

ORDINANCE NO. 2015-11

**AN ORDINANCE REGULATING ITINERANT MERCHANTS,
PEDDLERS, AND SOLICITORS AND REVOKING, SUPERSEDING, AND
REPLACING IN ITS ENTIRETY ORDINANCE NO. 07-11 PREVIOUSLY
PASSED RELATING TO THE SAME**

WHEREAS, the Village of Winnebago Board of Trustees finds that unregulated peddlers, solicitors, and transient vendors can result in public nuisance and other dangers to public health and safety; and

WHEREAS, the Village of Winnebago Board of Trustees finds that the public interest, convenience, and necessity require the regulation of itinerant merchants, peddlers, and solicitors in order to promote free speech activities while safeguarding the safety of the residents of the Village; and further finds requiring registration and permitting of all itinerant merchants, peddlers, and solicitors will assist in protecting the public against persons of criminal habits or tendencies representing themselves as itinerant merchants, peddlers, or solicitors; and

WHEREAS, the Village of Winnebago Board of Trustees previously passed Ordinance 07-11 relating to the same, but the current Board feels a further revision is needed to clarify the need for some form of registration even with not-for-profit groups, and to extend the provisions of this ordinance to those attempting to solicit donations for a particular cause, with or without the offer of some tangible item such as candy, tickets, or other goods for the making of such donation, and to expand the categories of crimes on the record of an applicant, which could disqualify said individual from obtaining a permit, in order to protect the safety of the citizenry and staff of the Village of Winnebago; and

WHEREAS, to avoid confusion, it would be better to pass a new ordinance pertaining to the regulations of itinerant merchants, peddlers, and solicitors, incorporating the revisions desired by the Board, since to incorporate the above concepts there is the requirement of

revisions to various portions of Ordinance No. 07-11.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF WINNEBAGO AS FOLLOWS:

ARTICLE I
REVOCATION OF ORDINANCE NO. 07-11

Ordinance No. 07-11 pertaining to regulations for the supervision and control of solicitors, itinerant vendors, and peddlers within the corporate limits of the Village of Winnebago, Illinois, which ordinance was passed and adopted on November 12, 2007, respectively, shall be and hereby is revoked, superseded, and replaced in its entirety by the instant ordinance, effective ten (10) days after its passage, approval, and publication in pamphlet form as provided by law.

ARTICLE II
SHORT TITLE

The instant ordinance shall be known and may be cited as the "Village of Winnebago Itinerant Merchant, Peddler, and Solicitor Ordinance".

ARTICLE III
GENERALLY

SECTION 1. DEFINITIONS

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

BUSINESS means the activities carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

GOODS means merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

ITINERANT MERCHANT means any person, whether as owner, agent or consignee, who engages in a temporary business of selling goods within the village and who, in the furtherance of such business uses any building, structures, vehicle, or any place within the village.

PEDDLER means:

(1) Any person who travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Any person who, without traveling from place to place, sells or offers goods for sale from any public place within the village.

SOLICITOR means any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future, or for services to be performed in the future, or one who seeks donations for a particular cause, with or without the offer of some tangible item such as candy, tickets, or other goods for the making of such donation. A person who is a solicitor is not a peddler.

SECTION 2. PROHIBITED ACTS

(A) It shall be unlawful for any person engaged in activities regulated by this ordinance to sell, dispense, or display for sale any goods, wares, merchandise, materials, or services from any box, case, suitcase, or other container, vehicle, or contrivance upon any street, sidewalk or other public property within the Village of Winnebago.

(B) It shall be unlawful for any person engaged in activities regulated by this ordinance to ring a bell, or knock on a door, or otherwise enter any private property for the purpose of engaging in activities regulated by this ordinance when notice, bearing the words, "No Solicitors," or words of similar import indicating that such persons are not wanted on such premises, is painted, affixed, or otherwise exposed to public view.

(C) It shall be unlawful for any person engaged in activities regulated by this ordinance to fail, at the outset, to disclose honestly and correctly to the prospective buyer or donor his name and the name of the firm, organization or corporation he represents.

(D) It shall be unlawful for any person engaged in activities regulated by this ordinance to employ any use, plan, or scheme, or make any assertion, representation, or statement of fact which misrepresents the purpose of his call.

