

ORDINANCE NO. 02-14

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Brooks Compton ON THE 19th DAY OF May, 2014.

AN ORDINANCE REPEALING CHAPTER 836 "PEDDLERS AND SOLICITORS" OF THE CODIFIED ORDINANCES OF THE CITY OF CENTERVILLE AND ENACTING NEW CHAPTER 836 ENTITLED "PEDDLERS, VENDORS, CANVASSERS, AND CHARITABLE SOLICITATIONS"

WHEREAS, the City had enacted Chapter 836 of the Codified Ordinances of Centerville, titled "Peddlers and Solicitors" to establish regulations for uninvited solicitors and peddlers on private residences; and

WHEREAS, the purpose of Chapter 836 is to protect the health, safety, and welfare of the citizens of Centerville; and

WHEREAS, it is in the best interests of the City to provide for regulations; and

WHEREAS, the City Council has determined that it would be in the best interests of the City to update Chapter 836; and

WHEREAS, the City Council desires to protect the residential well-being, tranquility, and privacy of its residents by implementing certain curfews for door-to-door activity within the City; and

WHEREAS, the City Council desires to protect its citizenry from crime, through the efficient use of its limited law enforcement resources, utilizing proactive policing methods, and simultaneously fulfilling its mandatory obligations to balance its budget under Ohio Revised Code §5705.39 and otherwise responsibly conserve fiscal taxpayer resources; and

WHEREAS, the City Council desires to protect its citizenry from crime and fraud perpetrated by criminals posing as door-to-door solicitors or canvassers, as well as protecting its citizenry from criminal activity in general through the use of proactive policing methods and the efficient use of its limited law enforcements resources; and

WHEREAS, it is expressly acknowledged and understood that Chapter 836 is enacted in order to protect City citizens and is in compliance with a recent Sixth Circuit's decision in *Ohio Citizen Action v. City of Englewood*, 671F.3d 564 (2012); and

WHEREAS, Council finds that these changes, taken together, will reduce crime and opportunities for crime, will optimize the allocation of limited public safety resources, and will provide a means for citizens to protect their privacy and family time, while balancing and respecting the rights of commercial and non-commercial entities to engage in activities within the scope of protection afforded under the First Amendment to the United States Constitution;

WHEREAS, the City is authorized as a charter municipality to exercise all powers of local self-government;

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1: That Chapter 836 of the Codified Ordinances of the City of Centerville be and is hereby repealed in its entirety.

Section 2: That Chapter 836 "Peddlers, Vendors, Canvassers and Charitable Solicitations" is hereby adopted as follows:

CHAPTER 836
Peddlers, Vendors, Canvassers and Charitable Solicitations

836.01 DEFINITIONS
As used in this chapter:

- (a) "Business" means the business carried on by any person who is an itinerant merchant, peddler or solicitor as defined in this ordinance.
- (b) "Canvassing", "Canvassers" and "Canvass" means the house-to-house distribution of ideas, pamphlets, literature, or the collection of signatures or support for any purpose or cause. This definition does not include solicitation, peddling, or vending, as those terms are defined in this Section. This definition includes requesting contributions when such requests are made in conjunction with the house-to-house distribution of ideas, pamphlets, literature, or the collection of signatures or support for any purpose or cause. This definition includes both "Contact Canvassers" and "Non-Contact Canvassers" as defined in subsections (b)(1) and (b)(2), hereof.
 - (1) "Contact Canvassers" and "Contact Canvassing" mean those persons who canvass, as defined in subsection (a) hereof though in person, face-to-face contact, verbal or otherwise, with individual residents.

