

**AN ORDINANCE TO AMEND THE BROWN CITY CODE BY
REPEALING SECTIONS 112.45, 112.46, 112.47, 112.48, 112.49, 112.60 AND
112.61, ADDING SECTION 113 TO CHAPTER TITLE XI – GENERAL
REGULATIONS.**

THE CITY OF BROWN CITY ORDAINS:

SECTION 113: PEDDLERS AND SOLICITORS

- 113.1 General Provisions: The City Council hereby determines that regulation of all types of solicitation and peddling are sufficiently connected to the City's interest in preventing crime and protecting citizens' quiet enjoyment and peace. The City Council also determines that a significant connection among evening solicitation, evidence of nighttime crime, and disruption of citizens' quiet enjoyment and peace exists to limit all types of solicitation to between 9 AM and 9 PM. It is further determined that the City has no other less restrictive means available to achieve its objectives. It is further determined that a ban on solicitation after 9 PM and before 9 AM leaves ample alternative channels of communication open to solicitors in the City.
- 113.2 Definitions: The following words and phrases when used in this Chapter shall have the meanings respectively ascribed to them:
- 113.2.1 "Solicit" and "solicitation" shall mean the request of money, credit, property, financial assistance or other thing of value by telephone, personal interview, or otherwise on the plea or representation that such money, credit, property, financial assistance or other thing of value, or any part thereof, will be used for a charitable, religious, patriotic, civic, educational, or philanthropic purpose. The said words shall also mean the placing of canisters for the receipt of money in business establishments or other public places. The said words shall also mean and include the sale or offer to sell any article, tag, ticket, emblem, publication, advertisement, subscription, or other thing, whether of value or not, on the pleas or representation that such money, credit, property, financial assistance, or other thing of value, or any part thereof, whether received by the solicitor or purchased by the buyer, will be used for a charitable, religious, patriotic, civic, educational or philanthropic purpose.
- 113.2.2 "Peddler" shall mean any person traveling by foot, wagon, automotive vehicle or other conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or who takes or

attempts to take orders for sale of goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not. Any person who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the provisions of this Chapter, shall be deemed a peddler. The word "peddler" shall include the words, "hawker", "huckster" and "canvasser". The word "peddler" shall not include agents of utility companies or firms franchised by referendum of the electorate of the City of Brown City or agents of such firms governed by franchise ordinance(s) enacted by the City Council of the City of Brown City following an affirmative advisory vote on the question by said electorate.

113.2.3 "Person" shall mean any individual, firm, co-partnership, corporation, company, association or joint stock association, church, religious sect, religious denomination, society, organization or league, and includes any trustee, receiver, assignee, agent or other similar representative thereof.

113.2.4 "City Clerk" shall mean the individual elected as City Clerk of the City of Brown City, or his/her authorized deputy.

113.3 Permit or license required; exception: No person shall solicit or peddle for any cause whatsoever, except as otherwise provided in this Chapter, within the City of Brown City, without a permit or license from the City Clerk, authorizing such solicitation or peddling. Provided, however, that the provisions of this Chapter shall not apply to solicitations conducted exclusively within the membership of an organization by its own officers and members.

113.4 Application; contents: Applications for permits for noncommercial solicitation filed with the City Clerk upon forms to be furnished by the City Clerk. The application shall contain the following information, or in lieu thereof, a detailed statement of the reason why such information cannot be furnished. Such applications for permit to solicit shall be sworn to and filed with the City Clerk not less than twenty-one (21) days prior to the time when the permit is desired:

113.4.1 Name, date of birth, address, telephone number and headquarters of the person applying for the permit. Photocopy of picture identification such as Driver's License / Michigan ID Card. A list of vehicles being used by peddlers / solicitors to include make, color, plate number.

113.4.2 If the applicant is not an individual, the names and addresses of the applicant and the principal officers and managers.