(E) It shall be unlawful for any person to engage in activities regulated by this ordinance after having been asked by the owner, manager, or occupant of the dwelling to leave such premises.

(F) It shall be unlawful for any person engaged in activities regulated by this ordinance to fail to provide, at the request of the purchaser, a written receipt, which receipt shall be signed by the person making the sale, or receiving the donation, and set forth a brief description of the amount of the donation and the purpose thereof, or goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment, if any.

(G) It shall be unlawful for any person engaged in activities regulated by this ordinance to use threats, expressed or implied, or coercion as an inducement to make a sale or obtain a donation.

(H) It shall be unlawful for any person engaged in activities regulated by this ordinance to continue efforts to make a sale, or solicit a donation, when specifically requested to discontinue such efforts by the prospective buyer or donor.

(I) It shall be unlawful for any person engaged in activities regulated by this ordinance to misrepresent the right of a buyer to rescind or cancel a sale under state and/or federal law.

(J) It shall be unlawful for any person engaged in activities regulated by this ordinance to represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have, or that a person has sponsorship, approval, status, qualification, affiliation, or connection with an individual, organization, firm, or corporation that he does not have.

(K) It shall be unlawful for any person engaged in activities regulated by this ordinance to represent that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand.

(L) It shall be unlawful for any person engaged in activities regulated by this ordinance to make a false or misleading representation concerning the availability of credit or the nature of the transaction or obligation incurred.

(M) It shall be unlawful for any person engaged in activities regulated by this ordinance to advertise or attempt to sell his goods, wares, merchandise, chattel, things of value, or services of any kind, character, or description, or attempt to solicit monetary or other donations, by any type of public outcry, including, but not limited to, the use of mechanical means.

(N) It shall be unlawful for any person engaged in activities regulated by this ordinance to obstruct any public street, public highway, public sidewalk, or public alley or way, or any other public place or building by hindering, or impeding or tending to hinder or impede, the free and uninterrupted passage of vehicles, traffic, or pedestrians.

(O) It shall be unlawful for any person engaged in activities regulated by this ordinance to commit in or upon any public street, public highway, public sidewalk, alley, or public way or any other public place or building, any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any such business lawfully

conducted by anyone in or upon facing or fronting on any such public street, public highway, public place or building, which prevents the free and uninterrupted ingress, egress, or regress therein, thereof, and thereto, and no person shall, by his presence or by other means, either alone or in consort with others, interfere with, or interrupt, the conduct of business in the offices located in such buildings.

(P) It shall be unlawful for any person engaged in activities regulated by this ordinance to obstruct or interfere with the free and uninterrupted use of private or residential property as a residence by hindering or impeding, or tending to hinder or impede, the free, uninterrupted passage of vehicles or persons.

SECTION 3. HOURS

No person shall engage in the business enumerated in this ordinance except between the hours of 9:00 a.m. and 7:00 p.m. Monday through Saturday. No such business shall be engaged in on Sundays, or state or national holidays. The requirements of this section shall not apply to those certain "peddlers" that provide regular, routine deliveries of products for particular stores and businesses used for resale, or incorporated into the store or business's final product.

SECTION 4. EXCEPTIONS

The provisions of this ordinance shall not apply to officers or employees of the village, county, state, or federal governments, or any subdivision thereof, when on official business. Also, those certain "peddlers" that provide regular, routine deliveries of products for particular stores and businesses used for resale, or incorporated into the store or business's final product shall be exempt from the permit requirement. Further, any organization sponsored by or affiliated with Winnebago Community Unit School District #323 shall be exempt from the permit requirement. Also, itinerant merchants who have a stationary location for their business within the commercial areas of the Village north of McNair Street, and thus are not engaging in

door-to-door solicitation or peddling, shall be exempt from the restriction prohibiting conducting business on Sundays, or state or national holidays. The normal business hours restriction of the hours of 9:00 a.m. to 7:00 p.m. shall continue to apply to said stationary itinerant merchants. Such stationary itinerant merchants shall also be exempt from Section 2(a) of Article III of the instant ordinance which prohibits selling, dispensing or displaying for sale any goods, wares, merchandise, materials, or services from any box, case, suitcase, or other container, vehicle or contrivance.

