BOROUGH OF WATCHUNG

ORDINANCE NO. OR: 17/13

AN ORDINANCE REPEALING SECTION 11-1, TITLED "HAWKERS AND PEDDLERS", OF CHAPTER XI OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF WATCHUNG AND REPLACING WITH A NEW SECTION 11-1, TITLED "PEDDLERS, SOLICITORS AND CANVASSERS."

BE IT ORDAINED by the Mayor and Council of the Borough of Watchung, in the County of Somerset, State of New Jersey, that Section 11-1, titled "HAWKERS AND PEDDLERS", of Chapter XI of the Revised General Ordinances of the Borough of Watchung is hereby repealed and replaced as follows:

Section 1. Section 11-1, titled "HAWKERS AND PEDDLERS" of Chapter XI of the Revised General Ordinances of the Borough of Watchung is hereby repealed and replaced as follows:

11-1 PEDDLERS, SOLICITORS AND CANVASSERS

11-1.1 Definitions.

As used in this section:

"Applicant" shall mean every person who has applied for a permit to peddle, solicit and canvass in the Borough.

"Canvasser" shall mean any person who goes from door to door, or from place to place, by traveling on the streets and roads, or stands within the streets and roads or public rights-of-way, for the purpose of obtaining the views of any person upon any economic or social question or project or for the purpose of distributing literature, leaflets, pamphlets, advertisements, circulars, samples, door hangers or other written material for the purposes of information and/or advertising.

"Commercial Purposes" shall mean for the purpose of selling goods, services or wares or advertising goods, services or wares with an intent of profit-making. However, no peddling, canvassing, or soliciting by non-profit or charitable organizations shall be considered a "commercial purpose."

"Non-Commercial Purposes" shall mean those purposes which are not commercial.

"Peddler" shall mean any person who goes from door to door, or from place to place, by traveling on the streets and roads, or stands within the streets and roads or public rights-of-way, in an effort to take orders for present or future delivery of merchandise, as defined hereinafter.

"Merchandise" shall mean any and all goods or wares which are ordinarily the objects of trade and commerce. Merchandise shall also mean and refer to orders or contracts for a service, home improvement or alteration.

"Solicitor" shall mean any person who goes from door to door, or from place to place, by traveling on the streets and roads, or stands within the streets and roads or public rights-of-way, to plead or ask for contributions or donations, monetary or otherwise, for any person, group, association or corporation.

11-1.2 Permit Required for Commercial Peddling, Solicitation, and Canvassing.

a. Any person desiring to peddle, solicit, or canvas for a commercial purpose within the Borough must apply for and receive, prior to such activity taking place, a commercial peddling, soliciting, and canvassing permit from the Borough Clerk.

b. A separate application shall be required for each entity or person peddling, soliciting or canvassing. In addition, each applicant shall pay a non-refundable administrative fee of one hundred ten ($110.00) dollars. Each applicant shall agree to be fingerprinted for the purpose of a criminal record verification. The fingerprint impressions are performed by a third party. The necessary form and instructions will be provided by the Borough Clerk to the applicant at the time of application. Applicant shall bear the cost of this verification. Every application shall contain the following information:

i. Name, age, physical description and social security number of applicant.

ii. Complete permanent home and local address, if any, of the applicant.

iii. A statement as to whether or not the applicant, or any person hereunder selected by the applicant to solicit, canvass or peddle, has been convicted of any public offense and, if so, the nature of the offense and the penalty imposed, if any.

iv. Two (2) recent photographs of the applicant which shall be approximately two and one-half inches by two and one-half inches (2.5 x 2.5) in size showing the head and shoulders of the applicant.

v. The name, address and telephone number of at least three (3) business or character references of the applicant.

vi. The name and address of the person, group, organization or corporation for whom the applicant intends to solicit, canvass or peddle, or the supplier of the goods to be solicited, canvassed or peddled. If the applicant purports to be an employee of a company on behalf of whom they will be peddling, soliciting, or canvassing, the applicant must provide proof of employment.

vii. The make, model, year, color and license plate number of each automobile to be used by the applicant.

viii. A statement as to whether the applicant has been denied a soliciting, canvassing or peddling permit within the previous year and the reasons therefor, if any.

ix. The approximate number of dates during which the applicant intends on peddling, soliciting and canvassing and the anticipated daily hours during which such permitted activities will take place.

