

ORDINANCE NO. 41-10

**AN ORDINANCE AMENDING SECTIONS 836.03(b)(4) and 836.03(c)(1)
OF THE CODIFIED ORDINANCES OF THE CITY OF AVON
AND DECLARING AN EMERGENCY**

WHEREAS, the City Administration and Members of Council responded to resident complaints for regulations placing restrictions on the activities of peddlers, solicitors and canvassers who operate within the City by passing Ordinance No. 28-08 on May5, 2008; and

WHEREAS, said Ordinance rewrote Chapter 836 of the Codified Ordinances of the City of Avon; and

WHEREAS, Legal Committee of Council met on April 21, 2010 at the request of the Law Director to consider minor changes to Chapter 836 deemed necessary to forestall possible constitutional challenges to future enforcement; and

WHEREAS, by a vote of three (3) in favor and zero (0) opposed, the Legal Committee of Council voted to recommend to Council amendments to §836.03(b)(4) and §836.03(c)(1); and

WHEREAS, Council, having reviewed these proposed amendments, finds that passage of this ordinance to be in the best interests of the health, safety and welfare of the citizens of Avon in balancing their right to the quiet use and enjoyment of their property with the dictates of the First Amendment and the right of all citizens to exercise freedom of speech.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN, AND STATE OF OHIO:

Section 1 - Section 836.03(b)(4), which presently reads as follows:

836.03 **PEDDLING OR SOLICITING ON PRIVATE PROPERTY; PERMIT
REQUIRED; PROHIBITED ACTIVITIES; CANVASSING.**

(a) Permit Required. No peddler or solicitor shall peddle or solicit within the City, unless he or she is the holder of a valid permit issued pursuant to this chapter.

- (1) The peddler or solicitor must be in actual possession of said permit; it must be displayed on their person in a way that makes it readily discernible to the property owner.
- (2) The peddler or solicitor must be in actual possession of a copy of the City's "Do Not Knock Registry", as set forth in Section 836.031.

- (b) Application; Fee; Permit; Registration.
- (1) Any person seeking a permit in conformity with this chapter shall obtain an application for same from the Police Department and shall submit the completed application to such department on a form supplied by the Chief of Police which shall contain the following information:
 - A. Full name of the applicant.
 - B. Date of birth of the applicant.
 - C. Local address, if any.
 - D. Permanent home address.
 - E. Taxpayer identification number for tax purposes.
 - F. A description of the nature of the business and the goods, wares, merchandise, property, and/or services to be sold or, as applicable, the reason for soliciting funds.
 - G. Telephone number of the applicant.
 - H. An indication of the streets to be peddled or solicited along with dates and hours of peddling or solicitation for each respective street or area.
 - I. Whether the applicant has ever been convicted of a crime and, if so, where and the nature of the offense and the punishment or penalty imposed therefor, if any.
 - J. Such other information as the Police Department may by rule require in order to protect the public health safety and/or general welfare.
 - (2) All permit applications shall be referred to the Director of Public Safety, who shall, within five days after receipt of the completed application, issue permits to the solicitors or peddlers unless he or she finds that:
 - A. The applicant has provided false, misleading or deceptive information in his or her application; and/or
 - B. The applicant or any solicitor or peddler named on the permit application has been convicted of a felony violation or misdemeanor violation involving fraud or moral turpitude within the past five years.
 - (3) Any permit issued under this chapter shall be valid for not more than 90 days.
 - (4) Each applicant shall pay a non-refundable permit application fee of ten dollars (\$10.00), which fee shall be paid to the Director of Public Safety at the time the permit is issued.
 - (5) Upon issuance of the permit, the peddler and/or solicitor shall be issued a current copy of the City's Peddler, Solicitors and Canvassers' "Do Not Knock Registry" as established by Section 836.031 below, together with a copy of Section 836.04 "Resident Prohibition by Notice."
 - (6) Once issued, a permit may be used only in conformity with the laws of the City and the State of Ohio; may not be assigned or transferred; must be carried by the permittee at all times; and may be revoked or suspended by the Director of Public Safety or designee for any of the following causes:

- A. The permittee or person preparing the application on behalf of the permittee provided false, misleading or deceptive information in the permit application.
- B. The permittee is convicted of a felony or of a misdemeanor involving fraud or moral turpitude.
- C. The permittee violates any provision of this chapter or peddles or solicits in an unlawful manner.

Is hereby amended to read as follows: (New language in bold print)

(a) Permit Required. No peddler or solicitor shall peddle or solicit within the City, unless he or she is the holder of a valid permit issued pursuant to this chapter.

- (1) The peddler or solicitor must be in actual possession of said permit; it must be displayed on their person in a way that makes it readily discernible to the property owner.
- (2) The peddler or solicitor must be in actual possession of a copy of the City's "Do Not Knock Registry", as set forth in Section 836.031.

(b) Application; Fee; Permit; Registration.