ARTICLE IV **PERMITS**

SECTION 1. REQUIREMENTS APPLICATION PROCEDURE; STANDARDS FOR ISSUANCE

(A) REQUIREMENTS

(1) Except as otherwise provided in this ordinance, any person which is an itinerant merchant, peddler, or solicitor shall obtain a permit before engaging in such activity within the Village.

(2) The fee for the permit required by this ordinance shall be \$100.00 for a permit expiring 90 days after its issuance, or \$200.00 for an annual permit expiring one year after the date of its issuance. This fee shall be waived as to volunteers seeking donations for not-for-profit corporations, or seeking contributions which are recognized as deductible for federal income tax purposes, but a permit must still be obtained.

(3) For boy scouts, girl scouts and other troops or groups organized for minors, whether secular or non-secular in purpose, who seek to engage in activity regulated by this ordinance, the permit shall be obtained by the troop or group leader. For individuals who are minors not associated with a troop or group and who seek to engage in activities regulated by this ordinance, the permit application shall be completed by the parent or guardian of such

minor. The troop or group leader, or parent or guardian of the minor, as applicable, shall also ensure such minor wears the respective group uniform and/or badge or other apparel identifying the not-for profit group.

(4) No permit issued under this ordinance shall be transferable.

(B) APPLICATION PROCEDURE

(1) All applicants for permits required by this ordinance shall file an application with the Police Chief or Designee. This application shall be signed by the applicant if an individual, by all partners if it is a partnership, or by the President of a corporation, or by the troop or group leader of a not-for profit troop or group organized for minors, or the parent or guardian of a minor who is not part of a troop or group is seeking to engage in not-for profit activity regulated by this ordinance. The applicant shall be required to provide information concerning the following items:

a. Full name, date of birth, and social security number of applicant, and the address of applicant, including the residence address of applicant. The applicant shall be required to show his driver's license or other identification suitable to the Village Police Chief or designee to identify the applicant, and the name and address by the person, firm, or corporation or association by whom the applicant is employed or who he or she represents.

b. Except as otherwise stated herein, full name, date of birth, social security number, and physical description of every individual who is to engage in such activities regulated by this ordinance, and the address of every such person engaged in activities regulated by this ordinance, including the residence address of every such person. The individual who is to engage in such activities regulated by this ordinance shall be required to show his driver's license or other identification suitable to the Village Police Chief or designee to identify such individual, and the name and address of the person, firm, or corporation or association by whom such

individual is employed or represents.

c. The name of the individual having the management authority or supervision of the applicant's business during that time that it is proposed to be carried on in the Village, the local address of such individual, the permanent address and Social Security number of such individual, and the capacity in which such individual will act.

d. If employed, the name, address and telephone number of the employer, or if acting as agent, the name, address and telephone number of the principal who is being represented, along with the employer's Federal Employer Identification Number (FEIN) or Social Security number, with credentials in written form establishing the relationship and the authority of the employee or agent to act for the employer or principal, as the case may be.

e. Whether or not the applicant, or other individual identified in subsection (B)(1)(a) through (B)(1)(c) of this section has been convicted of any crime or misdemeanor, other than minor traffic violations, and, if so, the nature of each offense and the penalty assessed for each offense.

f. A description of any vehicle proposed to be used in the business, including its registration number, if any.

g. Two photographs of the applicant, shall be required, which photographs will be taken by the Village Police Chief or designee at the time of filing of the application.

h. Proof of possession of any fireworks permit, food handling license, or other license or permit which, under federal, state or local laws or regulations, the applicant is required to have in order to conduct the proposed business, or which, under such law or regulation, would exempt the applicant from the permitting requirements of this ordinance.

i. Written evidence of insurance covering liability and general liability with limits of at least \$1,000,000.00 per person and \$2,000,000.00 per occurrence, or such other

amount as may from time to time be required by State law, must be furnished to the Village showing the Village is named as an additional insured, and a written statement from the applicant agreeing to indemnify and hold harmless the Village from any cause of action whatsoever as a result of the conduct of business by the applicant or anyone associated with the applicant.

j. The time period during which it is proposed to carry on the applicant's business.

k. The nature, character, and quality of goods or services to be offered for sale or delivered, or the purpose for which donations are to be solicited, if goods, their invoice value, and whether they are to be sold by sample as well as from stock; if goods, where and by whom such goods are to be manufactured or grown, and where such goods are at the time of application; and the nature of the advertising proposed to be done for the business.

l. A statement that the applicant does not engage in door-to-door peddling and soliciting between the hours of 7:00 p.m. and 9:00 a.m., or on Sundays, state, and national holidays.

m. A statement that the applicant is aware that he or she can not engage in activities regulated by this ordinance on a notice bearing the words "No Solicitors" or words of similar import indicating that such persons are not wanted on such premises, painted, affixed, or otherwise exposed to public view.

