

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: Action A 1

DATE: March 11, 2010

SUBJECT: Ordinance 1073-10 - Update of SMC 9.12 Sultan's Peddler and Solicitor Ordinance

CONTACT PERSON: Jeff Brand, Police Chief and Laura Koenig, Clerk/Deputy Finance Director

ISSUE:

The issue is the introduction of Ordinance 1073-10 to amend SMC 9.12 Peddler and Solicitor regulations to bring the regulations into conformance with state and federal law. The issue was discussed at the February 25, 2010 and staff was directed to prepare an ordinance based on the policy decisions made by the Council.

SUMMARY:

The City of Sultan Peddler and Solicitor Ordinance has been in place since 1979 and recent court rulings have rendered it no longer enforceable. A number of other cities have been faced with the same issue and have written updated, enforceable ordinances to protect their citizens.

In recent months we have seen an increase in citizens' complaints about aggressive peddlers that are unwilling to abandon their sales pitches and try to intimidate citizens into buying their wares.

Although recent court rulings have limited the regulation authority of cities, they have not totally restricted regulations and allow a permit process to register peddlers and solicitors. The City may collect fees to offset the administrative costs of a permit program.

A revised Peddler's and Solicitor's ordinance would update Sultan Code so it is enforceable, properly regulated and if the Council wishes, would provide fees to help offset the cost of the program.

DISCUSSION

Court rulings regarding peddlers and solicitors do not suggest we totally abandon regulations of the activity but do require the city to allow political and religious groups to solicit unhindered and require the city to impose reasonable regulations to groups and corporations that wish to engage in those activities in our city. The City Attorney has provided information regarding court cases dealing with peddlers and solicitors. (Attachment B).

There were a number of policy issues addressed by the Council:

1. Does the Council want to regulate peddler and solicitors?
Consensus of the Council was yes, they would like to provide regulations
2. Does the Council want to require a license or permit?
Yes
3. As part of application process, does the Council want to require a background check by the Police Department?
4. Does Council want the permit process to pay for staff time and / or discourage peddlers and solicitors by imposing a high permit fee?
Fee to be determined at a later date and included in the City's fee schedule
5. Does Council want any fee associated with its permits?
Yes – amount not yet determined.
6. Does Council want to regulate the hours and days a peddler or solicitor can be active?
Yes – from 8 AM to 8 PM only
7. Does Council want to include service groups such as Girl or Boy Scouts, Boys and Girls Club, etc in the requirement for permits?
Exclusions should be provided for local youth service groups.

FISCAL IMPACT:

It is difficult to determine the fiscal impact a Peddler's and Solicitor's program, as there are many unanswered questions right now. The city of Sultan could potentially realize limited revenue from permit fees or in the case of violators, could realize revenue from fines levied by the court.

A permit program would require staff to review and enter permit information into the computer. In the event of violators, there will be court and defense attorney costs, associated.

RECOMMENDED ACTION:

Staff recommends the Council introduce Ordinance 1073-10 for a first reading and pass it on for a second reading on March 25, 2010.

ATTACHMENTS: A. Ordinance 1073-10 Peddlers, Solicitors and Transient Merchants
B. SMC 9.12 Peddlers and Solicitors
C. E-mail from City Attorney

**CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1073-10**

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON,
REPEALING CHAPTER 9.12 (PEDDLERS AND SOLICITORS)
OF THE SULTAN MUNICIPAL CODE IN ITS ENTIRETY AND
ENACTING A NEW CHAPTER 9.12 TITLE PEDDLERS,
SOLICITORS AND TRANSIENT MERCHANTS TO PROVIDE
FOR PERMITS FOR PEDDLERS, SOLICITORS AND
TRANSIENT MERCHANTS; PROVIDING FOR SEVERABILITY;
AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City Council has determined it is in the best interest of the community to provide for licensing of peddlers, solicitors and transient merchants;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Sultan Municipal Code (SMC) Chapter 9.12 Amended. SMC Title 9.12 (Peddlers and Solicitors) is hereby amended by repealing Chapter 9.12 in its entirety and enacting a new chapter 9.12 entitled, "Peddlers, Solicitors and Transient Merchants." The City Clerk is directed to codify the following provisions as SMC 9.12.