- 113.4.3 The purposes for which such solicitation is to be made and the use or disposition to be made of any receipts therefrom; or property purchased if the same is to be distributed by solicitor.
- 113.4.4 The names and addresses of the person, or persons, who will be in direct charge of conducting the solicitations.
- 113.4.5 An outline of the method, or methods, to be used in conducting the solicitations.
- 113.4.6 The time when such solicitation shall be made, giving the proposed dates for the beginning and ending of such solicitations and the hours of the days thereof.
- 113.4.7 Such other information as may be required by the City Clerk for him/her to determine the kind or character of the proposed solicitation and whether such solicitation is in the interest of, and not inimical to, the public welfare.
- 113.4.8 In the event that information otherwise available to the City Clerk is deemed by him/her to be sufficient to permit him to make a determination pursuant to the provisions of this Chapter, he may authorize a license application which does not contain all or any part of the information required under this Section.
- 113.5 Filing false application: It shall be a violation of this Chapter for any person knowingly to file or to cause to be filed an application containing one or more false statements.
- 113.6 Standards in consideration of permits. The City Clerk shall authorize the permit required by this Chapter whenever he/she shall find the following facts to exist:
 - 113.6.1 That the applicant is a person who is, as a matter of fact, engaged in charitable, patriotic, civic, educational, philanthropic or religious activity, or engaged in raising funds for distribution to such persons or organizations.
 - 113.6.2 That the net proceeds derived from the solicitation authorized under the permit shall be used substantially for charitable, civic, educational, patriotic, philanthropic or religious purposes.
 - 113.6.3 That the solicitation by the applicant will not become an annoyance or a nuisance to the citizens of the City or that such solicitation in no way conflicts with the solicitation of any other person or organization

previously authorized. Such solicitation will inure to the benefit of the citizenry of the City.

- 113.6.4 That the net proceeds over reasonable expenses, derived from the solicitations authorized under the permit shall be used exclusively for charitable, civic, educational, patriotic, philanthropic or religious purposes.
 - 113.6.5 That none of the proceeds derived from the solicitations authorized by the permit will be divided in any manner with persons who actually make the solicitations.
 - 113.6.6 That the proceeds of the solicitations authorized by the permit will not be divided or in any manner shared, either directly or indirectly, with any person or organization other than the applicant for the permit or the organization for whose benefit the solicitation is made.
- 113.7 Peddling license required: No person shall engage in the business of peddler without first obtaining a license therefor. No such license shall be granted except upon certification of the Chief of Police.
- 113.8 Peddling license application: The initial application shall furnish the following information:
- 113.8.1 Name and description of applicant;
 - 113.8.2 Permanent home address and full local address of the applicant;
 - 113.8.3 Drivers license number;
 - 113.8.4 A brief description of the nature of the business and the goods to be sold;
 - 113.8.5 If employed, the name and address of the employer, together with credentials establishing the exact relationship;
 - 113.8.6 The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery;
 - 113.8.7 A photograph of the applicant, taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be 2" x 2" showing the head and shoulders of the applicant in a clear and distinguishing manner;
 - 113.8.8 The fingerprints of the applicant;