x. Proof that the applicant carries and maintains in force insurance covering its operations written by an insurance company licensed to do business in the State of New Jersey. Such insurance must provide comprehensive general liability insurance of $500,000 (combined single limit each occurrence).

xi. A copy of the applicant's government issued picture identification card.

c. Issuance or Denial of a Permit Application

i. Upon receipt of a complete application, the Borough Clerk shall, within two (2) days, transmit the application to the Chief of Police, or designee, who shall initiate, within five (5) days, an investigation of the business and moral character of the applicant for protection of the public welfare. The Chief of

Police, or designee, shall complete the investigation and transmit any recommendations under subsection 11-1.2(c)(ii) and (iii) of the Revised General Ordinances of the Borough of Watchung to the Borough Clerk within thirty (30) days of initiating such investigation unless the Chief of Police, or designee, is at that time awaiting information concerning the applicant from the criminal record verification after a timely request.

ii. If, as a result of such investigation, the applicant's moral or business character is determined to be unsatisfactory pursuant to this subsection, the Chief of Police, or designee, shall recommend the denial of the requested permit to peddle, solicit, or canvass in the Borough of Watchung. Any such determination shall not be discretionary, but shall be based on one (1) or more of the following findings:

1. The applicant has been convicted of an indictable offense within the past five (5) years.

2. The applicant has purposefully misrepresented material information on the requisite application.

3. The applicant has been convicted of any disorderly person offense for which he cannot give an account sufficient to satisfy the Chief of Police, or designee, that he will not pose a threat to the public welfare.

4. The past business endeavors of the applicant, or the company who employs or contracts with the applicant, have been found fraudulent by a competent authority or the applicant has been found to misuse or misappropriate funds in prior business dealings.

5. The applicant lacks proof of required insurance.

iii. The Chief of Police, or designee, shall detail the finding(s) which caused the recommendation of the denial of the application and the evidence supporting the recommendation.

iv. If, as a result of such investigation, the applicant's moral and business character is determined to be satisfactory, the Borough Clerk's office shall issue a permit upon which the Borough Clerk shall affix:

1. One (1) photograph of the applicant;

2. The Borough Clerk's signature to the permit such that a portion of the signature shall overlap a portion of the photograph;

3. The date upon which the permit shall take effect, as well as the date upon which it shall expire.

v. Along with the issuance of all permits, the Borough Clerk shall also issue, and require a signed form acknowledging receipt of a copy of the Borough's Do Not Knock List and Do Not Drop Off list.

d. Appeal- In the event an application is denied by the Borough Clerk, the applicant shall have the right to appeal within ten (10) days to the Mayor and Borough Council which shall set a time and place for a hearing to be held to review the findings of the Chief of Police; provided, however, that the hearing shall be held within twenty-eight (28)days of such an appeal and it shall be held at a reasonable time and place. The applicant shall be given an opportunity to present why the application should be approved and a permit should be issued.

e. Expiration and Renewal of Permits- All permits issued under the provisions of this subsection shall expire on December 31 of the calendar year in which the permit is issued. A permit cannot be renewed except by making a new application to the Borough Clerk pursuant to subsection 11-1.2 of the Revised General Ordinances of the Borough of Watchung.

f. Exhibition of Permit- Each permit holder shall prominently display the permit whenever soliciting, canvassing or peddling in the Borough so that same is observable to any person addressed by the permittee.

g. Any commercial peddling, soliciting, and canvassing permit may be revoked by Chief of Police, or designee, for any of the following reasons:

i. Fraud, misrepresentation or any incorrect statement made in the course of carrying on any of the activities regulated by subsection 11-1 of the Revised General Ordinances of the Borough of Watchung.

ii. The occurrence of any of the events detailed in section subsection 11-1.2 of the Revised General Ordinances of the Borough of Watchung which would have precluded the initial issuance of the permit.

iii. Conducting an activity, permitted or otherwise, in such a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.

iv. Any permit holder whose permit has been revoked shall have the right to appeal the decision in accordance with the provisions of subsection 11-1.2(d) of the Revised General Ordinances of the Borough of Watchung.

h. Permit holders shall comply with the general regulations for Soliciting, Peddling and Canvassing at subsection 11-1.5 of the Revised General Ordinances of the Borough of Watchung.

