

ORDINANCE NO. 2014-825
UPPER MERION TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

AN ORDINANCE AMENDING THE UPPER MERION TOWNSHIP CODE, CHAPTER 119, "PEDDLING, SOLICITING AND HAWKING" BY REPEALING ORDINANCE NO. 64-148 IN ITS ENTIRETY AND ADDING NEW PROVISIONS RELATING TO PURPOSES AND COMPLIANCE; DEFINITIONS AND EXCLUSIONS; PRIVATE PROPERTY OWNERS' CONSENT; REGISTRATION AND IDENTIFICATION CARDS; LICENSE FEES; PROHIBITED CONDUCT; AND PENALTIES FOR VIOLATIONS

WHEREAS, pursuant to the Second Class Township Code, 53 P.S. 65101, *et seq.*, Upper Merion Township (the "Township") is authorized to make and adopt Ordinances it deems necessary for the proper management and control of the Township and welfare of the Township and its citizens that are consistent with the Constitution and the laws of the Commonwealth;

WHEREAS, the Township desires to further define the conduct regulated by Chapter 119 and provide for additional regulation of those activities in order to enhance the health, safety and general welfare of the residents of Upper Merion Township; and

WHEREAS, the Township, after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety and general welfare of the residents of Upper Merion Township will be served by this amendment of the Upper Merion Township Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors for Upper Merion Township, and it is hereby ordained and enacted, by the authority of the same, to wit:

SECTION I. CODE AMENDMENT.

A. THE UPPER MERION TOWNSHIP ZONING CODE, CHAPTER 119, "PEDDLING, SOLICITING AND HAWKING" IS HEREBY REVISED BY REPEALING ORDINANCE NO. 64-148 IN ITS ENTIRETY AND ADDING THE FOLLOWING SECTIONS:

§ 119-1. Purposes; compliance required.

A. Purposes. The purposes of this ordinance are to help protect the Township residents against criminal activity, including but not limited to fraud and burglary, and to minimize the unwelcome disturbance of residents and the disruptions of privacy, and to preserve the public health, safety and welfare by regulating and controlling solicitors and peddlers.

- B. Compliance required. On or after the effective date of this chapter, it shall be unlawful for any person to solicit orders for or to peddle or to hawk or otherwise sell or offer for sale any food, goods or merchandise of any kind or description from house to house or at any residence or upon any of the streets or public places or places open to the public within Upper Merion Township except when the same is done in compliance with this chapter.

§ 119-2. Definitions; word usage; exclusions.

- A. As used in this chapter, the following terms shall have the meanings indicated:

HAWKER - Any person soliciting orders for or selling food, goods or merchandise from residence to residence or upon any streets or public places or places open to the public within Upper Merion Township who does not come within the terms of the definitions below of a "solicitor" or "peddler"; provided, however, that such "hawker" does not remain at a stationary location for the purpose of selling food, goods or merchandise.

PEDDLE - To operate from a temporary stand, display or similar facility or to travel from house to house, door to door, street to street, or from place to place, carrying, conveying, or transporting goods, wares, merchandise or services for the purpose of offering or exposing the same for sale.

PEDDLER - A person who carries his wares, as described in the definition of "solicitor" with him either on his person or in a vehicle and peddles for himself or another person or business.

PEDDLING - The selling or offering for sale of any goods, wares, services or merchandise for immediate delivery which the person selling or offering for sale carries with him in traveling, or has in his possession or control, upon any of the streets or sidewalks or from house to house or by visitation to private residence or by entering in or upon private property.

SOLICITING - The seeking or taking of contracts or orders for all goods, wares services or merchandise for future delivery or for subscriptions or contributions upon any of the streets or sidewalks or from house to house or by visitation to private residences or by entering in or upon private property, and shall further mean the seeking or taking of contracts or orders for home or other building repairs, improvement and alterations and also orders or contract for any mechanical, electrical, plumbing or heating device, or equipment for house or other building improvements or repairs, upon any of the streets or sidewalks or from house to house or by visitation to private residence or by entering in or upon private property.

SOLICITOR - A person, business, or entity who shall engage in soliciting as defined above.

TOWNSHIP - The Township of Upper Merion.

- B. In the application or construction of this chapter, the masculine shall include the feminine and the singular shall include the plural.
- C. The following persons shall not be deemed to be included within the above definitions:
 - (1) Any person who has registered with the Pennsylvania Department of State as required, by Act. No. 337 approved August 9, 1964, known as the "Solicitation of Charitable Funds Act."
 - (2) Members of nonprofit organizations located in Upper Merion Township, such as the Boy Scouts and Girl Scouts, who take orders for the sale of cookies or other merchandise for the benefit of such organizations.
 - (3) Persons selling tickets for admission to places of amusement for the benefit of Charitable or otherwise nonprofit organizations which are located in Upper Merion Township.
 - (4) Residents under the age of eighteen (18) years when engaged in the business of being a solicitor under the direct supervision of any school or recognized charitable organization or religious organization.
 - (5) Farmers engaged in selling only the produce of their own farms from a truck or other vehicle.
 - (6) Political candidates or their campaign workers.
 - (7) Members of a religious group who are advancing a religious cause.
 - (8) Any person exempt from the licensing requirement by virtue of Pennsylvania State or Federal Law.

§ 119-3. Private Property - written invitation of owner or occupant required.

No solicitor, peddler or hawker whether licensed pursuant to this article or not, shall actively solicit on private property, against the wish or desire of the property owner of such property, or group of properties without the written permission of the private property owner or the Homeowner Association, Apartment Owner, Management or their Agents upon which the solicitation, peddling or hawking is made. When the owner is not the occupant of the premises, the written invitation of the occupant shall be required. The written permission must be carried by the solicitor, peddler or hawker and produced upon request for review.

