



# CITY of NOVI CITY COUNCIL

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**Agenda Item 2**  
**February 12, 2007**

**SUBJECT:** Consideration of Ordinance 07-40.06, an ordinance to amend the Code of Ordinances, Chapter 26, "Peddlers, Solicitors and Transient Merchants" in order to clarify the provisions relating to non-commercial solicitation and the standards for granting a permit for such solicitation. **Second Reading**

**SUBMITTING DEPARTMENT:** City Clerk's Office

**CITY MANAGER APPROVAL:** *Ch*

EXPENDITURE REQUIRED	N/A
AMOUNT BUDGETED	N/A
APPROPRIATION REQUIRED	N/A
LINE ITEM NUMBER	N/A

**BACKGROUND INFORMATION:** Recently, Council directed Administration to prepare an ordinance amendment to Chapter 26, "Peddlers, Solicitors and Transient Merchants" in order to clarify the provisions relating to non-commercial solicitation and the standards for granting a permit for such solicitation.

Following the first reading, the City Attorney and City Clerk received input from two local charitable organizations regarding the ordinance amendment. Those are incorporated in the second reading.

**RECOMMENDED ACTION:** Consideration of Ordinance 07-40.06, an ordinance to amend the Code of Ordinances, Chapter 26, "Peddlers, Solicitors and Transient Merchants" in order to clarify the provisions relating to non-commercial solicitation and the standards for granting a permit for such solicitation. **Second Reading**

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

February 8, 2007

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9300  
Fax: 248-851-2158  
www.secretwardle.com

Thomas R. Schultz  
Direct: 248-539-2847  
tschultz@secretwardle.com

Mayor Landry and City Council  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375

RE: *Peddlers and Solicitors Ordinance Amendment—Second Reading*  
Our File No. 55142 NOV

Dear Mayor and Council:

Attached is a revised proposed ordinance amending the peddlers, solicitors and transient merchants ordinance, Chapter 26 of the City of Novi Code, following the comments of City Council at the January 22, 2007 meeting, and after the subsequent meeting that Maryanne Cornelius and I had with representatives of the Lions Club. The additional changes since first reading are as follows:

- Section 22(a)—Revision of the current requirement that a person display a permit to solicit or peddle “in plain view on their person,” to require that the permit or license be carried by the peddler or solicitor and exhibited upon request to either the person solicited or an appropriate public official.
- Section 26-3(1)(f)—A refinement in the reference to soliciting within a public way on a street corner or intersection to include a reference to the solicitation being “in a fixed or limited area,” to make clear that the ordinance is talking about a permit holder being “stationed” at a particular place, rather than simply conducting activities in the right-of-way generally (similar changes throughout the ordinance).
- Section 26-3(2)—A change to allow two permits per year for ten consecutive days each, and a change allowing an applicant or permit holder to solicit at no more than *four* separate locations (as opposed to the two previously proposed).
- Section 26-5(1)—A new statement clarifying that the clerk shall not issue more than one permit to conduct solicitation at the same specific locations on the same dates. Priority for applications received for the same locations/dates to be given on a first-come

first-served basis, unless one of the applicants represents a national, statewide, or area-wide organization conducting a coordinated solicitation campaign.

- Section 26-10(1)—A limitation that solicitation cannot be conducted after 9:00 p.m. or dusk, whichever is earlier.
- Section 26-10(2)—A new provision indicating that no minor shall engage in solicitation at a street corner or intersection.
- Section 26-10(7)—Expansion of the requirement for a reflective safety vest to include other apparel clearly identifying the individual as a solicitor or representative.

Council will recall that there was some discussion and interest in limiting the right to solicit or peddle to Novi residents or other local groups, either with regard to all applicants or as to minors. We did research that question, and as indicated at the meeting it does implicate First Amendment and Equal Protection guarantees for non-residents.

We did find a handful of ordinances from other communities around the country that were adopted relatively recently that purport to exempt from the license or permit requirements certain local charitable, civil, and religious organizations. It did not appear from the discussion at the meeting, however, that the Council wanted us to explore an actual exemption for such local organizations. An exemption would not permit the clerk to perform even a cursory inquiry into the criminal history or background of an individual. To the extent the ordinance imposes, as the City's does, a comprehensive (i.e., applicable to all individuals) licensing process, I did not find any ordinances that limited the right to conduct solicitations or to peddle goods to local residents. Given the constitutional implications, we would not recommend that the City consider that course of action.

