



City of Powell, Ohio

ORDINANCE 2008-27

Adopted October 7, 2008

A ORDINANCE TO REPEAL CITY CODE CHAPTER 721 REGARDING PEDDLERS AND SOLICITORS AND ADOPTING NEW CITY CODE CHAPTER 721 REGARDING REGULATION OF PEDDLERS, SOLICITORS AND CANVASSERS.

WHEREAS, it is necessary from time to time to adopt a revised Chapter of the Codified Ordinances of Powell to provide for the health, safety, and general welfare of Powell residents and to reflect changes in federal, state, and case law; and

WHEREAS, recent case law has placed limitations upon the manner in which municipalities may regulate door-to-door peddlers, solicitors, and canvassers; and

WHEREAS, as a result of the recent case law, it become necessary to repeal Code Chapter 721 and to adopt a new Chapter 721; and

WHEREAS, the City desires to regulate peddlers, solicitors, and canvassers to the fullest extent allowable by law to protect the health, safety, and general welfare of the Powell residents who will come into contact with such door-to-door peddlers and solicitors;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF POWELL, DELAWARE COUNTY, OHIO, THAT:

Section 1: The Powell Code Chapter 721, which was implemented by Council on October 7, 1975 through the passage of Ordinance 167, is hereby repealed.

Section 2: Chapter 721 is hereby adopted to read as follows:

CHAPTER 721 Peddlers, Solicitors and Canvassers

721.01	Definitions.
721.02	License required.
721.03	Exceptions.
721.04	License Application and Requirements.
721.05	Appeals.
721.06	Carrying and Exhibiting License; Non-Transferability; Written Receipt Required.
721.07	Business Hours Restricted.
721.08	Notice Prohibiting Peddlers or Solicitors.
721.09	Fraud Prohibited; Revocation of License.
721.10	Severability Clause.
721.99	Penalty.

721.01 DEFINITIONS.

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CANVASSER. Any person who seeks to disseminate any lawful message by means of traveling from place to place without soliciting funds or donations.

CHARITABLE. Includes the words patriotic, philanthropic, social service, welfare, eleemosynary, benevolent, educational, civic, fraternal, veteran's medical and social research, either actual or purported.

PEDDLER. Any person who carries with him or her for the purpose of sale at retail and immediate or future delivery, goods, wares, food or merchandise, or any person who in person as principal or agent canvasses, sells or otherwise obtains orders or commitments for the sale, repair or exchange of goods, wares, food, or merchandise, or services.

RELIGIOUS or RELIGION. Shall not include the word charitable, but shall be given their commonly accepted definitions.

SOLICITOR. Any person who obtains or seeks to obtain funds for any cause whatsoever by means of canvassing from place to place.

721.02 LICENSE REQUIRED.

- (A) Subject to the exceptions in Section 721.03, all persons who systematically go to each residence, or randomly select residences, for the purpose of peddling and soliciting or any other such activity, shall first obtain a license from the Police Chief, or his or her designee, prior to proceeding with such activity.
- (B) Subject to the exceptions in Section 721.03, all persons acting for or hired by another as a peddler or solicitor in the City shall first obtain a license from the Police Chief, or his or her designee, prior to proceeding with such activity.

721.03 EXCEPTIONS.

The License, required by Section 721.02, shall not apply to:

- (A) The local delivery of newspapers and solicitation of subscriptions for the same, or
- (B) The sale of services or products exclusively to commercial or industrial enterprises located within the boundaries of the City; or
- (C) Those acting as a canvasser, as defined in Section 721.01, in order to disseminate ideas, thoughts, or messages regarding any cause, issue, religion, or political candidate as long as such canvassing does not include the violation of any local, state, or federal law; or
- (D) Any individual who, without compensation, acts as a peddler or solicitor on behalf of and for any recognized religious or charitable not for profit organization.

721.04 LICENSE APPLICATION AND REQUIREMENTS.

- (A) Applications for licenses for peddlers and solicitors shall be filed with the Police Chief, or his or her designee, on a form to be furnished by the Police Chief or his or her designee, which shall require, at least, the following information:
 - (1) The name of the applicant;
 - (2) A physical description of the applicant;
 - (3) The applicant's social security number;
 - (4) The federal identification number of the applicant's entity or organization if the applicant is peddling or soliciting on behalf of an entity or organization;
 - (5) The name and address of the person by whom the applicant is employed or for whom he is soliciting, if any, and the length of the applicant's service with such employer or person;
 - (6) The nature and character of the goods to be sold or services to be furnished by the applicant.
 - (7) The names of other municipalities in which the applicant has recently conducted peddling or soliciting activities; and

- (8) Verification that the applicant or his organization/entity has complied with the requirements of R.C. Chapter 1716 pertaining to charitable solicitations, if applicable;
 - (9) If the applicant is soliciting on behalf of a recognized religious or charitable not for profit organization, proof of tax exempt status; and
 - (10) Each individual shall furnish a valid government issued identification which includes a photograph of himself or herself.
- (B) Applications shall be made at least three business days before the license is issued to allow time to complete a background check completed by the Police Chief, or his or her designee.
 - (C) If the Police Chief, or his or her designee, determines after investigation that the information furnished under this Section is correct; that the applicant proposes to engage in lawful commercial or professional enterprise and that neither the applicant nor the enterprise upon which the applicant proposes to engage constitutes a clear and present danger to the residents of the City, he shall issue a license to the applicant.
 - (D) The license fee charged by the Police Chief, or his or her designee, shall be the fee as identified in the current Fee Schedule of the City of Powell. All annual licenses issued under the provisions of this Chapter shall expire twelve (12) months after issued. Other licenses shall expire on the date specified in the license.
 - (E) No license shall be required for any person who acts as a canvasser if no donations or any other type of contributions are sought by the canvasser.