**Chapter 9.12
PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS**

Sections:

- [9.12.010](#) Definitions.
- [9.12.020](#) Permit required – Exemptions.
- [9.12.030](#) Permit – Application.
- [9.12.040](#) Investigation of applicant – Issuance and denial of permit.
- [9.12.050](#) Permit – Exhibit.
- [9.12.060](#) Permit – Expiration.
- [9.12.070](#) Permit – Revocation.
- [9.12.080](#) Right of appeal.
- [9.12.090](#) Use of streets.
- [9.12.100](#) Hours and notice.
- [9.12.110](#) Records.
- [9.12.120](#) Violation – Penalty.

9.12.010 Definitions

For the purpose of this chapter, the terms defined in this section have the meaning ascribed to them:

A. "Peddler and/or Solicitor"

- (1) All persons, both principals and agents, as well as employers and employees, who shall sell, offer for or expose for sale, or who shall trade, deal or traffic in any personal

property or services in the City by going from house to house or from place to place or by indiscriminately approaching individuals.

- (2) Sales by sample or for future delivery, and executory contracts of sale by solicitors or peddlers are embraced within the proceeding subsection; provided, however, that this chapter is not applicable to any sales person or canvasser who solicits trade from wholesale or retail dealers within the City.
- (3) Any person, both principals and agents, as well as employers and employees, who, while selling or offering for sale, any goods, wares, merchandise or anything of value, stands in a doorway or any unenclosed vacant lot, parcel of land or in any other place not used by such person as a permanent place of business.

B. "Transient merchant" means any person, firm or corporation who engages temporarily in the business of selling and delivering goods, wares or merchandise within the city, and who, in furtherance of such purposes, hires, leases, uses or occupies any building, structure or vacant lot, motor vehicle, trailer or railroad car.

9.12.020 Permit required – Exemptions.

(1) In addition to the business license required by SMC 5.04.030, no person, corporation, partnership or other organization shall engage in the business of a peddler, solicitor, or transient merchant within the City limits without first obtaining a permit therefore as provided in this chapter.

If any individual is acting as an agent for or employed by an individual, corporation, partnership or other organization, both the individual and the employer or principal for whom the individual is peddling must obtain a permit as provided in this chapter:

- (a) provided, however, that said employer or principal for whom the individual is peddling or soliciting need not obtain a permit if written proof is submitted to the Mayor or designated appointee establishing that said employer and/or principal has transacted business within the State of Washington for a continuous period of at least three years immediately prior to the application's filing with the Mayor or designated appointee;
- (b) provided further, that if the City does not require a license of the employer pursuant to the above exemption, the City may still investigate the employer to see if the employer has in any manner violated any provision of SMC [9.12.040\(2\)](#) and may deny a permit to any individual employee if violations are found to exist.

(2) The following persons are exempt from the permit requirements and fee provisions of this chapter:

- (a) Farmers who peddle agricultural, horticultural, or farm products they have actually grown, harvested or produced;
- (b) Any person who is specifically requested to call upon others for the purpose of displaying goods, literature or giving information about any article, service or product;
- (c) Charitable, religious or nonprofit organizations or corporations which have received tax exempt status under 26 USC 501(c)(3) or other similar civic, charitable or nonprofit organizations;
- (d) Newspaper carriers;
- (e) Peddlers operating at any City-sponsored or authorized civic event for a time period not to exceed five consecutive days, so long as each peddler's name, address and telephone number is submitted to the City, in advance of the civic event, to be maintained in the City records; and

- (f) Vendors operating at a farmers' or public market or other City-sponsored or approved activity under the provisions of a temporary use permit; provided, that the name, address and telephone number of each vendor is provided in advance to the City to be maintained in the City records.
- (g) School or local youth groups.