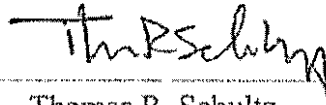
The other issue that came up during the discussion at Council and afterwards was whether the process could insure that certain local organizations that have a long history of solicitations on particular dates and in particular locations continue to be able to conduct their activities on those dates and in those locations. As Council knows, one of the reasons the language of the current ordinance came up at all was in response to an organization that sought to occupy not only some of those dates and locations but many others as well, under a single permit. During our recent round of research, we found no ordinances that created such a locally favorable process. And from our discussions with the Lions Club, it appeared that they understood that they were likely to have to pay attention to the dates on which their application could be filed to secure particular dates and locations, and that there might be a "market place" issue that they would have to deal with.

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We did put in a provision giving a priority in favor of groups that were participating under a national, statewide, or area-wide coordinated campaign date. The idea is that this language would cover things such as the statewide "white cane week" declarations.

I look forward to discussing the proposed revisions with Council at the meeting on February 12, 2007. If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



Thomas R. Schultz

TRS/jes

cc: Clay J. Pearson, City Manager  
Maryanne Cornelius, City Clerk

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STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI  
ORDINANCE 07-40.06

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES  
OF THE CITY OF NOVI, CHAPTER 26, "PEDDLERS,  
SOLICITORS AND TRANSIENT MERCHANTS," IN ORDER  
TO CLARIFY THE PROVISIONS RELATING TO NON-  
COMMERCIAL SOLICITATION AND THE STANDARDS FOR  
GRANTING A PERMIT FOR SUCH SOLICITATION

**THE CITY OF NOVI HEREBY ORDAINS**

**Part I.** That the City of Novi Code of Ordinances, Chapter 26, Peddlers, Solicitors, and Transient Merchants, is hereby amended to read as follows, in its entirety:

**Sec. 26-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Non-commercial solicitation* means the request of money, credit, property, financial assistance, or other thing of value 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 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.

*Peddler* means any person traveling by foot, wagon, automotive vehicle, or other conveyance, from place to place, from house to house, or from street to street (1) carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions, offering and exposing the same for sale; (2) making sales and delivering articles to purchasers; (3) 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. Peddler shall not include a person who conducts such

activities at a social gathering within a home at the invitation of the occupant of the home. The word "peddler" shall be synonymous with the phrase "transient merchant."

**Sec. 26-2. Permit/license required.**

(a) No person shall solicit or peddle for any cause whatsoever, except as otherwise provided in this chapter, within the City of Novi without having secured ~~displaying in plain view on their person a current~~ a permit or license from the city clerk, authorizing such solicitation or peddling. The permit or license issued hereunder shall be carried by the peddler or solicitor at all times when peddling or soliciting, and shall be exhibited upon request to any person solicited or to whom any goods or materials described in this provision are peddled and to any police officer or public official authorized to issue civil infraction citations. A minor soliciting or peddling under a group minor permit or license shall display in plain view a copy of such permit or license.

(b) Notwithstanding the provisions of subsection 26-2(a), no permit or license shall be required for minors when engaged in solicitation or peddling for civic, charitable, philanthropic, religious, educational, or athletic purposes, or when the minor is either accompanied by an adult or there is compliance with the provisions relating to group minor permits and licenses contained within subsections 26-2(c)--(e).

(c) An adult may obtain a minor group solicitation permit or a minor group peddling license in accordance with this subsection. Minors covered by such group permits or licenses may solicit or peddle without being accompanied by an adult, provided there is compliance with the provisions of subsections 26-2(c)--(e).

(d) In addition to the information required in sections 26-3 and 26-4, an applicant for a minor group permit or license shall provide the following information:

(1) For each minor who is to solicit or peddle:

- a. Name.
- b. Address.
- c. The name, address and telephone number of a parent or guardian that may be contacted in the case of an emergency regarding the minor.
- d. Evidence that any work permit required pursuant to MCL 409.104; MSA 17.731(4), has been obtained.

(2) A telephone number(s) or pager number(s) of the applicant which enable contact to be made with the applicant at all times when solicitation or peddling by a minor or minors is taking place.

The information pertaining to the minors soliciting or peddling shall be updated as additional minors are employed to solicit or peddle. No minor shall solicit or peddle under a minor group permit or license until such information pertaining to the minor has been provided to the City of Novi Police Department.

