ORDINANCE NUMBER 4004-2016

AN ORDINANCE AMENDING CHAPTER 66 (PEDDLERS AND SOLICITORS), ARTICLE II, SECTION 66-31 – 66-38 DEFINITIONS, LICENSE REQUIRED, PROHIBITED ACTS, REVOCATION OF LICENSE, AND EXEMPTIONS OF THE LAND DEVELOPMENT CODE FOR THE CITY OF WOODSTOCK, GEORGIA.

Whereas, the City of Woodstock, Georgia (hereinafter sometimes referred to as the "City") is a municipality duly formed and existing pursuant to Georgia law; and

Whereas, the 1983 Constitution of the State of Georgia provides for the self-government of municipalities without the necessity of action by the General Assembly[1]; and

Whereas, the City of Woodstock, Georgia, has the legislative power to adopt clearly reasonable ordinances, resolutions or regulations relating to its property, affairs and local government for which no provision has been made by general laws or which are expressly allowed by general laws, and which are not inconsistent with the Constitution or any charter provision applicable thereto[2]; and

Whereas, the governing body of the City has determined that it is in the best interest of the City and its citizens to adopt the following; and

NOW THEREFORE BE IT RESOLVED, THE MAYOR AND COUNCIL OF THE CITY OF WOODSTOCK, GEORGIA HEREBY ORDAINS:

Section 1. That the Code of Ordinances, City of Woodstock, Georgia is hereby amended by deleting and replacing section 66-31 "Definitions," of Chapter 66 "Peddlers and Solicitors" of the Code of Ordinances, with a new section 66-31, to read as follows:

ARTICLE II. – ITINERANT MERCHANTS, PEDDLERS, AND SOLICITORS

Sec. 66-31. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Charitable Purpose means any benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities, environment, civic, or public interest.

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[1] Ga. Const., 1983, Article IX, Section II, Paragraph II provides in pertinent part as follows:

> "The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to the municipalities may be dealt with without the necessity of action by the General Assembly. "

[2] O.C.G.A. § 36-35-3 (a) provides as follows:

> "(a) The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto. Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify or supersede any action taken by a municipal governing authority under this Code section, except as authorized under Code Section 36-35-6."

Contributions means the promise or grant of any money or property of any kind or value.

Itinerant Merchant means any person who idles, stops, or stands for more than 30 minutes at any location within the City, to sell or take orders for any goods, wares, or merchandise; and who, in furtherance of such purposes sets up displays or exhibits, distributes samples, or holds instructional demonstrations on the use of those goods, wares, or merchandise.

Peddler means any person who travels throughout the City, generally limiting their time to 30 minutes or less per location, to sell or take orders for goods, wares, or merchandise which they carry, convey, or transport as they move from door to door or place to place; and who, in furtherance of such purposes, may distribute handbills or other materials which promote or advertise the sale or provision of goods or services.

Person means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, an unincorporated organization, a league, a society, or any religious organization and includes any owner, employee, trustee, receiver, assignee, agent or other similar representative thereof.

Religious Organization means an entity which:

(1) Conducts regular worship services; or

(2) Is qualified as a religious organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Solicitation Activity means the request directly or indirectly of money, credit, property, financial assistance or other things of value from another. These requests may be accomplished by using any of the following methods:

(1) Any spoken or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill, written advertisement, or publication;

(3) The making of any announcement to the press over the radio, by telephone or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering, which the public is requested to patronize or to which the public is requested to make a []; or

(4) The sale of, offer or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or other thing.

The term "solicitation" shall be deemed completed when made, whether or not the person making the same received any contribution or makes any sale referred to in this article.

Solicitor means any person who takes or attempts to take orders for goods, wares, or merchandise, including books, periodicals, magazines or personal property of any nature for future delivery; or, who seeks contributions in the form of information, money, donations, financial assistance, or anything else of value for any purpose; or who takes or attempts to take orders for services to be furnished or performed in the future.

The terms "solicitor," "itinerant merchant" and "peddler" shall not include the following classifications of individuals:

(1) Any person, firm or corporation who solicits orders for the future delivery of goods to merchants for the merchants' resale. Orders solicited from merchants shall be orders for future delivery only.

(2) Individuals who sell agricultural produce produced by that individual.

(Code 1989, § 9-3-1; Ord. No. 005-2007, 3-12-2007)

Cross reference— Definitions generally, § 1-2.

Section 2: That the Code of Ordinances, City of Woodstock, Georgia is hereby amended by deleting and replacing section 66-32 "License required," of Chapter 66 "Peddlers and Solicitors" of the Code of Ordinances, with a new section 66-32, to read as follows:

Sec. 66-32. - License required; Prohibitions

(a) Itinerant merchants prohibited. Itinerant merchants do not qualify for a license to operate within the City limits.

