

ORDINANCE NO. 85-2018

**TITLE: AMEND BARBERTON CODIFIED ORDINANCES
CHAPTER 844 – PEDDLERS AND SOLICITORS**

AN ORDINANCE TO AMEND ORDINANCE 153-2017, CHAPTER 844, "PEDDLERS AND SOLICITORS," OF THE BARBERTON CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, State of Ohio:

SECTION 1. That Chapter 844 of the Barberton Codified Ordinances entitled "Peddlers and Solicitors," shall be amended with a ~~strike through~~ for any deletions and **bold** for any additions to read as follows:

844.01 DEFINITIONS.

As used in this chapter, unless a different meaning clearly appears from the context:

(a) "Commercial solicitation" and "commercial solicitor." Any person who calls at residences without an invitation or previous consent of the owner or occupant of such premises for the purpose of any one or more of the following activities.

(1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs or services of any kind, character or description whatever, for either present or future delivery;

(2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character;

(3) Seeking to ~~obtain contributions or to~~ sell any goods, articles or services of any kind.

(b) "Non-commercial solicitation" and "non-commercial solicitor."

(1) Seeking to obtain from an occupant of any residence an indication of such occupant's belief in regard to any social, political or religious matters;

(2) Seeking to obtain contributions or sell any goods, articles or services of any kind for the support or benefit of any educational, civic, philanthropic, charitable, religious or non-profit association, organization, corporation or project;

(3) Seeking to influence the personal belief of the occupant of any residence in regard to any social, political or religious matter; or

(4) Taking a poll or census by any person, firm or corporation, other than a governmental body or agency thereof, and excluding commercial polls.

(5) Seeking to obtain signatures to support or oppose any group, cause, movement or candidate.

~~(c)~~ (c) "Residence" means a "Dwelling" as defined in Section 1133.01(31) of the Codified Ordinances of Barberton.

~~(d)~~ (d) "Street Vendor." A cart, stall, vehicle, or other outdoor facility normally located within a public right-of-way for the purpose of selling or otherwise distributing food, services, or merchandise. All street vendors must maintain a certificate of insurance

naming the City of Barberton as an additional insured. Street vendors are considered to be a temporary use and must conform to Section 1310 of the Barberton Development Code. Street vendors do not include vending machines, newspaper racks, parking meters, fire or police call boxes, pay telephones, or farm stands.

844.02 HOURS OF SOLICITATION REGULATED.

(a) No commercial solicitation shall be conducted before 9:00 a.m. or after ~~6:00~~ **9:00** p.m. (local time) Monday through Saturday, or at any time on ~~Sunday~~ or a state or national holiday.

(b) No non-commercial solicitation shall be conducted before 9:00 a.m. (local time) or after 9:00 p.m. (local time) or at any time on a state or national holiday.

844.03 COMMERCIAL SOLICITING IN RESIDENCE DISTRICT.

No person shall enter upon the lot or land of any residence in the City of Barberton, for the purpose of commercial soliciting as defined in Section 844.01(a)(1), (2) and (3) unless such person has **successfully** registered his credentials with the Chief of Police as provided in Section 844.04.

844.04 REGISTRATION OF CREDENTIALS FOR COMMERCIAL SOLICITORS; APPLICATION FEE.

(a) Whoever desires to solicit for commercial purposes as defined in Section 844.01(a)(1), (2) or (3) shall have his credentials registered and shall file in duplicate with the Chief of Police, or the Chief of Police's designee, a written application on a form to be provided by the Chief of Police correctly setting forth the following information:

- (1) The full name of the applicant;
- (2) His or her address;
- (3) His or her birth date, demonstrating the person is at least **eighteen** (18) years of age, **(or have the application consigned as set forth in subsection (e))**, height, weight and color of eyes and hair;
- (4) Whether or not he or she uses a motor vehicle in his or her business, and if so, the make, model, year and current registration number thereof;
- (5) The state of issue of his or her driver's license and the number thereof;
- (6) The name, address and phone of his or her employer, and a contact person therein;
- (7) A brief description of the goods, wares, merchandise or services involved;
- (8) Whether or not he or she has ever been convicted of any crime, other than a traffic offense, and if so, the nature thereof and the penalty therefor;
- (9) Mobile telephone number; and
- (10) A photo identification card.

(b) Concurrently with the filing of the application, the applicant shall pay a fee for a BCI and FBI background check in addition to eighty-five dollars (\$85.00) to compensate for the costs incident to the examination, registration and issuance of stamped copies of credentials.

(c) Within ~~20~~ **thirty (30)** days of compliance of the foregoing provisions of this section **and absent a conviction for an offense listed in subsection (f)**, the Chief of Police shall forthwith stamp the original of the application as "Inspected and Registered" and deliver the same to the applicant for identification use as hereinafter provided. Such application shall also be stamped with the date of expiration of the registration which in each case shall be the close of the current calendar year, or 6 months whichever is later.

(d) Possession of such stamped application shall not entitle the applicant to enter upon any lot or land specified in Section 844.05 or between the hours of ~~6:00~~ **9:00** p.m. (local time) and 9:00 a.m. (local time) on weekdays and Saturdays or at any time on a state or national holiday ~~or Sundays~~, not to any residence displaying the notice contained in Section 844.05, nor to a residence on the "Do Not Solicit" list, nor shall such credentials be valid for the solicitation or sale of any goods or services not disclosed in the original application.

(e) Any person who has not reached **eighteen (18)** years of age shall be required to have a parent, guardian or employer co-sign on the application.

