

ORDINANCE NO. 646-09

**AN ORDINANCE OF THE TOWN OF FOWLER PROVIDING
FOR REGISTRATION OR LICENSING OF TRANSIENT DEALERS,
PEDDLERS, CANVASSERS AND SOLICITORS.**

WHEREAS, the Board of Trustees of the Town of Fowler desires to regulate transient dealers, peddlers, canvassers and solicitors so as to protect the privacy of its residents, prevent crime and provide a modest level of consumer protection; and

WHEREAS, these purposes may be obtained through registration or licensing of transient dealers, peddlers, canvassers and solicitors.

NOW, THEREFORE, BE IT ORDAINED by the town of Fowler Board of Trustees as follows:

4.04.010 Transient Dealers, Peddlers, Canvassers, & Solicitors.

4.04.010.01. Definitions.

- a “Transient Dealer” in this chapter shall mean and include any person whether a resident of the town or not, who engages in the temporary business of selling or selling and delivering goods or services within the town, and who, in furtherance of such purpose, hires, leases, uses or occupies any tent, room, structure, building, shop, lot or other real property, alley, street, road, right of way or any other place or temporary location within the town.
 - 1 The term “transient dealer” includes those not selling from stock but exhibiting samples for the purpose of securing orders for future delivery. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with a local dealer, trader, merchant, or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant, or auctioneer.
 - 2 Excluded from the term transient dealer are manufacturers’ representatives who supply wholesalers, dealers or merchants located in the town, merchants who have a permanent location within the town and who hold a current, valid Colorado sales tax license, local area farmers selling produce and persons, corporations, limited liability companies, firms, or associations who are invited into the Town of Fowler by the town.
 - 3 Fireworks stands are exempt from this chapter, but must comply with the specific fireworks license regulation.
- b “Temporary business” in this chapter means a person who establishes a business within the town with the intention and determination to remain within the town for

a short period of time only, whether such period is definite or indefinite, or until disposition of a particular stock of merchandise has occurred.

- c “Peddler” in this chapter shall mean any person, whether a resident of the town or not, traveling by any means from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, and merchandise offering and exposing the same for sale, or making sales and delivering articles to purchasers or selling or offering to sell services to be furnished or performed in the future.
- d “Canvasser” or “Solicitor” in this chapter shall mean any person, whether a resident of the town or not, traveling by any means from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares, and merchandise, or for services to be furnished or performed in the future, whether or not such person has carried or exposed for sale a sample of the subject of such sale or whether he is collecting advance payments for such sales or not; provided that such definition includes any person who, for himself, or for another person hires, leases, uses or occupies any room, structure, building, shop, lot or other real property, alley, street, road, right of way or any other place or temporary location within the town for the purpose of exhibiting any samples and taking orders for future delivery.
- e “Person” in this chapter shall mean and includes the singular and the plural and also means and includes any firm, corporation, limited liability company, association, club, partnership, limited partnership, any society, or any other organization.

4.04.010.02 Obstruction of Street and Sidewalks while Conducting Business. It is unlawful for any person licensed or registered as specified in this chapter, to conduct business in such a manner as to attract a crowd which may cause the blockading or obstruction of any street, roadway, alley or sidewalk.

4.04.010.03 Temporary Food Establishment. No person shall operate, own, or maintain a temporary food establishment without a Health Department inspection.

4.04.010.04 Conducting Business without a License. It is unlawful for any person to engage in the business of a peddler, solicitor, canvasser, or transient dealer as defined in this chapter within the corporate limits of the town without first obtaining a current and valid license as provided for in this chapter.

4.04.010.05 Prohibitions on Calling

- a Where Premises Is Signed. It is unlawful for any peddler, solicitor, canvasser, or transient dealer to make an unsolicited call at a premises signed “No Solicitations” or words to that effect on or adjacent to the front door of the premises.
- b Where Occupant Has Placed Premises on No Visit List.