9.12.030 Permit – Application.

(1) Applicants for a permit under this chapter must file with the City a sworn application in writing on a form to be furnished by the City.

(2) All applications shall provide the following information on the application, with sufficient proof of identification:

- (a) Name, date of birth and description of the applicant;
- (b) Address and telephone number;
- (c) A brief description of the nature of the business and the goods or services to be sold;
- (d) If employed or acting as an agent, the name and address of the employer or principal, together with the description of the exact relationship with the principal or employer;
- (e) If a vehicle is to be used, a description of the same, including the license number;
- (f) A photograph of the applicant, taken within 60 days immediately prior to the date of filing the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (g) A statement as to whether or not the applicant has been convicted of any crime within the last 10 years, including misdemeanors, gross misdemeanors, or violations of any municipal ordinance, the nature of the offense, and the punishment or penalty assessed therefore; and
- (h) All sales to occur on a parcel of land must be upon property zoned HOD, UC or ED and the following must accompany the application:
 - (i) Signature of the property owner authorizing use of parcel;
 - (ii) A site plan showing the location of the sales area the nearest driveway and the nearest fire hydrant.
- (i) That the peddling is in compliance with the applicable provisions of Chapter Snohomish County Code (SCC) 30.43; and
- (j) Such other information as may be required by the City.

(3) Unless otherwise exempt under SMC [9.12.020](#), any individual, corporation, partnership or other organization which acts as the principal or employer for individual peddlers shall obtain a permit as provided herein and shall provide the following information on the application in addition to any information required as set forth above:

- (a) The applicant's name, address and telephone number and the names and addresses of all individuals who are employed by or acting as an agent for the applicant;
- (b) If a corporation, the names, addresses and telephone numbers of the corporation's board of directors, principal officers and registered agent; provided, however, that the Mayor or designated appointee may waive any portion of this requirement when disclosure would be unduly burdensome;
- (c) If a partnership, the names, addresses and telephone numbers of the partners;

- (d) A list of any criminal convictions during the past 10 years for the applicant, any owners of the business, and if a corporation, the board of directors and officers;
- (e) Name, address and telephone numbers (business and home) of the individual, if applicable, acting as the manager for the applicants;
- (f) A list of all other cities, towns and counties where the applicant has obtained a peddler's permit or similar permit within the past five years; and
- (g) Such other information as may be required by the City.

(4) At the time of filing the application, each applicant shall pay a nonrefundable fee as set forth in the current fee resolution to cover the City's cost of investigation and the issuance of a permit, including each peddler, principal and/or employer.

9.12.040 Investigation of applicant – Issuance and denial of permit.

(1) The Mayor or designated appointee shall refer the application to the Police Department which shall determine the accuracy of the information contained in the application and conduct a criminal history background investigation of the applicant. Upon completion, the Police Department shall forward the results of the investigation, together with a recommendation for approval or denial, to the Mayor or designated appointee.

(2) If, as a result of the investigation, the character and business responsibility of the applicant are found to be satisfactory, the Mayor or designated appointee shall issue the permit to the applicant. The s Mayor or designated appointee hall deny the applicant the permit if the applicant has:

- (a) Committed any act consisting of fraud or misrepresentation;
- (b) Committed any act which, if committed by a permit holder, would be grounds for suspension or revocation of a permit;
- (c) Within the previous 10 years, been convicted of a misdemeanor or felony directly relating to the occupation of peddler, including, but not limited to, those misdemeanors and felonies involving moral turpitude, fraud or misrepresentation;
- (d) Been refused a permit under the provisions of this chapter; providing, however, that any applicant denied a permit under the provisions of this chapter may reapply if and when the reasons for denial no longer exist; or
- (e) Made any false or misleading statement in the application.