(f) Any person who through the solicitation permitting process is discovered to have been convicted of, or who has pleaded guilty to any criminal offense of the Ohio Revised Code, United States Code, or any other substantially similar state or local code provisions that constitutes any theft or fraud offense, any offense of burglary, any offenses of violence, any drug trafficking offense or any offenses of any sex crime law or statute, is prohibited from commercial solicitation within the City of Barberton.

(g) Any person who application for Registration is rejected or denied shall be entitled to appeal that denial by filing a Notice of Appeal of that denial or rejection with the Clerk of Council. Said notice appeal shall be filed within ten (10) days of said denial. Said appeal shall be heard by Council. Council shall forthwith set a time and place for hearing such appeal and give the appellant due notice thereof by certified mail. Appeal from the decision of the Council shall be as provided in the Ohio Revised Code.

844.05 NOTICE PROHIBITING SOLICITATION.

(a) Notice by the owner or occupant of any residence or place of business of the determination to refuse to receive any uninvited solicitors shall be given by displaying a card, decal or sign that is plainly visible, upon or near the main entrance door to the residence or place of business, indicating such determination by the owner or occupancy, containing the words "No Solicitors Invited," or words of similar import, that are clearly printed and legible. Any such sign that complies with the requirements of this section shall be exempt from any additional or different requirements contained in the provisions of this code, including but not limited to the Planning and Zoning Code. No commercial or non-commercial solicitor shall solicit upon any residence or place of business displaying the notice contained herein.

(b) In addition to subsection (a) herein, any resident may further appear at the City or otherwise cause to register their residence on the "City of Barberton - Do Not Solicit" list which shall be maintained and updated by the Chief of Police and provided to each registered solicitor.

844.06 SOLICITATION IN VIOLATION OF NOTICE.

It is hereby declared to be unlawful and shall constitute a trespass for any person to go upon any premises and ring the doorbell upon or near any door, rap or knock upon any door or create any sound in any other manner calculated to attract the attention of any occupant of such residence for the purpose of commercial **or non-commercial** solicitation in defiance of the notice exhibited at the residence in accordance with the provisions of Section 844.05(a),

or the "Do Not Solicit" list as contained in Section 844.05(b) unless the commercial or non-commercial solicitor has been previously invited upon the premises by the owner, lessee, or an adult occupant thereof.

844.07 LEGAL ACTION.

Notwithstanding any penalty provided for under the terms of this chapter, the Chief of Police or any resident of the City, or any other person, firm or corporation, partnership or other entity **who believes they have been improperly solicited under this chapter** may commence a civil action in any court of competent jurisdiction against any person, firm, corporation, partnership or other entity who violates the provisions of this chapter. Such relief shall include any preliminary or permanent injunction to abate such nuisance and such other relief as the court may deem appropriate, including, but not limited to, reasonable attorney's fees, expenses and court costs.

844.08 FALSE INFORMATION; REVOCATION OF REGISTRATION; APPEALS.

(a) No person shall make any false statement or give any false or misleading information in the application required by Section 844.04.

(b) Should subsequent information disclose that any applicant has falsified any information required in such application, the Chief of Police shall forthwith revoke such registration and notify the holder thereof either in person or by certified mail of the actions so taken. Such remedy shall be in addition to the penalty provided by in Section 844.99.

(c) Any person whose registration is so revoked may, within ten days after receipt of the revocation notice, appeal to Council by filing with the Clerk a signed written statement briefly setting forth his ground of appeal. Council shall forthwith set a time and place for hearing such appeal and give the appellant due notice thereof by certified mail. The appellant may appear before Council in person or by an attorney. The decision of Council **shall be subject to appeal as provided in the Ohio Revised Code.** ~~thereon shall be final.~~

844.09 DISPLAY OF CREDENTIALS UPON REQUEST.

(a) It shall be the duty of any police officer of the Municipality to require any person found engaged in commercial soliciting for orders or selling goods, wares, merchandise or services in any residence district established by the Zoning Code who is not known by such police officer to be the holder of registered and stamped credentials as required by Section 844.04 to produce his credentials, and to enforce the provisions of this chapter.

(b) Every holder of registered and stamped credentials, when engaged in soliciting orders for or selling goods, wares, merchandise or services upon any lot or land of any residence in any residence district established by the Zoning Code, shall, upon the request of any owner or occupant of such lot or land, exhibit for examination his credentials issued pursuant to the provisions of this chapter.

(c) Every holder of registered and stamped credentials, when engaged in soliciting orders for or selling goods, wares, merchandise or services upon any lot or land of any residence in any residence district established by the Zoning Code, shall prominently display his or her credentials in a conspicuous place upon his or her person at all times while soliciting pursuant to this section.

(d) The Chief of Police shall cause a weatherproof credential of sufficient size and color to be given to each approved applicant herein.

(e) While engaging in ~~commercial~~ solicitation, each ~~commercial~~ solicitor shall carry the "Do Not Solicit" list upon their person.

844.10 STREET VENDORS.

(a) All street vendors must register in the office of the Chief of Police and obtain a permit to do so from him.

(b) Copies of all valid licenses or permits necessary to conduct business as outlined above are required. All original licenses and permits must be able to be produced upon request.

844.11 STREET VENDOR LOCATIONS.

No street vendor, as defined in Section 844.01(c), may set up within a distance of 250 feet from any event that is sanctioned and approved by the Mayor or Director of Public Safety, **during a period of beginning eight (8) hours before said event and ending eight (8) hours after the conclusion of said event.**

844.99 PENALTY.

Any person, firm, partnership, association or corporation violating any provision of this chapter shall be guilty of a misdemeanor of the third degree for a first offense and a misdemeanor of the first degree for a subsequent offense.

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, for the reason that it is necessary to facilitate timeliness, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2018

Clerk of Council

President of Council

Approved _____ 2018

Mayor