- 113.8.9 A statement as to whether or not an applicant has been convicted of any felony, or any misdemeanor or Municipal Ordinance violation involving moral turpitude.
- 113.9 Peddling license fees: The fees for a Peddler's License shall be as specified in the Brown City Fee Schedule. No fee for a Peddler's License shall be so applied as to occasion an undue burden upon interstate commerce. In any case, where a license fee is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce, he may apply to the City Manager for an adjustment of the fees so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application maybe made before, at or within six (6) months after payment of the prescribed license fee. The applicant shall, by affidavit, and supporting testimony, show his method of business and gross volume or estimated gross volume of business and such other information as the City Manager may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The City Manager shall then conduct an investigation, comparing the applicant's business with other businesses of like nature and shall make findings of fact from which he/she shall determine whether the fee fixed for the Peddler's License is unfair, unreasonable or discriminatory as to the applicant's business and shall fix as the license fee for the applicant, an amount that is fair, reasonable and nondiscriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the City Manager shall have the power to base the fee upon a percentage of gross sales, or any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fee as prescribed by the City of Brown City Fee Schedule. Should the City Manager determine the gross sales measure of the fee to be the fair basis, he may require the applicant to submit, either at the time of termination of applicant's business in the City of Brown City or at the end of each three-month period, a sworn statement of the gross sales and pay the amount of fee therefor, provided that no additional fee during any one license year shall be required after the licensee shall have paid an amount equal to the annual license fee as prescribed in the City of Brown City Fee Schedule.
- 113.10 Contents: Permits and licenses issued under this Chapter shall bear the name and address of the person by whom the solicitation is made, the date issued, the dates within which the permit holder may solicit, and a statement that the permit does not constitute an endorsement by the City of the purpose of the solicitation or of the person or group conducting the solicitation. All permits and licenses shall be signed by the City Clerk.
- 113.11 A copy of the permit or license must be carried by each solicitor or peddler. Solicitation or peddling without a valid permit or license or a copy of the permit or license is a misdemeanor, punishable by a fine of up to \$500, 90 days in jail, or both.

- 113.12 Expiration: The dates within which the permit holder under this Chapter may solicit shall be determined by the City Clerk; provided that no permit shall grant the right to solicit for a longer period than ninety (90) days.
- 113.13 Nontransferable: Any permit or license approved and issued under this Chapter shall be nontransferable; provided, however, that this shall not prevent any permittee from using any number of solicitors and representatives and provided, further, that the City Clerk shall require that each solicitor and representative shall carry a fascimile copy of such permit while engaged in solicitation.
- 113.14 Misrepresentation of endorsement by City: No person shall represent that the granting of a permit or license under this Chapter is an endorsement by the City of the particular organization involved, and any such representation is hereby declared to be a misrepresentation of fact and subject to the provisions for revocation of the permit.
- 113.15 Revocation: If, upon receipt of written information or upon his own investigation, the City Clerk has reason to believe that any officer, agent or representative of a permittee is misrepresenting the facts or made untrue statements, or has misrepresented facts or making untrue statements, either with words or by implication, with regard to solicitations or the purposes thereof, or has made untrue statements in the application, or that in any other way the solicitations have been conducted, including a failure to carry a copy of the permit, in violation of any part of this Chapter and not in conformity with the intent and purpose of this Chapter, then the City Manager and / or City Clerk shall immediately suspend such permit and shall cause notice thereof to be mailed to the permit holder. If any agent or representative of the permittee is misrepresenting or making untrue statements with regard to the solicitation, or has made untrue statements in the application, or in any other way the solicitation is being conducted in a manner inimical to the protection of the public health, safety or welfare of the citizens of the City of Brown City, or in violation of any of the provisions of this Chapter or of any statute of the State of Michigan, or any other Ordinance of the City of Brown City, or is representing in any way that any permit granted hereunder is endorsement of such solicitation, then the City Manager and / or City Clerk may suspend the permit or revoke same. One conviction of a solicitor or peddler for the permittee within a one (1) year, three-hundred and sixty-five (365) day time span, for violations arising out of the manner, style or content of the solicitation shall be grounds for suspension or revocation of the permit or license. Further it shall be a violation serving as grounds for suspension or revocation of such licenses for any permittee or licensee or his representative to enter upon property which is posted as prohibiting solicitors. Further, it shall be a basis for revocation or suspension of said permit as well as a misdemeanor punishable by a fine of up to \$500, 90 days in jail, or both when the permittee or its solicitors fail to leave premises when asked by owner or occupant to do so.