- (2) "Non-Contact Canvassers" and "Non-Contact Canvassing" mean those persons who canvass, as defined in subsection (a) hereof, without attempting in person, face-to-face contact with individual residents, such as the distribution of leaflets and/or pamphlets by leaving them at a place of residence.
- (c) "Charitable purpose" shall be as defined in Ohio R.C. Chapter 1716.01 (B)(1).
- (d) "City Manager" means the City Manager or his/her designee.
- (e) "Contribution" means the gift, sale for less than market value or purpose for more than market value of alms, food, clothing, money or property, including donations under the guise of a loan or money or property of the rental thereof for any charitable, religious or political use or purpose.
- (f) "Itinerant Merchant" means any person, whether as an owner, agent or consignee, who engages in a temporary business of selling goods within the City and who, in the furtherance of such business, uses any building, structure, vehicle or place within the City.
- (g) "Peddler" means an itinerant solicitant/trader who sells wares which he/she may carry with him/her traveling about from place to place.
- (h) "Person" means any firm, co-partnership, corporation, company, association, joint stock association, church, religious sect, religious denomination, society, organization or league, and includes any trustee, receiver, assignee, agent or other similar representative thereof.
- (i) "Political" and "Political Organization" shall not mean or include the term "charitable". Such terms shall be given their commonly accepted definitions. It is not necessary that a person be a candidate for an office or in support of another person as a candidate to be included within the definition of "political" or "political organization".
- (j) "Religious" and "Religion" shall not mean and include the term "charitable". Such terms shall be given their commonly accepted definitions.
- (k) "Solicit" and "Solicitation" mean the method by which a peddler or vendor conveys his/her wares.
- (l) "Sunset" shall mean the time of day as designated by the US Naval Observatory Astronomical Applications Department.
- (m) "Temporary Use" for purposes of this ordinance means a short term or seasonal use intended to promote or sell specific merchandise or products and shall include, but not limited to special events, sidewalk sales, and outdoor seasonal sales.
- (n) "Vendor" means a person who transfers property by door-to-door sale.
- (o) "Youth Fundraiser" and "Youth Fundraising" means fundraising for (i) a K-12 school or school-related activity, or (ii) a youth organization such as an athletic club, Boy/Girl Scout troop, and the like, when such activity is undertaken by a person, age 18 or under. Youth fundraising activity, as contemplated by this definition, typically includes, but is not limited to, the sale of fundraising products such as popcorn, wrapping paper, candy, fruit or plants.

836.02 AUTHORITY TO ISSUE LICENSE

The City Manager is hereby authorized to grant, issue, and revoke a license to any person who desires to vend, solicit, peddle or request contributions other than in conjunction with canvassing activity, under this chapter.

836.03 LICENSE OR REGISTRATION REQUIRED

No person shall peddle, vend, solicit, or request contributions other than in conjunction with canvassing activity, for any purpose, charitable or otherwise, unless such person has obtained a license therefore from the City or unless the person meets one of the exceptions contained in Section 836.08. Such person shall carry the license required by this section and a photographic identification card at all times while exercising such calling, and shall upon demand, exhibit those items to any official of the City or occupant of any residence or business establishment being contacted.

836.04 LICENSE APPLICATION

An application for a license to peddle, vend, solicit, or request contributions other than in conjunction with canvassing activity, shall be made on forms provided by the City. The license shall be issued only if the City Manager finds the following facts to exist:

- (a) All of the statements made in the application are true.
- (b) The applicant had provided a valid photographic identification card.
- (c) The applicant has a good character and reputation for honesty and integrity, or if the application is not an individual person, every member, managing officer or agent of the applicant has a good character or reputation for honesty and integrity, as evidenced by the absence of prior convictions of any felony or misdemeanor involving an offense of violence as defined in R.C. 2901.01(A)(9), or has committed a sexually oriented offense as defined in R.C. 2950.01 or conviction of any other crime, other than a traffic offense, which was in any way connected with the act of peddling, canvassing, vending, or soliciting.
- (d) The control and supervision of the solicitation will be under responsible persons who meet the qualifications specified in subsection (c) hereof.
- (e) The applicant has not engaged in any fraudulent transaction or enterprise as evidenced by the absence of civil or criminal convictions or pending investigations by any governmental agency.
- (f) The solicitation, vending, peddling, or request for contribution other than in conjunctions with canvassing activity, will not be a fraud on the public.

836.05 LICENSE WAITING PERIOD; INVESTIGATION

The City Manager shall require a waiting period, after receipt of the information on the proper form, for the purpose of having the Division of Police make an independent inquiry of the requirements specified in Section 836.04. The waiting period shall be no longer than two (2) business days beginning on the first business day after which the proper form is delivered to the City Manager. Upon objection of the Chief of Police, the license may be withheld.