(e) An applicant granted a minor group permit or license shall be responsible for the conduct of those minors covered by the permit or license. A minor group permit or license shall be revoked by the chief of police, or his designee, upon violation by the grantee, or any covered minor, of any provision of this chapter or of Chapter 22 of the Novi Code of Ordinances. Such revocation shall be effective upon verbal notification by means of the telephone and/or pager numbers provided pursuant to subpart 26-2(d)(2), or by written notification addressed to the grantee's address as provided with grantee's application. The grantee, upon request, shall be provided a hearing before the chief of police, or his designee, for the consideration of reinstatement of the permit or license. Such hearing shall be during the business hours of 9:00 a.m. to 5:00 p.m., and, if requested by the grantee, shall be within twenty-four (24) hours of the revocation. A license or permit shall be restored upon demonstration by the grantee that measures have been taken to prevent further code violations.

### **Sec. 26-3. Non-commercial solicitation permit; application.**

(1) Applications for permits for non-commercial solicitation shall be filed with the city clerk upon forms to be furnished by the city. Such applications for permit to solicit shall be sworn to and filed with the city clerk not less than ~~seven~~-fourteen (14) days, nor more than sixty (60) days, prior to the time when the permit is desired to commence. The application shall contain the following information:

(a) Name, address, telephone number, and headquarters of the person applying for the permit.

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

(c) 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.

(d) The names and addresses of the person, or persons, who will be in direct charge of conducting the solicitations. The names and addresses of the person, or persons, who will participate in the solicitations.

(e) An outline of the method, or methods, to be used in conducting the solicitations.

(f) If the applicant intends to conduct solicitations while remaining in a fixed or limited area within a public right-of-way, including a street corner or intersection, the specific location(s) of such solicitation.

(g) The time when solicitation shall be made, giving the proposed dates for the beginning and ending of such solicitations and the hours of the days thereof.

(h) A statement as to whether or not an applicant has been convicted of any felony, or any misdemeanor

(2) A permit for non-commercial solicitation shall be issued upon receipt of the completed application, and receipt of a permit application fee in an amount set by resolution of the city council. ~~Such~~ A permit for solicitation within the city limits shall remain valid for a period of ninety (90) days; provided, however, that a permit allowing solicitation while remaining in a fixed or limited area within a public right-of-way within the city, including a street corner or intersection, shall be valid for a period of ten (10) consecutive days only, for each applicant. No applicant shall receive more than two (2) such permits for solicitation in any one (1) calendar year. No permit for

solicitation within a public right-of-way shall authorize such solicitation at more than four (4) separate street corner or intersection locations within the City on the same day.

**Sec. 26-4. Peddling license; application.**

(1) An application for a peddling license shall be filed with the city clerk upon forms to be furnished by the city clerk. Such applications for a peddling license shall be sworn to and filed with the city clerk not less than fourteen (14) days, nor more than sixty (60) days, prior to the time when the license is desired to commence. The application shall contain the following information:

- (a) Name and description of applicant;
- (b) Permanent home address and full local address of the applicant;
- (c) A photocopy of the person's drivers' license or State of Michigan identification card. The actual license or identification card shall be produced at the time of submittal of the application. The city clerk shall have the Novi Police Department verify that the identification is bona fide;
- (d) A brief description of the nature of the business and the goods to be sold;
- (e) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (f) 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;
- (g) A statement as to whether or not an applicant has been convicted of any felony, or any misdemeanor.

(2) A peddling license application shall be accompanied by an application fee in an amount set by resolution of the city council.

~~(3) The issuance of license applied for pursuant to this section may be denied by the city clerk and licenses issued may be revoked or suspended by the city clerk at any time, for any of the following causes:~~

- ~~(a) Fraud, misrepresentation or any false statement made in the application for license;~~
- ~~(b) Any violation of this chapter;~~
- ~~(c) Conducting a business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, morals, safety or welfare of the public;~~
- ~~(d) Failure or inability of an applicant to meet and satisfy the requirements and provisions of this chapter and every other ordinance of the city.~~

(43) Peddling licenses shall remain valid for a period of ninety (90) days.