(C) STANDARDS FOR ISSUANCE

(1) The written application shall be submitted to the Village Police Chief, or designee thereof, not less than one (1) week nor more than one (1) month prior to the proposed commencement of business.

(2) The Village Police Chief having received an application as required shall act upon the same by granting or denying the same, or adding whatever additional requirements or

restrictions the Police Chief deems reasonable and proper. However, before granting any such application the Police Chief shall forward a copy of the application, with a written indication of the intention to grant the request and issue a permit, to the Village President and all Village Trustees. If within five (5) calendar days of the date of the written notice by the Police Chief of the intention to grant the permit, no written objection is received from the Village President or any Village Trustee, the Police Chief or his or her designee shall issue the permit. If a written objection is received by the Police Chief from the Village President or a Village Trustee within the time frame provided then the matter shall be referred to the full Village Board for consideration and hearing. The decision of the Village Board shall be final.

If the Village Police Chief acts to deny the application, in addition to notifying the applicant, a courtesy notification shall also be made to the Village President and Village Trustees specifically stating the reason for the denial. An applicant whose application has been denied may appeal the decision of the Police Chief to the full Village Board, with an opportunity for a hearing. The decision of the full Village Board shall be final.

The Village Police Chief or designee shall be responsible for actual issuance of the permit once an application is granted.

(3) The applications shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals or general welfare. In particular, tangible evidence that the applicant has:

- a. Been convicted of a crime of theft, assault, battery, sexual assault, sexual or financial exploitation, violent act, or other crime of moral turpitude;
- b. Made willful misstatements in the application;
- c. Committed prior violations of ordinances pertaining to itinerant merchants, peddlers, or solicitors and the like;
- d. Committed prior fraudulent acts; or

- e. A record of continual breaches of solicited contracts shall constitute valid reasons for disapproval of an application:

SECTION 2. EXHIBITION OF IDENTIFICATION

(A) Any permit issued to an itinerant merchant under this ordinance shall be posted conspicuously in or at the place named therein. If more than one location within the Village shall be used to conduct the business permitted, separate permits shall be issued for each location.

(B) The Village Police Chief or designee shall issue a permit to each peddler or solicitor permitted under this ordinance. The permit shall contain the words "permitted peddler" or "permitted solicitor," the expiration date of the permit, and the number of the permit. Solicitors shall be required to wear picture identification issued by the Village Police Chief or designee. The first two picture identifications issued by the Village Police Chief or designee will be at no cost to the applicant. Any additional picture identification required shall be issued at a cost of \$5.00 each.

SECTION 3. REVOCATION OF PERMIT

Any permit issued pursuant to this ordinance may be revoked by the Village Chief of Police or designee because of any violation by the permitted of this or of any other ordinance of the Village, or of the state or federal law, or whenever the permittee shall cease to possess the qualifications or character required by this ordinance for the original permit.

ARTICLE V **PENALTIES**

Any person violating or aiding or abetting the violation of any provision of this ordinance shall be guilty of a petty offense and shall be fined not less than One hundred dollars and 00/100 (\$100.00) nor more than Five hundred dollars and 00/100 (\$500.00), plus any court costs. A separate offense shall be deemed committed on each day during or on which a violation occurs

or continues.

ARTICLE VI
ENFORCEMENT

The Village Chief of Police or designee shall be charged with enforcement of this ordinance.

ARTICLE VII
SEVERABILITY

The sections, paragraphs, sentences, clauses, and phrases of this ordinance, are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional, invalid, or enforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and section of this ordinance.

ARTICLE VIII
EFFECTIVE DATE

This ordinance shall be in full force and effective 10 days after its passage, approval, and publication in pamphlet form as provided by law.

APPROVED:

President of the Board of Trustees of the
Village of Winnebago, Illinois

ATTEST:

Village Clerk

PASSED: 12-7-2015

APPROVED: 12-7-2015

PUBLISHED: _____