721.05 APPEALS.

Any person who has applied for a license in accordance with this Chapter and to whom the Police Chief or his or her designee has, after an investigation, denied a license may appeal the decision to the City Manager. Such appeal shall be considered by the City Manager within five days, and the City Manager's decision shall be final.

721.06 CARRYING AND EXHIBITING LICENSE; NON-TRANSFERABILITY; WRITTEN RECEIPT REQUIRED.

- (A) The license issued under this Chapter shall at all times be conspicuously attached and exhibited on the outer clothing of the peddler or solicitor;
- (B) License issued under the provisions of this Chapter are non-transferable and shall not be used by any person other than the person identified on the license.
- (C) Upon request, all solicitors or peddlers shall provide a written receipt showing the name of the peddler or solicitor, the amount of the contribution or purchase and the date. Upon request, all persons acting as peddlers or solicitors on behalf of any recognized religious or charitable not for profit organization shall provide a statement attesting to the organization's exempt status under Section 501 of the Federal Internal Revenue Code.

721.07 BUSINESS HOURS RESTRICTED.

No person shall peddle, solicit or conduct market research, door to door, at dwelling houses or businesses at random, on sidewalks or streets, at public places, at private meeting places or in any other manner or place in the City between 8 p.m. and 9 a.m. or on any Sunday or holiday. Holiday shall have the same meaning as defined in Section 1.14 of the Ohio Revised Code.

721.08 NOTICE PROHIBITING PEDDLERS OR SOLICITORS.

- (A) The owners or occupants of any residence or place of business may evidence a determination to refuse to receive any uninvited peddlers or solicitors by displaying a weatherproof card, decal or sign not less than three inches by four inches in size nor more than one square foot

in total surface area upon or near the main entrance door to the residence or place of business, containing the words "No Peddlers or Solicitors Invited" with letters at least one-third inch in height.

- (B) No person shall go upon any premises and ring the door bell, rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of any occupant of such residence or place of business for the purpose of securing an audience with the occupants thereof and engage in peddling or solicitation in defiance of a notice displayed pursuant to this Section.

721.09 FRAUD PROHIBITED; REVOCATION OF LICENSE.

- (A) No person shall directly or indirectly make or perpetrate any misstatement, deception or fraud in connection with any solicitation or peddling for any purpose in the City or in any application or report filed under this Chapter.
- (B) No person having entered into an agreement to conduct any peddling or solicitation on behalf of any person or organization shall fail to remit or pay to the party entitled thereto the proceeds of such peddling or solicitation in accordance with the terms of the agreement.
- (C) The Police Chief, or his or her designee, may revoke at any time any license issued under this Chapter for violation of any provision of this Chapter.

721.10 SEVERABILITY CLAUSE.

If any particular portion of this Chapter is declared to be invalid by a court of competent jurisdiction, such declaration of invalidity shall be limited to that particular portion declared invalid. The declaration of invalidity shall not affect or impair the remainder of this Chapter, and to his end, the provisions are severable.

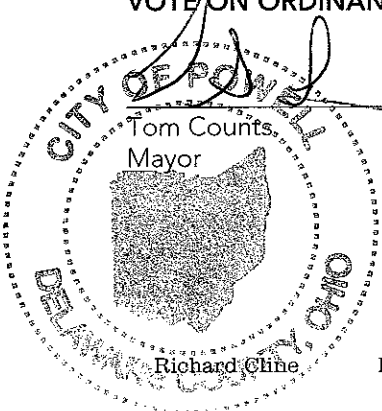
721.99 PENALTY.

- (A) Whoever violates any provision of this Chapter shall be guilty of a misdemeanor of the fourth degree on the first offense and shall be guilty of a misdemeanor of the first degree for a second or subsequent violation of this Chapter or any substantially similar Chapter of these Codified Ordinances. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
- (B) A violation of Section 721.08, in addition to other penalties provided for in this Chapter, is deemed to be a criminal trespass and shall be punishable as set forth in Section 541.05 of these Codified Ordinances.

Section 3: That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of the Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4: This Ordinance shall take effect and be in force from and after the earliest opportunity allowed by law.

VOTE ON ORDINANCE 2008-27: Y 6 N 0



[Signature]
Tom Counts
Mayor
Date 10/18/08

[Signature]
Susie Robb
City Clerk
Date 10/22/08

EFFECTIVE DATE: November 6, 2008

This legislation has been posted in accordance with the City Charter on this date 10/22/08.
[Signature] City Clerk

City Council

Tom Counts, Mayor

Richard Chine Don Grubbs Jim Hrivnak Elmer Meider Art Schultz Dan Wiencsek