

AN ORDINANCE OF THE CITY OF HAHIRA, GEORGIA FOR THE PURPOSE OF AMENDING CERTAIN PROVISIONS OF CHAPTER 8, SECTION 8-32 OF THE HAHIRA CITY CODE ("THE CITY PEDDLER ORDINANCE"); PROVIDING FOR LICENSES FOR PEDDLING; CONTROLLING LOCATION AND REQUIREMENTS FOR PEDDLERS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND FOR OTHER PURPOSES.

WHEREAS, under the general powers vested by law in the City Council for the City of Hahira, the City has the authority to regulate peddlers, itinerant traders and traveling salesmen of all types in the City; and

WHEREAS, unlicensed peddling by unregistered peddlers exposes the citizens of Hahira to fraudulent peddlers, and harms legitimate businesses; and

WHEREAS, the City Council deems it to be in the best interests of the citizens of the City that a Peddler Ordinance be enacted in accordance with law;

NOW THEREFORE, BE IT ORDAINED, and IT HEREBY IS ORDAINED, pursuant to Georgia law and the powers vested in the City Council, that Section 8-32 of the City Peddler Ordinance is hereby deleted in its entirety and replaced with the following:

Sec. 8-32 PEDDLERS

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, and general welfare by regulating peddling, itinerant traders, traveling salesmen, and other door-to-door salesmen, generally known as peddlers. Such persons typically market magazines, appliances, house wares, and other goods and services by going door to door in neighborhoods and business districts. The citizens of Hahira are subject to unregulated peddling by sometimes questionable organizations or individuals, with illegitimate products, or no intent to deliver. It is the purpose of this Ordinance to regulate peddling in the City, to protect the public health, safety and welfare. To achieve this end, this Ordinance requires peddlers to seek licenses, have background checks, and peddle under certain limitations. However, it is not the intent of this Ordinance to require legitimate sales representatives, visiting business or persons they have already made appointments with, or already have a legitimate business relationship with, to need licensing. Neither is it the intent of this Ordinance to infringe free speech rights or require licensing for persons going door-to-door for political campaigns, religious proselytizing, or other free speech reasons.

Sec. 8-32.1 DEFINITIONS

A. Definitions. The following words as used in this Ordinance shall have the following meanings:

1. *Applicant* shall mean the person seeking a license.
2. *Goods* shall mean any sort of personal property, wares or merchandise that can be sold, including, but not limited to, brushes, vacuums, magazines, newspapers, luggage, house wares,

electronics, computers, furniture, food, agricultural products, flowers, tools, clothing, decorative accessories, rugs, paintings, sculpture, dishes, and so forth.

3. *License* shall mean a permit to peddle.

4. *Official photo identification* shall mean a driver's license or identification card issued by Georgia, another U.S. State, or the U.S. Military; or a U.S. Passport.

5. *Peddling* or *to Peddle* shall mean traveling from place to place or door to door on foot or in a vehicle and exhibiting, offering to sell, or selling goods or services, to households, businesses or passers-by. It shall also mean traveling from place to place or door to door taking orders for the sale of goods or services for delivery at another time or place. The solicitation of orders combined with a separate transaction to make delivery to the purchaser as a part of a scheme or design to evade the provisions of this Ordinance shall be deemed peddling. Visits by sales representatives pursuant to previously-arranged appointments with a specific business or person, or as a part of an on-going business relationship, shall not be deemed peddling.

6. *Peddler* means any person who engages in peddling.

7. *Person* shall mean any natural person, organization, corporate entity or other business entity.

8. *Police Chief* means the Chief of Police for the City of Hahira or his or her designee.

9. *Services* means the provision of any sort of professional or trade service to another, including for example, general maintenance, construction, painting, lawn service, house cleaning, mending, sharpening, motor repair, appliance repair, and so forth.

Sec. 8-32.2 RESTRICTIONS

A. License Required. It shall be unlawful for any person to engage in peddling in the City without first obtaining a license. Licenses shall be for a period of twelve months, and may be renewed. Each employee of a business or corporation engaging in peddling shall have a separate license.

