BROOKINGS COUNTY ORDINANCE 2016-01

AN ORDINANCE LICENSING AND REGULATING PEDDLERS OPERATING OUTSIDE THE BOUNDARIES OF INCORPORATED MUNICIPALITIES WITHIN BROOKINGS COUNTY AND WITHIN THE INCORPORATED MUNICIPALITIES OF SINAI, BRUCE, BUSHNELL AND ELKTON.

BE IT ORDAINED BY BROOKINGS COUNTY, SOUTH DAKOTA:

WHEREAS, SDCL 9-34-18 provides for the local regulation of peddling and soliciting by a county or municipality;

WHEREAS, the citizens of the incorporated municipalities of Sinai, Bruce, Bushnell, and Elkton do not have such a regulation and have requested that Brookings County Ordinance 2016-01 apply to said municipalities within Brookings County; and

WHEREAS, the Brookings County Commission finds it is appropriate and in the best interests of the citizens of Brookings County to regulate the temporary business of peddlers operating outside the boundaries of incorporated municipalities within Brookings County and within the incorporated municipalities of Sinai, Bruce, Bushnell and Elkton.

NOW, THEREFORE, BE IT ORDAINED BY BROOKINGS COUNTY:

SECTION I. DEFINITIONS.

For the purposes of this Ordinance, the term Peddler includes the following:

> "Peddler" includes any person traveling by foot, vehicle, or any other type of conveyance, from place to place, carrying or transporting goods, wares and merchandise; offering and exposing the goods, wares and merchandise for sale or making sales and delivering articles purchased; or who, without traveling from place to place, shall sell or offer the goods, wares or merchandise for sale from his or her person or from any vehicle or conveyance.

SECTION II. EXCEPTIONS.

The provisions of this Ordinance shall not apply to the following:

A. Charitable, religious, or nonprofit organizations or corporations which have a tax exempt status under IRC paragraph 501(c)(3), 26 USCA.
B. Civic, educational, or veteran's organizations.
C. Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.
D. Persons selling or delivering personal property to regular customers on established routes.
E. Persons selling jams, jellies, vegetables, fruits, or flowers grown or produced by them and not purchased by them for resale.

F. Garage, rummage, yard, or moving sales, or auctions, that are held in compliance with any municipal or county zoning ordinance relating to the same.
G. Persons soliciting newspaper subscriptions, or magazine, book, or periodical subscriptions sponsored by any nonprofit organization.
H. Persons soliciting orders for any agricultural product produced or processed within the State of South Dakota, stock foods, veterinary medicines and biologicals, or such petroleum products as are subject to state inspection under SDCL Chapter 37-2.

SECTION III. REGULATIONS.

A. No Peddler shall do business in Brookings County without first obtaining a Peddler's License, which shall be prominently displayed at the location where the Peddler is conducting business, including carrying the same on his or her person if the solicitations involve traveling on foot.
B. No Peddler may make false or fraudulent statements concerning the quality or the nature of the goods, wares, merchandise or services for the purpose of inducing another to purchase the same.
C. No Peddler may engage in the business of peddling between the hours of 9:00 p.m. and 9:00 a.m., except by specific appointment with, or invitation from, a prospective customer.
D. No holder of a license issued under this Ordinance shall authorize or permit any person or business not identified on the license to utilize a duly issued license.

SECTION IV. PEDDLER'S LICENSE.

A. A Peddler's License shall be valid for a period of thirty (30) days from the date of issuance, unless an earlier expiration date is noted on the license.
B. The applicant for a Peddler's License shall file with the Brookings County Finance Officer, a sworn application in writing, on a form furnished by the Brookings County Finance Office, giving the following information:
    a. The name of the business;
    b. The name of the applicant;
    c. The permanent home address of the applicant;
    d. A phone number and email address for the applicant;
    e. The start and end date of the requested solicitation;
    f. Location where the applicant intends to conduct business in Brookings County;
    g. If a vehicle is to be used, the make, model and license plate number of vehicle;
    h. A brief description of the nature of the business and the goods to be sold;
    i. South Dakota Sales Tax ID number;
    j. Any felony or misdemeanor convictions within the past five (5) years; and
    k. Any judgment or conviction for fraud, deceit, or misrepresentation within the past five (5) years.
C. The fee for a Peddler's License shall be $100.00 and shall be paid at the time of application. The County Commission shall have the authority, on request of the applicant made to the Commission at a regular meeting, to waive or reduce any fee hereunder.

D. Upon payment of the appropriate fee and completion of the application, an applicant shall be issued a Peddler's License.
E. No Peddler may give any false or misleading information in connection with their application for a license.
F. No license shall be issued by the Brookings County Finance Office until the applicant has complied with the requirements of this Ordinance.
G. No license shall be issued to any person who does not have a valid South Dakota sales tax permit.