- 1 The town clerk shall establish and maintain a list of addresses where the occupant or owner has requested that no peddler, solicitor, canvasser or transient dealer make an unsolicited visit at that address.
- 2 The owner or occupant of any premises within the town of Fowler may request the town clerk in writing to place the address on a no visit list. The town clerk shall then place the address on the no visit list. Where the requesting owner or occupant moves, the owner or occupant has a duty to notify the town clerk so the address may be removed from the no visit list.
- 3 The town clerk shall provide the no visit list of addresses to each peddler, solicitor, canvasser or transient dealer who indicates intent to solicit, peddle or canvass on a door to door basis.
- 4 It is unlawful for any peddler, solicitor, canvasser or transient dealer to make an unsolicited call at a premises listed on the no visit list.

4.04.010.06 Application for License.

- a Every person desiring a town transient dealer's license or peddler's license shall first make written application with the town clerk and shall submit the written application to the town clerk together with a non-refundable application fee in the amount of twenty-five dollars (\$25.00). The application fee will be applied to the license fee where the town grants the license.
- b The written application shall include at a minimum the following information:
 - 1 applicant's name, residential address and telephone number;
 - 2 whether the applicant transacts business on his own behalf or on the behalf of another person and, if so, the name, business address, residence address and telephone number of such other person;
 - 3 the kind, class or nature of the goods, wares and merchandise that the applicant proposes to sell under the license;
 - 4 the names, residential addresses, business addresses and telephone numbers of the suppliers of goods, wares and merchandise that the applicant proposes to sell under the license where the applicant does not own the goods, wares and merchandise the applicant intends to sell.
- c Where appropriate, the application shall be accompanied by the following:
 - 1 written verification from the landowner of the property from which sales are to be made authorizing said use of the property and said sales,

- 2 written verification of a sales tax license, branch sales tax license, or special events license as the case may be certifying and verifying that sales tax will be collected and remitted to the town.
- d The application shall contain such other and further information and/or request for information as deemed appropriate by the town.
- e Following submission of a complete application including all attachments and payment of the correct application fee the town clerk shall refer the application to the Fowler Police Department for further investigation. The Fowler Police Department shall verify the information contained in the application and shall check all other references and/or information deemed appropriate under the circumstances. The Fowler Police Department shall give written findings of its investigation to the town clerk.
- f After the town clerk has received the completed application, appropriate application fee and a positive report from the Fowler Police Department, the town clerk shall issue to the applicant a written license authorizing the applicant to engage in business within the Town of Fowler.
- g Appeals. In the event the town clerk fails or refuses to issue a license hereunder, or believes that the applicant is not required to have a license, the applicant shall be entitled to an immediate appeal to the town manager. Where the town manager affirms the decision of the town clerk, the applicant shall have ten (10) days to file a written appeal to the Board of Trustees. The appeal shall be heard at the next regular board of trustees meeting that occurs at least ten days subsequent to the filing of the appeal with the town clerk at which time the applicant may present evidence and testimony as to why the license should be issued. The decision of the board of trustees shall be final.

4.04.010.07 Printed License, Fee and Renewal. Every person who desires to transact any business as a transient dealer, peddler, canvasser, or solicitor within the corporate limits of the town shall first obtain from the town clerk, during normal working hours, a written or printed license to engage in such business within the town, and shall pay to the town clerk the following fees for such license:

- a Twenty-five dollars (\$25.00) for a week or less license.
- b Seventy-five dollars (\$75.00) for a 6 month license.
- c One-hundred-dollars (\$100.00) for a 12 month license.
- d Provided there have been no violations of this chapter, and the proper amount of sales tax has been collected and remitted to the town, a transient dealer, peddler or solicitor's license may be renewed for an additional term of the same length as the original license so long as the request for renewal is made prior to or within thirty (30) days after the existing license expiration date. Where the correct license fee is remitted with the request for renewal, the town shall waive the application fee.

- e The written licenses issued by the Town Clerk shall be consecutively numbered, state the time, location, and purpose for which it was issued, shall be sealed with the seal of the Town of Fowler and shall further state that the license is non-transferable.