**Sec. 26-5. Investigation of application; grant or denial.**

(1) The city clerk shall examine all applications filed under this chapter and shall make or cause to be made such further investigation of the application or applicant as the clerk shall deem necessary. If the clerk finds the application to be satisfactory, the clerk shall approve the permit and issue it upon payment of any applicable fee. The clerk shall not issue more than one permit to conduct solicitations while remaining in a fixed or limited area within a public right-of-way within the city, including a street corner or intersection, for the same specific location(s) on the same date(s). If the clerk receives more than one application for a permit to conduct solicitations in the same location(s) on the same date(s), the clerk shall give priority to the first application received, unless before the permit is issued an application for a permit in the same location(s) and on the same date(s) is filed by an applicant affiliated with or representing a national, statewide, or area-wide organization conducting a coordinated solicitation campaign on the same date(s).

(2) The clerk shall not issue a license if he or she finds:

- (a) That the applicant failed to truthfully provide the information required in this chapter;
- (b) That the applicant has engaged in a fraudulent transaction or enterprise;
- (c) That the applicant has a bad business reputation or a reputation for dishonesty;
- (d) That the applicant has been convicted within the past five (5) years of a violation of federal, state, or local laws, ordinances, or regulations reflecting adversely on the applicant's ability to conduct the business for which the license is being sought in an honest and legal manner, including, but not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person;
- (e) That the applicant has had a license to conduct peddling or soliciting revoked within the past five (5) years.
- (f) That a permit has been granted to another individual or entity for solicitation within the public right-of-way at the same street corner or intersection for the date described in the application.

**Sec. 26-56. Written notice of suspension, revocation.**

Written notice of suspension or revocation, of a license issued pursuant to this chapter stating the cause therefor, shall be delivered to the licensee personally or by certified or registered mail return receipt requested to the address as shown on the application for license.

**Sec. 26-67. Right to hearing following denial, suspension, revocation.**

Any person whose license issued pursuant to this chapter is revoked or suspended, or any person whose application for a license is denied, shall have the right to a hearing before the council, provided a written request therefor is filed with the city clerk within ten (10) days following the personal delivery or the date of mailing of the notice of revocation or suspension or within ten (10) days following the denial of the application for a license.

**Sec. 26-78. 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.

**Sec. 26-89. Permit/license contents; transfer.**

(1) 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.

(2) Any permit or license approved and issued under this chapter shall be nontransferable. Solicitors and peddlers shall be required to obtain and carry permits irrespective of whether employed by another permittee.

**Sec. 26-910. Hours of peddling/solicitation; additional requirements.**

(1) No peddling or solicitation may be conducted after 9:00 p.m. or dusk (whichever is earlier) or before 9:00 a.m., prevailing time.

(2) No person under the age of fourteen (14) shall solicit after 7:00 p.m., prevailing time, unless accompanied by an adult. No minor shall engage in solicitation while remaining in a fixed or limited area within a public right-of-way, including a street corner or intersection.

(3) No peddler or solicitor shall enter into property which has posted a "No solicitation" sign, or its equivalent.

(4) No peddling of goods or services shall be permitted within a public right-of-way, including any street corner or intersection, or on other public property.

(3) No peddler or solicitor shall obstruct the free flow of vehicular or pedestrian traffic on any street, lane, sidewalk, or driveway.

(5) No peddler or solicitor shall engage in such activity in any public right-of-way or on any street, sidewalk, or other public place after being ordered to leave or desist by a police officer or public official or employee authorized to issue civil infraction violation notices.

(6) No peddler or solicitor shall threaten or harass any resident of the city in the course of their activities or in any way engage in any conduct that would tend to threaten the health and safety of another or cause a nuisance, including, but not limited to, shouting, crying out, blowing horns, or ringing bells or similar devices designed to attract the attention of the public so as to be audible within an enclosed structure.

(7) No solicitor shall engage in solicitation while remaining in a fixed or limited area within a public right-of-way, including a street corner, or intersection, unless he or she is wearing a reflective safety vest or other apparel identifying the individual as a solicitor or representative of the individual or entity on whose behalf the solicitor is acting.

**Part II. Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**Part III. Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

**Part IV. Repealer.** All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**Part V. Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

#### **CERTIFICATION**

It is hereby certified that the foregoing Ordinance was adopted by the Novi City Council, Oakland County, Michigan, at a meeting of the Council duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**CITY OF NOVI**

\_\_\_\_\_  
**David B. Landry, Mayor**

\_\_\_\_\_  
**Maryanne Cornelius, City Clerk**

**ADOPTED:**

**EFFECTIVE:**

**PUBLISHED:**

894473