SECTION V. DENIAL OF LICENSES.

Upon the Brookings County Finance Officer's review of the application, the Finance Officer may refuse to issue a Peddler's License to the applicant under this Ordinance for any of the following reasons:

(1) The location and time of the activity would endanger the safety and welfare of the Peddler, their customers, or the public;
(2) An investigation reveals that the applicant falsified information on the application;
(3) Any individual listed on the application that has been convicted of a felony or misdemeanor violation involving a sex offense, trafficking in controlled substances, or any violent acts against persons or property, such conviction being entered within the five (5) years preceding the date of application;
(4) Any individual listed on the application is a person against whom a judgment based upon, or conviction for, fraud, deceit or misrepresentation has been entered within the five (5) years immediately preceding the date of application;
(5) There is no proof as to the authority of the applicant to serve as an agent to the principal; or
(6) The applicant has been denied a license under this Ordinance within the preceding 365 days, unless the applicant can and does show to the satisfaction of the Brookings County Finance Officer that the reasons for such earlier denial no longer exist.

The Brookings County Finance Officer's disapproval and the reasons for disapproval must be noted on the application, and the applicant will be notified the application is disapproved and that no permit will be issued. Notice will be mailed to the applicant at the address shown on the application form.

SECTION VI. PRIVATE PREMISES.

It shall be unlawful for any Peddler to enter upon premises owned, leased or rented by another and refuse to leave such premises after having been notified by the owner or possessor of such premises, or its agent, to leave the premises.

It shall be unlawful for any Peddler to enter upon any private premises when the premises is posted with a sign prohibiting peddling, soliciting, or business of a similar nature which prohibits door to door sales at such premises.

SECTION VII. ENFORCEMENT.

It shall be the duty of any law enforcement officer of the County to require any person seen peddling, soliciting, or canvassing, and who is not known by such officer to be duly licensed, to produce his or her Peddler's License, and to enforce the provisions of this Ordinance against any person found to be violating the same.

SECTION VIII. PENALTIES.

A. A violation of this Ordinance is a Class 2 Misdemeanor and shall be punishable by a fine of up to $500.00 and/or thirty (30) days imprisonment in the county jail.
B. In addition to any criminal enforcement, Brookings County or any individual may pursue any available civil remedies deemed appropriate and necessary.
C. Any Peddler found to be operating in violation of this Ordinance or without a Peddler's License shall be prohibited from obtaining a Peddler's License for a period of 365 days.

SECTION IX. LICENSE REVOCATION.

Any license issued under this Ordinance may be revoked or suspended, by the Brookings County Finance Officer, after notice and hearing, for any of the following reasons:

(1) Fraud, misrepresentation or false statement contained in the license application;
(2) Fraud, misrepresentation or false statement made by the Peddler in the course of conducting solicitation or peddling activities;
(3) Conducting peddling or solicitation activities contrary to the provisions contained in the license or within this Ordinance; or
(4) Conducting peddling or solicitation activities in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety or general welfare of the public.

SECTION X. NOTICE AND HEARING.

Notice of a hearing for revocation of a license issued under this Ordinance shall be provided in writing and will set forth specifically the grounds for the proposed revocation and the time and place of the hearing. Notice will be mailed, postage prepaid, to the Peddler at the address shown on the license application or at the last known address of the Peddler.

SECTION XI. APPEALS.

Any person aggrieved by the action or decision of the Brookings County Finance Officer to deny, suspend or revoke a license applied for under the provisions of this Ordinance will have the right to appeal such action or decision to the Brookings County Board of Commissioners within fifteen (15) days after the notice of the action or decision has been mailed to the person's address as shown on the permit application form, or to his or her last known address.

(1) An appeal will be taken by filing with the County Finance Officer a written statement setting forth the grounds for the appeal;
(2) The County Finance Officer will transmit the written statement to the Brookings County Board of Commissioners within ten (10) days of its receipt and the County Commission will set a time and place for a hearing on the appeal.
(3) A hearing will be set not later than twenty (20) days from the date of receipt of the appellant's written statement;
(4) Notice of the time and place of the hearing will be given to the appellant in the same manner as provided for the mailing notice of action or decision; and
(5) The decision of the County Commission on the appeal will be final and binding on all parties concerned.

SECTION XII. SEVERABILITY.

This Ordinance and each section and provision hereunder are hereby declared to be independent divisions and subdivisions and, not withstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstance other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provisions so known to be invalid.

Adopted this 21st day of June, 2016.

BROOKINGS COUNTY:

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Ryan Krogman, Chairperson
Brookings County Commission

ATTEST:

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Vicki Buseth
Brookings County Finance Officer

First Reading: June 9, 2016

Second Reading: June 21, 2016

Adopted: June 21, 2016

Publications: June 30, 2016

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