B. State Law Requirement. In addition to this Ordinance, peddlers as defined by state law must obtain a license from the Probate Court of Lowndes County, under the requirements of O.C.G.A. § 43-32-1 et seq. The requirements of that statute are separate from this Ordinance, and obtaining only that license shall not satisfy the requirements of this Ordinance.

Sec. 8-32.3 LICENSE REQUIREMENTS.

A. License Application. All requests for a license shall be made as provided in Article I of this Chapter.

B. Individual Licenses Required. Each individual person seeking to peddle must obtain a license. If the applicant is working for another individual or corporation or other business entity, that information must be disclosed on the application and the license, if granted.

C. Required Information. In addition to the requirements under Article I of this Chapter, all applications for licenses must include at a minimum the following information, and shall be signed by the applicant:

1. Name and address of the applicant, including a local address where the applicant will be staying while peddling. If the applicant is working for an entity other than himself, such as a corporation or another individual, provide the name of the employer, provide the headquarters address and address of the Lowndes County office, or the address of the closest branch office if there is no Lowndes County office;

2. Applicant's height, weight, age, sex, race, and social security number for background check purposes;

3. Photocopy of driver's license or other official photo identification of the applicant;

4. Proposed peddling activity including identification of the type of business, and the goods or services to be sold;

5. If a vehicle is to be used, a description of the vehicle together with the license plate number;

6. The desired duration of the license (maximum twelve months);

7. The application shall contain a statement that the submission of the application shall be considered to be consent that a background check may be run by the Police Chief, at his discretion, on the applicant, and a statement that all information contained therein is true and correct; and

8. Any additional information the Police Chief may find reasonably necessary for a fair determination as to whether the proposed event will endanger public health, safety or welfare.

D. Fingerprints. The fingerprints of the applicant shall be taken by the police department, for identification and background check purposes.

E. License and Identification Carried. The signed license is to be kept on-site in the possession of a peddler at all times that peddling is underway. Licenses shall be displayed at the request of any citizen or law enforcement personnel. Official photo identification shall also be kept on the person of a peddler at all times he or she is peddling, and shall be presented upon request of any citizen or law enforcement personnel. It shall be a violation of this Ordinance to fail or refuse to display a license or official photo identification when requested.

F. Duration, Renewal. A peddler license shall be valid for the period specified thereon, up to a maximum of twelve months. A peddler license may be renewed upon submission of an application for renewal, accompanied by a \$25 investigation fee and a \$25 license fee. Upon application for renewal, the Police Chief shall check to insure no complaints or criminal charges have been made against the peddler, and shall apply the same criteria as applies to the grant of a license to renew the license.

F. Fees. An application shall be accompanied by an application fee of \$50 to cover the cost of investigation and the license fee, as provided in the City's license ordinance. If the license application is denied, the license fee shall be refunded. These fees may be raised from time to time by the City Council.

Sec. 8-32.4 INVESTIGATION AND ISSUANCE

A. Investigation. The Police Chief shall review the application for completeness and compliance with the terms of this Ordinance. The Police Chief shall determine whether there are any records of complaints against the applicant in the records of the Police Department, the Lowndes County Sheriff's Department or the GCIC/NCIC crime database system. The Police Chief may, at his discretion, conduct a background check of the applicant and make any other inquiries he deems necessary for the investigation of the applicant.

B. Decision. The Police Chief shall make his recommendation to the Council regarding approval or disapproval of the license application. The Police Chief shall recommend denial of the application if he finds that any or all of the following apply:

1. The applicant or the employer of the applicant has any criminal complaints pending against them, or has a criminal record involving crimes of theft, fraud, or other moral turpitude;
2. The background check has revealed the applicant is not of good character, or the proposed good or service is not legitimate or legal;
3. The grant of the license is contrary to the public's health, safety or general welfare; or
4. The application was not complete, or the application or license requested are not fully in compliance with the requirements of this Ordinance.

The Police Chief shall indicate on the application review form all reasons for rejection of the application.

Sec. 8-32.5 PEDDLING REGULATIONS; PROHIBITED LOCATIONS AND TIMES

A. Prohibited Times. No peddling shall be allowed during the following times:

1. Before 9:30 a.m. or after 6:00 p.m. Monday through Friday;
2. Between the hours of 11:30 a.m. and 1:30 p.m. Monday through Friday;
3. Before 10:00 a.m. or after 5:00 p.m. on Saturday or Sunday; and

4. At any time after sunset or before sunrise.

B. Prohibited Locations. No peddling shall be allowed at the following locations:

1. On any street or highway right-of-way;
2. On any bridges and sidewalks;
3. On any public property or governmentally-owned property; and
4. On any private property without the permission of the property owner.