(b) Solicitors and Peddlers. Each solicitor or peddler who contemplates doing or does any business within the city limits shall be required to obtain a license from the city clerk in the manner specified in this article. The applicant must meet the zoning requirements as set forth in chapter 50 pertaining to the land development code. No license shall be issued to the applicant without the approval of the city manager.

(Code 1989, § 9-3-2; Ord No. 96-03-26, 3-26-1996; Ord. No. 04-03-23, 3-23-2004; Ord. No. 005-2007, 3-12-2007)

Charter reference— Specific powers regulate itinerant trades, § 1.13(17).

Section 3: That the Code of Ordinances, City of Woodstock, Georgia is hereby amended by deleting and replacing section 66-36 "Prohibited Acts," of Chapter 66 "Peddlers and Solicitors" of the Code of Ordinances, with a new section 66-36, to read as follows:

Sec. 66-36. - Prohibited acts.

(a) No licensee under this article, nor anyone in his behalf, shall shout, make any outcry, blow a horn, ring a bell or use any other sound device including any loudspeaking radio or amplifying system upon any of these streets, alleys, parks, or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom capable of being plainly heard upon the streets, avenues, alleys, parks or other public places for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

(b) No licensee shall attempt to do business at any residence, office, or business clearly displaying a sign stating "No Solicitors or Peddlers Invited," "No Solicitation" or other similar language.

(c) No licensee may engage in door to door soliciting on Sundays or between the hours of 8:00 p.m. and 9:00 a.m. on Mondays through Saturdays.

(d) It shall be unlawful for any licensee to enter any private dwelling without the consent of the owner or occupant, or to remain there after being requested or directed to leave.

(e) It shall be unlawful for any licensee to fail to register and carry or produce for inspection a license when required under the provisions of this article.

(f) It is unlawful for any solicitor or peddler to make any false or deceptive statement on any registration hereunder.

(Code 1989, § 9-3-6; Ord. No. 005-2007, 3-12-2007; Ord. No. 005-2007, 3-12-2007)

State Law reference— Operation of mechanical sound making device within motor vehicle plainly audible at 100 feet prohibited, O.C.G.A. § 40-6-14.

Section 4: That the Code of Ordinances, City of Woodstock, Georgia is hereby amended by deleting and replacing section 66-37 "Revocation of License," of Chapter 66 "Peddlers and Solicitors" of the Code of Ordinances, with a new section 66-37, to read as follows:

Sec. 66-37. - Revocation of license.

Licenses issued under the provisions of this article may be revoked for any of the following causes:

(1) Fraud, misrepresentation, or false statement contained in the application for license;

(2) Fraud, misrepresentation, or false statement made by a solicitor or peddler to another while pursuing any matter or transaction contemplated under this article;

(3) Any violation of this article;

(4) Conviction of any felony;

(5) Conviction of any misdemeanor involving moral turpitude; or

(6) Conducting any business contemplated under this article, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(Code 1989, § 9-3-7; Ord. No. 005-2007, 3-12-2007)

Section 5: That the Code of Ordinances, City of Woodstock, Georgia is hereby amended by deleting and replacing section 66-38 "Exemptions," of Chapter 66 "Peddlers and Solicitors" of the Code of Ordinances, with a new section 66-38, to read as follows:

Sec. 66-38. - Exemptions.

(a) Any person who solicits or accepts money, donations, or financial assistance of any kind for any religious, charitable, educational, political, or nonprofit organization; sells merchandise for a fee on behalf of such an organization; or who leaves leaflets or flyers or other papers related to such an organization shall be exempt from the registration and license requirements of this article, unless solicitation occurs from a public right of way, in which case a permit may be required per Sec.66-39.

(b) Any person who calls upon homes, offices, or businesses at the request of or with the express permission of the occupants is exempt from the requirements of this article.

(c) Any officer or employee of the city, county, state, or federal government, or any subdivision thereof is not subject to the provisions of this article when such officer or employee is on official business. Such persons who qualify for any exemption outlined in this section shall remain subject to the prohibitions set forth in sections 66-31 through 66-37.

(Ord. No. 005-2007, 3-12-2007)

Section 6. Where other provisions of the Land Development Code impose standards and conditions that are at variance with the provisions of this Chapter, the most stringent regulations shall control.

Section 7. Should any provisions of this Ordinance be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any provision thereof other than the provisions specifically declare to be invalid. The Mayor and Counsel hereby declares that it would have passed this Ordinance and each subsection, sentence,

clause and phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses or phrases may be declared illegal, invalid or unconstitutional.

Section 8. This Ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF WOODSTOCK, GEORGIA, THIS 11 DAY OF July, 2016.

1st Reading: 6/13/16 2nd Reading: 7-11-16

DONNIE HENRIQUES, MAYOR

Rhonda Pezzello

RHONDA L. PEZZELLO, CLERK

Approved as to form:

ELDON L. BASHAM, CITY ATTORNEY