(3) The denial of a permit to an individual, corporation, partnership or other organization which serves as the employer or principal for individual peddlers shall be a sufficient basis to deny a permit to the individual applicants who are employed by or acting as an agent for the applicant

9.12.050 Permit – Exhibit.

Peddlers, solicitors and transient merchants are required to exhibit their permit displayed on their person and fully visible while conducting any peddling activities.

9.12.060 Permit – Expiration.

All permits issued pursuant to this chapter are nontransferable and should be valid for the calendar year in which issued. License fees shall not be prorated for any portion of the year.

9.12.070 Permit – Revocation.

(1) Permits issued pursuant to this chapter may be revoked by the Mayor or designated appointee after notice and hearing for any of the following causes:

- (a) Fraud, misrepresentation or false statement contained in the application for permits;

- (b) Fraud, misrepresentation or false statements made in the course of carrying on the business as a peddler;
- (c) Any other violation of the Sultan Municipal Code;
- (d) Conviction after submission of the application for a peddler's permit of a felony or misdemeanor directly relating to the occupation of peddler, including, but not limited, those misdemeanors and felonies involving moral turpitude, fraud or misrepresentation;
- (e) Conducting the business of peddling in any unlawful manner or such manner as to constitute a breach of the peace or to constitute a menace to the health, safety and general welfare of the public; or
- (f) Violation of any part of this chapter by any employer of a permit holder, regardless of whether the employer is separately licensed under this chapter.

(2) The revocation of any permit held by an individual, corporation, partnership or other organization which serves as the employer or principal for individual peddlers shall constitute a basis for revoking the permit issued to individual applicants who are employed by or acting as agents for such individual, corporation, partnership or organization.

(3) The revocation of a permit for three or more persons who are employees or agents of an individual, corporation, partnership or organization shall constitute a basis for revoking the permit issued to the employer or principal, as well as the permits issued to all other employees or agents of that employer or principal.

(4) Notice of revocation of a permit shall be given by the Mayor or designated appointee in writing, setting forth specifically the grounds of the complaint and the time and place of hearing. The hearing shall be held by the Mayor or designated appointee. In addition, it shall state that the peddler's permit shall be suspended pending the outcome of such hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his or her last known address. The revocation shall become final if no appeal is requested as provided in SMC [9.12.080](#). If the permit holder is an individual, corporation, partnership or organization which employs or serves as the principal for individual permit holders, the notice shall also be mailed to the individual permit holders.

9.12.080 Right of appeal.

Any person aggrieved by the action of the Mayor or designated appointee in the denial of an application for permit or in the decision to revoke a permit as provided in this chapter shall have the right to appeal to the City Hearing Examiner. Such appeal shall be taken by filing with the City Clerk, within 10 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Hearing Examiner shall set a time and place for a de novo hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided in this chapter for notice of hearing on revocation. The decision and order of the Hearing Examiner on such appeal shall be final and conclusive. Hearings shall be held within 21 days of the day the request is received by the City. The fee for the hearing examiner shall be set in the City's fee schedule.

9.12.090 Use of streets.

No peddler shall have any exclusive right to any location in the public streets, nor be permitted a stationary location, nor be permitted to operate in any congested area where operations might impede or inconvenience the public. For the purpose of this section, the judgment of a police

officer, exercised in good faith, shall be conclusive as to whether the area is congested or the public impeded or inconvenienced.

9.12.100 Hours and notice.

No person shall engage the business of peddler between the hours of 8:00 p.m. and 8:00 a.m.

9.12.110 Records.

The Police Department shall report to the Mayor or designated appointee all convictions for violations of this chapter and the Mayor or designated appointee shall maintain a record for each permit issued and record the reports of violation therein.

9.12.120 Violation – Penalty.

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of up to \$1,000 and/or imprisonment for a term not to exceed 90 days.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____ DAY OF _____, 2010.

