his license request is disapproved, the reasons therefor, and advise him of the appeal procedure.

SECTION 6: LICENSE FEES. The license fee for any peddler, solicitor or canvasser, or transient merchant shall be twenty-five dollars (\$25.00) for each day, one hundred fifty dollars (\$150.00) for each month, and three hundred dollars (\$300.00) for each quarter. All fees shall be paid in advance.

SECTION 7: BOND REQUIREMENT. Before any license as provided herein shall be issued for engaging in the business of peddler, solicitor or canvasser, or transient merchant as defined in this ordinance, every applicant plying his trade as an individual, shall file with the City Clerk a surety bond running to the City or a cashier's check in the amount of five hundred dollars (\$500.00). Every business, firm, company or corporation, which has one or more employees or agents acting in the capacity of peddler, solicitor, canvasser or transient merchant, shall file with the City Clerk a surety bond covering all such employees or agents and running to the City or a cashier's check in the amount of five hundred dollars (\$500.00) for each employee and/or agent.

Every bond for those engaging in a business as a peddler, solicitor or canvasser, or transient merchant as

defined in this ordinance shall be executed by the applicant as principal and at least one surety upon which service of process may be made in the State of Idaho, said bond to be approved by the City Attorney, conditioned that the said applicant and all of the applicant's agents and employees, shall comply fully with all of the provisions of this ordinance.

Based upon written justification and letters of reference from local citizens, local business firms, local companies or local corporations, or being licensed for one (1) year, the above bonding requirements may be waived when specifically approved by the City Council.

Action on the surety bond or cashier's check may be brought directly by any person damaged by a licensee's violation of any provision of this ordinance.

After expiration of a license, the City Clerk shall, upon application of the licensee, return the bond or cashier's check six (6) months after receipt of application for return, unless the Clerk has been notified of the pendency of any claim or cause of action by any person upon the bond or cashier's check.

SECTION 8: EXHIBITION OF LICENSE. The license issued to the licensee hereunder by the City Clerk shall be exhibited in a conspicuous place if the licensee is using a vehicle or a building in his business and otherwise must be kept by the person and exhibited at any time upon request.

SECTION 9: LOCATION RESTRICTIONS. No licensee hereunder shall have any exclusive right to any location in a public street, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this ordinance, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced. No business activity shall be carried on in any area of the City by any licensee who

is licensed pursuant to this ordinance, where such business activity is prohibited by the City of Rexburg Zoning Code.

SECTION 10: UNLAWFUL CONDUCT. No licensee hereunder shall:

A. Make physical contact with the person being solicited unless that person's permission is obtained;

B. Misrepresent the purpose of the solicitation;

C. Misrepresent the affiliation of those engaged in the solicitation;

D. Continue efforts to solicit from an individual once that individual informs the solicitor that he does not wish to give anything to or to buy anything from that solicitor;

E. Represent the issuance of any license under this ordinance as an endorsement or recommendation of the solicitation;

F. Enter upon any premises when the same is posted with a sign stating "No Peddlers Allowed" or "No Solicitation Allowed" or other words to such effect;

G. Knowingly make any false statement on an application for a license hereunder;

H. Fraud, misrepresentation or false statement made in the course of carrying on the business.

SECTION 11: ENFORCEMENT. It shall be the duty of any police officer of the City to enforce this ordinance. The Chief of Police shall report to the City Clerk all violations of this ordinance.

SECTION 12: RENEWALS. Licenses which are not renewed for a minimum of any six (6) quarters within the two (2) year period from the date of the original issue shall be, upon application for renewal, treated as an original application.

SECTION 13: EXPIRATION OF LICENSE. All licenses issued under the provisions of this ordinance shall expire on

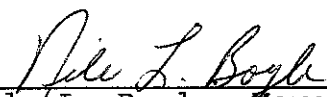
the date specified in the permit. No license shall be issued for a period longer than one (1) year.

SECTION 14: PENALTY. Any person, business, firm, company or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed three hundred dollars (\$300.00), or by imprisonment in the county jail for a period not to exceed thirty (30) days or both such fine and imprisonment. Each day or violation continued shall be separate offenses, punishable as hereinabove described.

SECTION 15: SEVERANCE CLAUSE. The provisions of this ordinance are declared to be severable if any section, sentence, clause, or phrase of this ordinance shall not affect the validity of the remaining sections, sentences, clauses and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

SECTION 16: This ordinance shall take effect and be in full force and effect from and after its passage, approval and due publication as provided by law.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR this 18th day of April, 1990.


Nile L. Boyle, Mayor

ATTEST:


Rose Bagley, City Clerk

(SEAL)

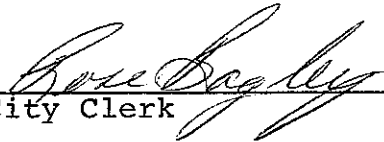
STATE OF IDAHO)
 : ss.
County of Madison)

I, ROSE BAGLEY, City Clerk of the City of Rexburg, Idaho, do hereby certify: That the above and foregoing is a

full, true and correct copy of the Ordinance entitled:

AN ORDINANCE PROTECTING THE HEALTH, SAFETY AND WELFARE OF RESIDENTS OF THE CITY OF REXBURG, IDAHO; PROTECTING ITS CITIZENS FROM CRIME AND UNDUE ANNOYANCES BY MEANS OF REGULATION OF PEDDLERS, SOLICITORS OR CANVASSERS, AND TRANSIENT MERCHANTS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE AND FOR SEVERABILITY; AND PROVIDING WHEN SAID ORDINANCE SHALL TAKE EFFECT.

Passed by the City Council and approved by the Mayor this 18th day of April, 1990.


City Clerk

(SEAL)