836.06 LICENSE FEES

The City Manager, before issuing the license required by this chapter, shall collect from each licensee a fee as determined by the City Manager in an amount not to exceed twenty dollars (\$20) for each license issued under this chapter. Each separate person shall have an individual license in order to solicit within the City.

**836.07 LICENSE EXPIRATION; REVOCATION OR
SUSPENSION**

Any license issued pursuant to this chapter shall expire not later than ten (10) days following the date of issuance. Such a license may be revoked or suspended at any time by the City Manager if the holder:

- (a) Is found to have misrepresented any statement on the application for a license to peddle, vend, solicit, or request contributions other than in conjunction with canvassing activity;
- (b) Violates any of the provisions of this chapter;
- (c) Is the subject of a complaint for criminal trespass as defined by Section 642.12(a) of the Centerville Codified Ordinances; or
- (d) Is found to be convicted of any offense as included in subsection 836.04(c) herein.

836.08 EXCEPTIONS FROM LICENSE AND FEES

Except as otherwise provided in Sections 836.11 and 836.12, the restrictions of this chapter do not apply to any Canvassing activity, as defined in Section 836.01(b), or to Youth Fundraising activity, as defined in Section 836.01(o). These exceptions are adopted, among other reasons and without limitation, on the following grounds:

- A. That Canvassing activity, although it may involve requesting contributions, is principally conducted as an expression of core political speech and presents a lower risk of fraud, theft, or other criminal conduct than that presented by other house-to-house activities.

- B. That Youth Fundraising activity is engaged in by minors who are likely to be recognized by their neighbors and present a lower risk of fraud, theft, or other criminal conduct than that presented by other house-to-house activities.

836.09 COMPLIANCE WITH STATE LAW

A representative of a charitable organization, as defined in Ohio R.C. Chapter 1716, may be required, if requested by the City Manager or his/her designee, to provide certification that such organization is duly registered with the Ohio Attorney General's Office.

836.10 FALSIFICATION; MISREPRESENTATION

No person required to obtain a license to solicit, peddle, vend or request contributions other than in conjunction with canvassing activity, under this chapter shall register a false or fictitious name or address or represent by words or action that he/she is the employee, agent, partner, or representative of any person or organization, when in fact, he/she is not the employee, agent, partner, or representative of such person or organization.

836.11 PERMISSIBLE HOURS

- (a) All peddling, vending, soliciting, Youth Fundraising activity and requests for contributions other than in conjunction with canvassing activity, permitted under this chapter may be made only between the hours of 9:00 A.M. and Sunset.
- (b) All Canvassing activity permitted under this chapter may be made only between the hours of 9:00 A.M. and 9:00 P.M.

836.12 PROHIBITED SOLICITING; NOTICE

No person shall knock at the door or ring the doorbell of any residence, apartment, or other dwelling unit in the City upon which is clearly displayed at the entrance a notice that reads "NO SOLICITORS" or that otherwise clearly purports to prohibit peddlers, Contact Canvassers, vendors, solicitors, or persons requesting contributions, unless such person is or has been invited upon the premises by the occupant thereof.

836.13 APPEALS

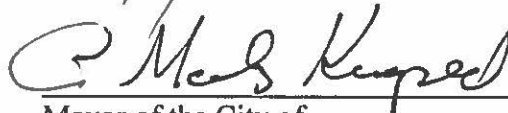
The City Manager shall give notice of a refusal to issue a license required by this chapter to the applicant. The applicant may appeal such refusal to Council by filing a written Notice of Appeal with the Clerk of Council within ten (10) days after such refusal and at least seven (7) days before the Council meeting at which the appeal shall be heard. The appeal shall state briefly the grounds for appeal. The applicant may appeal before Council, in person or by attorney. The decision of Council shall be final.

836.99 PENALTY

Whoever violates any of the provisions of this chapter is guilty of an unclassified misdemeanor and shall be fined not more than one thousand dollars (\$1000.00) for each offense. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

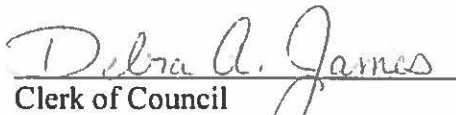
Section 4: This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 19th day of May, 2014.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 02-14, passed by the Council of the City of Centerville, Ohio on the 19th day of May, 2014.



Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.
Department of Law
Scott A. Liberman
Municipal Attorney