CITY OF SULTAN

Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

Laura Koenig, City Clerk

Approved as to form:

Margaret J. King, City Attorney

Passed by the City Council:

Date of Publication:

Effective Date:

**ISSUE: Chapter 9.12
PEDDLERS AND SOLICITORS**

Sections:

- | | |
|--------------------------|---|
| 9.12.010 | Uninvited solicitation declared nuisance. |
| 9.12.020 | Exceptions. |
| 9.12.030 | Violation – Penalty. |

9.12.010 Uninvited solicitation declared nuisance.

The practice of going in and upon private residences in the city of Sultan by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise not having been requested or invited to do so by the owner or owners, occupant or occupants, of said private residences for the sale of goods, wares and merchandise or services or solicitation of orders thereof, and/or disposing of and/or peddling or hawking the same, is declared to be a nuisance and punishable as such nuisance as a misdemeanor. (Ord. 377 § 1, 1979)

9.12.020 Exceptions.

The provisions of SMC [9.12.010](#) shall not apply to:

- A. A farmer or gardener vending his own unprocessed farm products raised or grown exclusively upon lands owned or tenanted by him;
- B. Vendors of dairy products and bakery goods;
- C. Unpaid solicitors for community service organizations operated not for profit;
- D. Vendors of printed materials, the chief aim of which is the dissemination of current news as distinguished from fictional writings. (Ord. 377 § 2, 1979)

9.12.030 Violation – Penalty.

Any person violating the provisions of this chapter shall upon conviction thereof be fined not more than \$300.00 or imprisoned not more than 30 days, or both fined and imprisoned. (Ord. 377 § 3, 1979)

MEMO FROM MARGARET KING, CITY ATTORNEY

Yes, SMC 9.12 needs to be replaced.

Below is a summary from MRSC website regarding the current case law on this issue.

I have also put together and attached an overview and examples of other peddler ordinances. Basically there are two approaches:

Example #1

- ? Broad definition
- ? Requires permit
- ? Exemptions
- ? Exemption for vendors at farmers markets
- ? See Covington as an example

Example #2

- ? Broad definition
- ? No solicitors signs
- ? Permit required at farmers markets
- ? Must also comply with health, insurance, food regulations
- ? See Edmonds and Des Moines as an example.

Please review and let me know what direction that City wants to go or if you have any questions. I would be happy to help you put something together or review something that you put together. Just let me know.

FROM MRSC WEBSITE

Reviewed 10/08

About Regulation of Peddlers and Solicitors - Court Decisions General

Municipal ordinances which prohibit solicitors, peddlers, and itinerant merchants from calling on private residences for the purpose of peddling or soliciting without the request or the invitation of the occupant are sometimes referred to as "Green River" ordinances (from the case of Town of Green River, Wyoming v. Fuller Brush Co., 65 F.2d 112 (10th Cir. 1933)). "Green River" ordinances entirely prohibit and declare the practice of uninvited house-to-house canvassing to be a nuisance and misdemeanor punishable by fine and imprisonment (Rhyne, The Law of Local Government Operations, pp 495-496). Such ordinances have been upheld in the past by the United States Supreme Court. These types of ordinances have been ruled unconstitutional when they prohibit religious or noncommercial door-to-door solicitation. The U.S. Supreme Court on June 17, 2002 by a vote of 8-1, invalidated a Stratton, Ohio ordinance that required canvassers to register and obtain a permit from the mayor's office before going door-to-door promoting any cause (Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton). The Court held that the ordinance violated the First Amendment as it applied to religious proselytizing, anonymous political speech, and the distribution of handbills. See MRSC Web Page, U.S. Supreme Court Says No Permit Required to Solicit for Religious Reasons.

Other decisions include *Breard v. Alexandria*, 341 U.S. 622, 95 L.Ed 1233, 71 S.Ct. 920 (1951). The *Breard* decision was decided at a time when "commercial speech" was thought to be outside the protection of the First Amendment. More recent Supreme Court Decisions question the analysis of the *Breard* case and suggest that a complete ban on door-to-door solicitation would be found unconstitutional today. See also *McQuillin, Municipal Corporations*, 24.378 (3rd Ed.).

Even though the 1951 United States Supreme Court decision has not been expressly overruled, more recent cases suggest that a total prohibition of door-to-door solicitation would be unconstitutional and unenforceable. In *Project 80's Inc. v. City of Pocatello*, 942 F.2d 635 (9th Cir. 1991), a city ordinance prohibiting door-to-door solicitation unless the homeowner places a "solicitors welcome" sign on the house was ruled an unconstitutional infringement of free commercial speech. The court concluded that the ordinance did not provide the least restrictive alternative available to accomplish the legitimate governmental interests of protecting residential privacy and preventing crime. The Federal Court decision invalidating the Cities of Pocatello and Idaho Falls' ordinances was the second time the Court had invalidated the ordinances. The 1991 decision was the result of a remand order by the United States Supreme Court of the earlier 1988 decision in *Project 80's Inc. v. City of Pocatello*, 876 F.2d 711 (9th Cir. 1991), vacated and remanded, *City of Idaho Falls v. Project 80's Inc.*, 493 U.S. 1013, 110 S.Ct. 709, 107 L.Ed.2d 730 (1990). Similar decisions have been reached by the Ohio Court of Appeals in *City of Tiffin v. Boor*, 109 Ohio App. 3d 337, 672 NE2d 200 (Ohio Ap. 1996), the Oregon Supreme Court in *City of Hillsboro v. Purcell*, 306 Or 547, 761 P.2d 510 (Ore., 1988) and an Illinois Federal District Court in *Green v. Village of Schaumburg*, 676 F.Supp. 870 (ND Ill., 1988).

Washington

While there are no reported Washington court decisions on the validity of "Green River" ordinances, on November 3, 2000 U.S. District Court Judge John C. Coughenour issued an order (*Peace Action Coalition v. City of Medina* (253 KB), Case No. C00-1811C) enjoining the city of Medina from enforcing its regulations that require all solicitors and peddlers to register with the local police department and submit to a criminal records check. In the words of the court, "the relevant portions of the Medina Municipal Code constitute an improper prior restraint on speech protected by the First Amendment, and are impermissibly overbroad and vague, chilling constitutionally protected speech." See MRSC Web Page, *Federal Court Strikes Down Medina Ordinance Regulating Door-to-Door Solicitation*.

The 1951 Supreme Court *Breard* case upholding such ordinances was recently cited in the case of *Singleton v. Jackson*, 85 Wn.App. 835 (1997) (holding that a door-to-door solicitor at a private residence was a licensee rather than a trespasser or invitee for purposes of premises liability if the front entry may be easily reached and there are no posted signs indicating strangers are not welcome). The validity of local ordinances banning door-to-door sales, however, was not addressed. A decision to totally prohibit door-to-door solicitation may not be defensible and should be carefully reviewed with the attorney.

Other types of regulations of door-to-door solicitation such as licensing, registration and identification requirements have survived constitutional challenges and been upheld by the

courts as appropriate regulations. For example, the City of Pasco's ordinance on licensing and regulation of itinerant vendors was upheld by the Federal Court in *Hispanic Taco Vendors of Washington v. City of Pasco*, 994 F.2d 676 (9th Cir. 1993). In drafting provisions for peddlers' and hawkers'

licenses, the city should review the provisions of chapter 36.71 RCW, especially RCW 36.71.090 restricting the ability of cities and counties to prohibit sales or require licenses for sales of farm produce. In addition, RCW 73.04.050 and .060 restrict local regulation of certain veterans. The enclosed samples contain examples of the necessary exemptions.

In the area of regulation of charitable solicitations, the city should refer to the provisions of chapter 19.09 RCW on charitable solicitations. It is recommended that other constitutional issues raised by the regulation of canvassing and solicitation involving religious activities should be discussed with legal counsel.