- 113.16 Fixed stands prohibited: No license shall stop or remain in any one place upon any street, alley or public place, longer than necessary to make a sale to a customer wishing to buy. Any peddler using a vehicle, when stopped, shall place his vehicle parallel to and within twelve (12) inches of the curb and shall depart from such place as soon as he has completed sales with customers actually present.
- 113.17 Practices prohibited: No peddler shall shout or cry out his goods or merchandise, nor blow any horns, ring any bell or use any other similar device to attract the attention of the public. The practice by a peddler of going in and upon private residences in the City of Brown City, State of Michigan which has posted a "No Solicitation" sign, or its equivalent for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same is hereby declared to be a nuisance and punishable as such nuisance as a misdemeanor.
- 113.18 Curb service prohibited: No person shall operate or maintain any stand, vehicle, store or place of business on or near to any highway in such a manner that the customers or traders with such person occupy or congregate within the limits of any street, lane, highway, or public place within the City. No person shall be permitted to use the streets, alleys, lanes or public places of the City for the service of customers or for the transaction of business, or to use any stands, stores or other places of business in any manner that shall require the customer, when transacting said business, to stand within the limits of the streets, highways, alleys or public places of the City.
- 113.19 Prohibited areas: No peddler, in the sale of goods, wares and merchandise, shall obstruct any street, alley, sidewalk or driveway except as may be necessary and reasonable to consummate a sale nor remain, barter, sell offer or expose for sale any goods, wares or merchandise in front of or at the side of any property against the wish or desire of the property owner or the tenant or occupant of such property. No peddler shall engage in peddling on any street, alley or public place after having been requested to desist by any police officer of the City because of congested or dangerous traffic conditions. No peddler shall engage in business on any State trunkline highway or County road within the City. No peddler shall engage in business in a commercially zoned district outside of any building.
- 113.20 Other prohibitions: Solicitations and peddling upon the street and public highways of the City are expressly prohibited at any time. No peddler or solicitor shall enter onto property which has posted a "No Solicitation" sign, or its equivalent.
- 113.21 Hours of peddling and solicitation: No peddling or solicitation, as defined by this Chapter, may be conducted in residential areas after 9 PM or before 9 AM. No peddling or solicitation, as defined by this Chapter, may be conducted in commercially or otherwise zoned district except during the normal business hours of the establishment in which the peddling is taking place. If said establishment is not otherwise open for business, there shall be no peddling after 9 PM and before 9 AM.

In all other areas of the City, peddling and solicitation shall be prohibited after 9 PM and before 9 AM.

- 113.22 Administrative Appeal: Any applicant denied a license or permit, or in the event a license or permit is revoked, may appeal the denial or revocation and request a hearing before the City Council. The request for hearing shall be in writing outlining the reasons for the appeal and presented to the City Manager or designee. The appeal hearing shall take place at the next regularly scheduled Council meeting or as soon as reasonably practical as determined by the City Council.
- 113.23 A violation of any of the sections of this Chapter is a misdemeanor, punishable by a fine of up to \$500, 90 days in jail, or both.
- 113.24 Effective Date: This Ordinance shall take effect thirty days after adoption.

INTRODUCTION:

This Ordinance was introduced by Councilmember Julie Miller on January 14, 2008, at the Regular Meeting of the Brown City Council. The Public Hearing thereon was held on January 28th, 2008.

CERTIFICATION:

I hereby certify that the foregoing constitutes a true and complete copy of Brown City Code Section 113, adopted by the Brown City Council at a Regular Meeting of the City Council held at the City Hall on the 28th day of January, 2008.

Roll Call vote on this Ordinance, five (5) members being present, was as follows:

Yeas: _____ 5 _____ Nays: _____ 0 _____
Abstain: _____ 0 _____ Absent: _____ 1 (Brown)

I do hereby further certify that the said Brown City Code Section 113 was published as required by the Brown City Charter in the Brown City Banner, a paper published and circulated in the City of Brown City, County of Sanilac, Michigan, on the 4th day of February, 2008.

City Clerk
City of Brown City
Sanilac County, Michigan