C. Peddlers Under 18. Applications for peddlers under age 18 must be signed by an adult, and the adult must provide their address and relationship to the applicant.

E. Exemptions. The provisions of this chapter shall not apply to a person engaged in the following sales or delivery of goods and services.

1. Sales of goods, wares, merchandise, publications and/or services by any bona fide charitable, religious, educational or philanthropic organization or when donated by owners or merchants of which the proceeds are to be used and applied to some charitable, religious, scouting, educational or philanthropic purposes;
2. Ordinary commercial travelers who sell or exhibit for sale goods, wares, merchandise, food, photographs, publications or services to firms, persons or corporations engaged in the business of buying, selling and dealing in the same;
3. Daily deliveries of milk and bakery and other food products or newspaper or the sale or deliveries of home grown food products; (The term HOME GROWN, as used herein, means a food product which is grown locally in a garden, orchard or field. The term LOCALLY, as used herein, means within the state.)
4. Bona fide merchants who merely deliver goods in the regular course of business;
5. Insurance salespeople, real estate salespeople and other professionals licensed by the state.

Sec. 8-32.6 VIOLATIONS, ENFORCEMENT

A. Persons peddling without a license or in violation of the license shall be cited with a citation for prosecution in the Municipal Court, in accordance with the requirements of law for such citations. Any police officer or code enforcement officer shall be authorized to issue such citations.

B. Any person, organization, business or entity violation the provisions of this Ordinance is subject to a fine of up to one thousand dollars (\$1,000.00) per day per violation per individual participant. The minimum fine shall be \$100.00 per day per violation per individual participant.

C. Any violation of this Ordinance shall immediately revoke the license. The Police Chief shall also have the discretion to revoke the license upon charge of violation being made, or upon awareness of illegal or unauthorized activity, if revocation is required in the best interests of public health, safety and welfare.

D. Any person, organization, business or entity found guilty of violating this Ordinance may not be issued a license for a two-year period from the date of the violation. Upon second offense, the person, organization, business or entity found guilty of violating this Ordinance shall be banned from further peddling in the City.

E. The City Attorney shall be authorized to seek injunctive relief and other relief in Superior Court if necessary to effectuate the intent of this Ordinance.

The City shall be entitled to seek civil fines in the amounts specified above, and shall be entitled to its attorney's fees for any successful action.

Sec. 8-32.7 Service of process.

Before any license as herein provided shall be issued for engaging in business as peddler or itinerant merchant in this city, the applicant for such license shall file with the city clerk an instrument nominating and appointing the city clerk as his true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of said applicant in respect to any matters connected with or arising out of the business transacted under said license and the bond given as required by this section, or for the performance of the conditions of said bond, or for any breach thereof, which instrument shall also contain recitals to the effect that said applicant for said license consents and agrees that service of any notice or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served upon the person applying for the license under this article, according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the city clerk, as herein provided, the city clerk shall send to the licensee at his last known address, by registered mail, a copy of said process.

Sec. 8-32.8 SEVERABILITY

If any paragraph, subparagraph, sentence, clause, phrase or any portion of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, or if any provision of any part of this Ordinance as applied to any particular situation or set of circumstances be declared invalid, or unconstitutional, such invalidity shall not be construed to affect the remaining portions of this Ordinance not so held to be invalid, or the application of this Ordinance or other circumstances not so held to be invalid. It is hereby declared to be the intent of the Commissioner to provide for separable and devisable parts and he does hereby readopt any and all parts hereof as may not be held invalid for any reason.

Sec. 8-32.8 REPEALER

This Ordinance repeals any prior ordinance or resolution in conflict herewith, except to the extent that said ordinance or resolution is more restrictive than this Ordinance, in which case that ordinance or resolution shall control.

SO ADOPTED this 1st day of December, 2011.

Wayne Bullard

Wayne Bullard, Mayor

Attest:

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City Clerk