11-1.3 Special Permit Required Non-Commercial Peddling, Soliciting, or Canvassing

a. Any person desiring to solicit, canvas or peddle for a non-commercial purpose are exempt from the permitting requirements of subsection 11-1.2 of the Revised General Ordinances of the Borough of Watchung. However, such persons must apply for and receive a special non-commercial peddling, soliciting, or canvassing permit prior to any such activities taking place. The application shall contain the following information:

i. The date of application.

ii. Name, age, physical description, and local address of each the person who will solicit, canvass or peddle on behalf of the person or organization.

iii. Name, address and telephone number of the organization, if any, on whose behalf the activity shall be undertaken.

iv. The estimated dates and daily hours during which the peddling, soliciting or canvassing will take place.

b. Upon being satisfied that the applicant has provided this information, the Borough Clerk shall issue a special non-commercial peddling, soliciting, or canvassing permit which shall expire on December 31st of the year it was issued.

c. All such permit-holders shall keep proof of their permit approval on their persons at all times during their peddling, soliciting, or canvassing which, for the purposes of subsection 11-1.3 of the Revised General Ordinances of the Borough of Watchung, shall be the notification of approval from the Borough Clerk.

d. An organization, for whom a person intends to peddle, solicit, or canvass for a non-commercial purpose, may apply on said person's behalf, for a special non-commercial peddling, soliciting, and canvassing permit.

e. All special non-commercial soliciting, canvassing or peddling permit-holders shall comply with the General Regulations Regarding Peddling, Soliciting and Canvassing of subsection 11-1.5 of the Revised General Ordinances of the Borough of Watchung.

11-1.4 Persons Exempt from All Permitting Requirements

a. The following entities are exempt from the requirements of Section 11-1 of the Revised General Ordinances of the Borough of Watchung:

i. Any person honorably discharged from the military services of the United States possessing a peddler's license issued in conformity with N.J.S.A. 45:24-9 and -10.

ii. Any person who is an exempt fireman of a volunteer fire department as defined by N.J.S.A. 45:24-9 and -10, possessing a license in conformity with said law.

iii. Any public utility or its employees, which public utility is subject to regulation by the State Board of Public Utility Commissioners; provided, however, that such employees shall display the identification badge or card issued by their employer. Third party suppliers of electrical services are not exempt under this provision.

iv. Any person engaged in the delivery of goods, wares or merchandise or other articles or things, in the regular course of business, to the premises of persons who had previously ordered same or were entitled to receive same by reason of a prior agreement.

v. Any person soliciting snow shoveling services within 24 hours of a snowstorm.

11-1.5 General Regulations Regarding Peddling, Soliciting and Canvassing.

a. No person, whether or not subject to the permitting requirements of section 11-1 of the Revised General Ordinances of the Borough of Watchung, shall peddle, solicit or canvass either before 9am or after 9pm on any given day.

b. No permit holder shall solicit, canvass or peddle upon premises whereupon a sign is posted which indicates that the permit holder or such permit holder's activities are not welcome. Such a sign may, but is not required to, state: "No Peddlers, Solicitors, and Canvassers Invited."

c. Permit holders shall not walk upon front yards or back yards to move from property to property or building to building unless invited to do so by the property owner.

d. No permit holder shall enter or attempt to enter the house or apartment of any resident of the Borough without an express invitation from an occupant thereof.

e. All literature, leaflets, pamphlets, advertisements, circulars, samples, door hangers or other written material being canvassed or peddled shall be handed to an occupant of the property or left in a secure place thereon.

f. All permit holders must comply with the provisions of section 6-10 of the Revised General Ordinances of the Borough of Watchung, an ordinance which prohibits the peddling, soliciting or canvassing and dropping off of literature, leaflets, pamphlets, advertisements, circulars, samples, door hangers, or other written material (except those specifically requested by the resident) on the premises of residents who have chosen to be placed on the Borough's Do Not Knock/Drop Off List.

11-1.6 Penalties

Penalties- Any violation of section 11-1 of the Revised General Ordinances of the Borough of Watchung shall be punishable by a fine and/or imprisonment as prescribed in section 1-5 of the Revised General Ordinances of the Borough of Watchung.

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 3. This Ordinance shall take effect upon final adoption and publication according to law.

ATTEST: **BOROUGH OF WATCHUNG**

_____ By: _____

Michelle DeRocco, Clerk Stephen K. Pote, Mayor

Introduced by: Joren
Approved: October 5, 2017
Published:
Adopted: