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City Attorney's Office

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515 Clark Avenue, P. O. Box 811
Ames, IA 50010
Phone: 515-239-5146 • Fax: 515-239-5142

September 24, 2007

The Honorable Ann Campbell, Mayor,
and Members of the City Council
of the City of Ames, Iowa

Re: United Youth Careers v. City of Ames – Transient Merchant Ordinance Revisions

Dear Mayor Campbell and Council Members:

Based on the recent mediated settlement of the federal civil rights law suit filed in 2004 by United Youth Careers, I am recommending two additional amendments to the Municipal Code. In United Youth Careers v. City of Ames, the plaintiffs alleged that the City's Transient Merchant ordinance, Municipal Code section 17.26, unconstitutionally discriminated against non-local organizations that solicited door-to-door.

The Federal District Court resolved many of the issues pending in the law suit in January, 2006, finding in the City's favor on five of six counts raised in a Memorandum Opinion and Order. On the sixth count, challenging the insurance requirement for transient merchants, the Court ruled in favor of the United Youth Careers and enjoined the City from enforcing the ordinance. You may recall that I then recommended and the Council adopted an amendment to Municipal Code section 17.26 eliminating the requirement of general liability insurance, for door-to-door solicitors.

United Youth Career's final complaint is that the City's restrictions on hours during which transient merchants may operate – sunrise to sunset – violate their free speech rights. Court decisions from other jurisdictions have invalidated municipal ordinances with similar time restrictions. See, e.g. City of Watseka v. Illinois Public Action Council, 796 F.2d 1547, 1558 (7th Cir. 1986)(ordinance prohibited solicitation after 5:00 p.m.); ACORN v. City of Frontenac, 714 F.2d 813, 819 (8th Cir. 1983)(ordinance prohibited solicitation after 6:00 p.m.).

Time restrictions on door-to-door solicitors are intended to protect residents from annoyance and intrusions upon their privacy, but in order to survive constitutional challenge restrictions must be narrowly-tailored to achieve their desired goals. Ordinances limiting solicitors to day-time hours have been invalidated by the courts. I am therefore recommending that the Transient Merchant ordinance be amended to permit door-to-door solicitation from 8:00 a.m. to 8:00 p.m. Such an amendment would permit some solicitation into the early evening hours while still providing reasonable protections to residents.

In order to provide residents with an alternative enforceable means of preventing unwanted solicitations in their homes, I am recommending that the ordinance be further amended to allow residents to post "No Solicitors" signs near their entryways. Solicitors who ignore the signs – like those who violate the restrictions on hours of solicitation – could be charged with either a municipal infraction or a simple misdemeanor. Ordinances authorizing the posting of "No Solicitors" signs have been viewed favorably the courts. ACORN v. City of Frontenac, 714 F.2d at 815.

I have attached a draft ordinance that illustrates by underlining and strikeouts the two proposed changes to section 17.26 of the Municipal Code. I recommend that you place the proposed ordinance amendments on a future meeting agenda for consideration.

Yours truly,

Douglas R. Marek
City Attorney

Attachment

c: Diane Voss

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING SECTION 17.26 THEREOF AND READOPTING THAT SECTION REVISED FOR THE PURPOSES OF CHANGING THE HOURS OF PERMITTED ACTIVITY TO 8:00 A.M. TO 8:00 P.M. AND PROHIBITING SOLICITATION FROM A PREMISES WITH A POSTED "NO SOLICITORS" SIGN; REPEALING ORDINANCES IN CONFLICT TO THE EXTENT OF CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT RESOLVED, by the City Council of the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be hereby amended by repealing Section 17.26 and readopting the same to state:

"Sec. 17.26. PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS.

(1) Each and every person engaged in residence to residence solicitation of orders for goods or services, or in residence to residence peddling of things carried along for sale, and who does not have any indoor place in the city where the same selling of goods and services is done by said person on a continuous and permanent basis, shall first obtain and wear, in a manner plainly visible, a registration and identification badge issued by the City Clerk.

(2) Each and every person who, for the purpose of selling goods or services, occupies a place out of doors, other than on public property, or who for said purpose occupies an indoor place on an intermittent or temporary basis only, and who does not have any indoor place in the city where the same selling of goods and services is done by said person on a continuous and permanent basis, shall obtain and wear, in a manner plainly visible, a valid registration and identification badge issued by the City Clerk.

(3) Each and every person engaged in residence to residence solicitation of gifts or donations who is not associated with a permanent office or home in the city where someone will receive and respond to inquiries for information and identification, shall first obtain and wear, in a manner plainly visible, a registration and identification badge issued by the City Clerk.

(4) For the purpose of registration each person as aforesaid shall provide to the City Clerk, or Clerk's designee the following:

(a) Their name, address, date of birth, social security number, height, weight, hair and eye color, and phone number, and if they do not have a permanent residence in this city, the residence and phone number where they reside permanently.

(b) Registration for minor children shall be done by a parent or legal guardian, or by a person bearing the notarized authorization of the child's parent or guardian.

(c) Persons working for or as a part of an organized crew shall provide the name, address and phone number, as aforesaid, of the person in charge of and responsible for the crew.

(d) The make, model, year, state of registration and license number of any and all vehicles being used in connection with the peddling or soliciting.

(e) List of the products being sold and the price of each.

(f) Name, address and phone number of the supplier of the product.

(g) Proof of the state sales tax permit or exemption from state and federal taxing authorities.

(h) If employed by or working in association with a corporation, the state of its incorporation, whether it is authorized to do business in Iowa, and evidence that the corporation has designated a resident agent within 50 miles of the City upon whom legal service may be made and that the corporation will be responsible for the acts of its employees and or associates in the City; and that the corporation is covered by the insurance specified in item 14, below.

(i) A statement as to whether or not applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance other than a traffic violation, the nature of the offense and the penalty imposed.

(j) The last municipalities, not exceeding three, where applicant carried on activities for which registration is sought immediately preceding the date of application and the addresses from which such business was conducted in those cities.

(5) The City Clerk shall, within five days of an application for registration being submitted, either issue the registration badge or a detailed explanation of why the application is not acceptable. The City Clerk shall refuse to register persons who fail to furnish complete or accurate information, and

registration shall be invalidated if it is found that false information was provided. Registration shall be denied if the applicant has violated this ordinance, or had registration hereunder revoked or invalidated in the past six months.

(6) Each adult person shall produce a photograph-driver's license, or if they have no such license, a passport or other official photographic identification. Minor children's identification shall be any reasonable means that establishes the child's identity and the identity of the child's parent or guardian.

(7) The identification badge shall be of a distinctive logo and design to show clearly that it has been issued by the City of Ames and shall incorporate a photograph of the registrant taken at the Clerk's office or where the Clerk directs, at the time of registration.

(8) The provisions of this section do not apply in the following cases:

(a) to those activities which are the subject of the provisions of the street vendors regulations set out in Sections 22.11 through 22.23 of the Ames Municipal Code;

(b) to persons who make regularly scheduled route deliveries in residential areas of goods or services, e.g. newspaper carriers, lawn services, cable television service, dairy product delivery service;

© to non-profit groups or events associated with some permanent office or home in the city where someone will receive and respond to inquiries for information about the sale or solicitation and identification of the persons involved.

(9) The aforesaid registration badge shall be valid for sixty days from its date of issuance.

(10) No person shall engage in the activities described in Subsections (1) and (3) above, between the time of ~~sunset 8:00 p.m.~~ and ~~sunrise 8:00 a.m.~~

(11) Persons found to be acting in violation of this section shall be ordered by the police to cease immediately until in compliance with this section. Failure or refusal to obey such order shall be punishable as a misdemeanor.

(12) Persons obtaining the registration badge pursuant to this section shall pay such fee as the Ames City Council shall set, from time to time, to cover costs of administration and enforcement of the provisions of this section. When three (3) or more businesses intending activity described in subsection (2) (Transient Merchants) are brought together at one place under the auspices of a non-selling organization that performs the required registration tasks for each of the persons to be so engaged, and brings that completed material to the City Clerk in advance of the selling event, only a single registration fee shall be charged, and photographs shall not be required. When persons as aforesaid come together at one place under the auspices of an organization exempted by subsection (8), no registration or fee shall be required.

(13) The City Clerk shall, after reasonable notice and opportunity for hearing, revoke any registration issued under this division where the registrant, in the application for the registration or in the course of conducting his/her activity, for which registered, has made statements constituting a fraudulent practice as defined by Subsection 714.8(6) Code of Iowa. Notice of the hearing for revocation of a registration shall be given in writing, specifically setting forth the grounds of the complaint and the time and place of the hearing.

(14) **(REPEALED)**

~~(15) It shall be a violation of this section for any person, whether registered or not registered, while soliciting, peddling, or selling, to enter upon any residential premises in the City where the owner, occupant, or person legally in charge of the premises has posted, at the entry to the premises or at the entry to the principal building on the premises, a sign bearing the words "No Peddlers," "No Solicitors," or words of similar import.~~

~~(15)~~ (16) Violation of this section shall be a municipal infraction punishable by a penalty of \$100 for a person's first violation thereof and \$200 for each repeat violation. Alternatively, violation of this section can be charged by a peace officer of the City as a simple misdemeanor."

Section Two. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Three. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, 2007.