4.04.010.08 Registration of Non-Profit Organizations:

- a Any person engaged in short term fund raising door to door within the town on behalf of a non-profit or government related organization including but not limited to school organizations, Boy Scouts, Girl Scouts, Four-H, and church organizations does not require a license but shall register with the town clerk.
- b Each person shall complete the same form as required for a license as set forth in this chapter but no fee shall be required. The registration for a non-profit fund raising event shall be effective for a limited period of time not to exceed ninety (90) days. Where the registration is for a youth organization and the youths participating in the fund raising are all less than eighteen years of age, an adult representing the organization may register on behalf of the organization in lieu of individual registration.
- c As part of the registration, the organization shall provide the town clerk with written documentation demonstrating the non-profit status of the organization. Acceptable documentation shall include but not be limited to a copy of an I.R.S. determination of non-profit status or a letter from a government administrator such as a school superintendent stating that the organization is approved by and operates under the umbrella of that government organization.
- d It shall be unlawful for any non-profit organization to engage in door to door fund raising without registering with the town clerk. Every person who unlawfully engages in door to door fund raising on behalf of a non-profit organization without registering with the town clerk as provided for in this chapter shall be punished by a fine of not more than \$300.00.

4.04.010.09 Records of Application. The Town Clerk shall keep on file each application made for a license, a duplicate copy of each license issued and all papers filed in connection with any license issued, and shall keep a record of all license fees paid and shall keep a record of all licenses issued that may be canceled, and all such files and records shall at all times be open to public inspection.

4.04.010.10 Examination of License. Every person licensed as a transient dealer, peddler, canvasser, or solicitor, whenever his license is demanded of him by any police officer of the town shall forthwith exhibit his license for examination by such officer, and if he neglects or refuses so to do, he shall be subject to the same penalty as if he has no license.

4.04.010.11 Cancellation of License. The license or licenses of any person who may be convicted of a violation of any provision of this chapter shall be null and void from the date of such conviction and shall be canceled on the records of the town clerk.

4.04.010.12 Unlawful Engagement of Business. Every person who unlawfully engages in or allows another to unlawfully engage in, on or about their property, in the business of a transient dealer, peddler, canvasser, or solicitor in the Town of Fowler, and every person who in said Town transacts any business which would make him a transient dealer, peddler, canvasser, or solicitor, without having a valid license as provided for in this chapter shall be punished by a fine of not less than \$100.00 and not more than \$1,000.00.

4.04.010.13 Untrue Statements in Application. No person shall make any false or untrue statement in an application for a license as a transient dealer, peddler, canvasser, solicitor and no transient dealer, peddler, canvasser, or solicitor shall commit any fraud in the transaction of his business as a transient dealer, peddler, canvasser, or solicitor, or sell any manufactured goods, wares, or merchandise by any false or short weight, or measure or sell any goods, wares, or merchandise as being composed or manufactured in whole or in part of a material different from which such manufactured goods, wares, or merchandise are actually composed or manufactured, or sell any manufactured goods, wares, or merchandise which are partly or entirely of a poisonous or injurious character or nature, for consumption of human beings, animals, or fowls, or for application to the body, hair, or skin or any human being or animal, and every person who shall be convicted of a violation of any provision of this Section shall be punished by a fine of not less than \$100.00 and not more than \$1,000.00.

4.04.010.14 Number of Persons Engaging in a Business. No more than one (1) person shall engage in business or operate under the same transient dealer, peddler, canvasser, or solicitor's license whether as principal or agent or assistance to any principal or agent.

4.04.010.15 Violation of a License. Each day that any person shall engage in business or operate as a transient dealer, peddler, canvasser, or solicitor as defined in Section One of this Ordinance, without first obtaining a license with the town clerk, shall be deemed a separate offense, and such person may be prosecuted accordingly.

REPEAL. Ordinance number 643-08 previously adopted is hereby repealed. All previously adopted ordinances and resolutions are hereby amended or repealed to conform to this ordinance.

SEVERABILITY. If any clause, sentence, paragraph or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect application to other persons or circumstances.

EMERGENCY. This ordinance is necessary for the immediate preservation of the Town of Fowler's peace, health, and safety. This ordinance is declared an emergency ordinance. This ordinance shall be effective following publication and upon final adoption.

INTRODUCED, READ IN FULL, PASSED AND ORDERED PUBLISHED on the first reading the 12th day of January 2009

ADOPTED and approved the 12th day of January, 2009.

TOWN OF FOWLER

DATED this 12th day of January, 2009.

BY: Ray A. Wards
Mayor Town of Fowler

ATTEST:

Shawn Pagnotta
Town Clerk