- (1) Any person seeking a permit in conformity with this chapter shall obtain an application for same from the Police Department or **City Hall** and shall submit the completed application to such department on a form supplied by the Chief of Police which shall contain the following information:
 - A. Full name of the applicant.
 - B. Date of birth of the applicant.
 - C. Local address, if any.
 - D. Permanent home address.
 - E. Taxpayer identification number for tax purposes.
 - F. A description of the nature of the business and the goods, wares, merchandise, property, and/or services to be sold or, as applicable, the reason for soliciting funds.
 - G. Telephone number of the applicant.
 - H. An indication of the streets to be peddled or solicited along with dates and hours of peddling or solicitation for each respective street or area.
 - I. Whether the applicant has ever been convicted of a crime and, if so, where and the nature of the offense and the punishment or penalty imposed therefor, if any.
 - J. Such other information as the Police Department may by rule require in order to protect the public health safety and/or general welfare.
 - K. **If the applicant is a juvenile, in addition to providing (A) through (J) above, the applicant must also list the name(s) of his or her parent(s) and/or legal guardian(s), an emergency contact telephone number for same and provide written proof of their consent to the activity. These requirements are waived upon written proof of emancipation.**

- (2) All permit applications shall be referred to the Director of Public Safety, who shall, within five days after receipt of the completed application, issue permits to the solicitors or peddlers unless he or she finds that:
 - A. The applicant has provided false, misleading or deceptive information in his or her application; and/or
 - B. The applicant or any solicitor or peddler named on the permit application has been convicted of a felony violation or misdemeanor violation involving fraud or moral turpitude within the past five years.
- (3) Any permit issued under this chapter shall be valid for not more than 90 days.
- (4) Each applicant shall pay a non-refundable permit application fee of **One Dollar (\$1.00)**, which fee shall be paid to the Director of Public Safety at the time the permit is issued. **Juveniles shall be exempt from said fee. No juveniles shall be issued a permit without an adult applicant obtaining said permit and listing all information required in (A) through (K), above, for each juvenile under his or her charge.**
- (5) Upon issuance of the permit, the peddler and/or solicitor shall be issued a current copy of the City's Peddler, Solicitors and Canvassers' "Do Not Knock Registry" as established by Section 836.031 below, together with a copy of Section 836.04 "Resident Prohibition by Notice."
- (6) Once issued, a permit may be used only in conformity with the laws of the City and the State of Ohio; may not be assigned or transferred; must be carried by the permittee at all times; and may be revoked or suspended by the Director of Public Safety or designee for any of the following causes:
 - A. The permittee or person preparing the application on behalf of the permittee provided false, misleading or deceptive information in the permit application.
 - B. The permittee is convicted of a felony or of a misdemeanor involving fraud or moral turpitude.
 - C. The permittee violates any provision of this chapter or peddles or solicits in an unlawful manner.

Section 2 - Section 836.03(c)(1), which presently reads as follows:

836.03 PEDDLING OR SOLICITING ON PRIVATE PROPERTY; PERMIT REQUIRED; PROHIBITED ACTIVITIES; CANVASSING.

(c) Restrictions; Hours; Conduct. Every person, whether a peddler, solicitor or canvasser, as that term is defined in this chapter, shall be governed by the following rules and regulations:

- (1) No person subject to the provisions of this chapter shall peddle or solicit except between the hours of 10:00 a.m. and 7:00 p.m., Monday through Saturday; nor shall such person peddle or solicit on Sunday or any legal State

or Federal holiday.

Is hereby amended to read as follows: (New language in bold print)

(c) Restrictions: Hours: Conduct. Every person, whether a peddler, solicitor or canvasser, as that term is defined in this chapter, shall be governed by the following rules and regulations:

- (1) No person subject to the provisions of this chapter shall peddle or solicit **anywhere within the city** except between the hours of 10:00 a.m. and 7:00 p.m., Monday through Saturday between October 1 and April 30. **However, between May 1 and September 30, the hours of solicitation shall be from 10:00 a.m. to 8:30 p.m..** No person shall peddle or solicit on Sunday or any legal State or Federal holiday.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

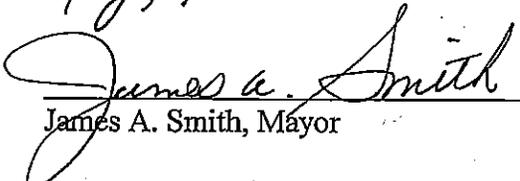
Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to revise Chapter 836 of the Avon Codified Ordinances as it pertains to restrictions on door-to-door peddlers and solicitors; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: May 10, 2010

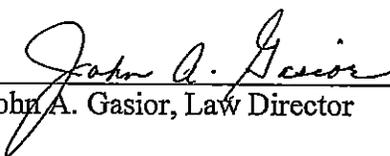
DATE SIGNED: May 10, 2010

By: 
Craig L. Witherspoon, Council President

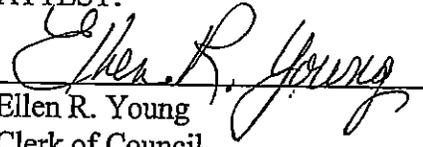
DATE APPROVED BY THE MAYOR: May 11, 2010


James A. Smith, Mayor

APPROVED AS TO FORM:


John A. Gasior, Law Director

ATTEST:

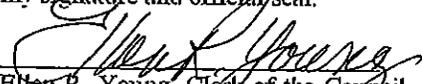

Ellen R. Young
Clerk of Council

Posted: May 12, 2010
In Five Places as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

I, Ellen R. Young, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 41-10, passed by the Council of said City on May 10, 2010.

IN WITNESS WHEREOF, I have on this 12th day of May, 2010, affixed my signature and official seal.


Ellen R. Young, Clerk of the Council
of the City of Avon, Ohio