§ 119-4. Registration and identification card required.

All solicitors, peddlers and hawkers desiring to engage in their trade in Upper Merion Township shall, prior to such engagement, also comply with the following requirements:

A. Register with the Police Department and obtain an identification card from the Township Manager.

- (1) Such registration shall be made by the submission and execution of a written application on a form furnished by the township.
- (2) The applicant shall state his name; his address; the name and address of his employer or principal, if any; his age; the general nature of the food, goods or merchandise for which he desires to solicit orders, to sell, to peddle or to hawk; and the description and license number of the vehicle, if any, which he will use in connection with his business. The applicant shall be fingerprinted and shall state whether he has ever been convicted of a felony or any crime involving fraud or any moral turpitude. Any applicant who has ever been convicted of any crime as aforesaid shall not be entitled to register, receive an identification card or engage in the solicitation, peddling or hawking of food, goods or merchandise in the township.
- (3) The applicant must provide a certified copy of a Pennsylvania State Police Criminal History check conducted within five (5) days of the submitted application.
- (4) The identification card shall remain the property of the township and shall not be altered or disfigured in any way and shall be kept available and presented by the applicant to any person desiring to see the same.
- (5) Upon expiration of the term of the identification card, the holder shall return the same to the Upper Merion Township Police Department and shall obtain a new identification card and register as aforesaid prior to again commencing his activities in the township.
- (6) The identification card shall be valid for a period of three (3) months from date of issue and shall not be transferable.
- (7) The identification card must be displayed on the outer most garment of the holder while they are engaged in solicitation, peddling or hawking activities.

- (8) No holder of an identification card shall permit another person to have possession of their identification card and if the card is lost or stolen the person to whom it was issued must report the loss to the Upper Merion Township Police Department immediately.
 - (9) The identification card must be returned immediately upon notification of suspension or revocation by the Upper Merion Township Police Department.
- B. If such person shall also be required to obtain a license from any other governmental agency, he shall, on registering as aforesaid, exhibit a valid license from such governmental agency.

§ 119-5. License fee.

Peddlers, solicitors, and hawkers, as defined in this chapter, shall, in addition to the above requirements, pay, prior to receiving their identification cards, a license fee as provided for in Chapter A173, Fees.

§ 119-6. Prohibited acts.

- A. It shall be unlawful for any peddler, solicitor, or hawker to:
- (1) Ring the bell or knock on the door or otherwise attempt to gain attention of the occupant for the purpose of soliciting at a residence, dwelling or apartment at which an Upper Merion Township sign bearing the words No Solicitors is affixed or otherwise exposed to public view; provided, that this subsection shall not apply to any solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof.
 - (2) Solicit at hours other than the following: nine o'clock (9:00) a.m. to eight o'clock (8:00) p.m. local time of any day.
 - (3) Engage in soliciting upon any premises (including parking lots), business or dwelling house, apartment or other residence after having been asked by the owner or occupant thereof to leave the premises, business or residence.
 - (4) Make more than one solicitation call at the same residential premises for identical goods, services or contributions within any consecutive fourteen (14) day period without receiving a prior invitation thereof from the occupants of the premises. This provision shall be construed to include solicitation upon the same premises by employees, agents or other persons acting on behalf of the same person more than once during the aforesaid period without a prior invitation as herein provided.

- (5) Fail to provide, at the request of the purchaser, a written receipt for purchases exceeding five dollars (\$5.00) in cash or tangible property, which receipt shall be signed by the person making the sale and shall set forth a brief description of the goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment.
- (6) Fail, at the outset, to disclose to the prospective buyer, his name and the name of the company, product and organization he represents.
- (7) Make any assertion, representation or statement which misrepresents the purpose of the call or use any plan, scheme or ruse which misrepresents such purpose.
- (8) To make any false pretense or false representation, and, particularly, it shall be unlawful for such holder to represent his identification card to be an endorsement by Upper Merion Township of himself, his goods or services or of the goods or services of his employer.
- (9) Conduct business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay or constitute a hazard to traffic, life or property, or an obstruction of adequate access to fire, police or other emergency vehicles.
- (10) Advertise or offer (to include but not limited to) any item, service or benefit by the hanging of any flyer or handbill to any door, residence or business, if asked to discontinue by the owner/occupant, or if a "No Solicitors" sign is posted on the property, regardless of whether a doorbell is rung or any physical or verbal contact is made.
- (11) To cut across or walk upon any lawn, front yard or courtyard, except upon sidewalks or walkways if such walkways are provided or upon a regularly established path where no sidewalk or walkway has been provided to the house or other building.
- (12) To attempt to contact the resident by any other means other than ringing the doorbell or knocking on the door. The act of yelling into windows or doors, knocking on windows or doors, or waiving and looking into windows and doors is prohibited.

B. It shall be unlawful for any person to:

- (1) Peddle or solicit or hawk, if the person so doing has been convicted of a felony, misdemeanor or ordinance violation involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of soliciting as defined in this Ordinance within the past ten (10) years.

- (2) Peddle, solicit or hawk or attempt to do so at a place of residence at any entrance other than the main, customary entrance of the residence.
 - (3) No person acting under this ordinance shall open any door or window of a building without receiving the permission of the occupant to do so.
 - (4) No person acting under this ordinance shall place any part of their body or equipment in such a manner as to prevent the occupant from closing the door.
- C. It shall be unlawful for any person to leave behind any trash, litter or garbage after they have completed their Peddling Soliciting or Hawking activities.

§ 119-7. Revocation of identification card.

- A. The identification card may be revoked by the Township Manager or Chief of Police, or their designee, should the holder of the same commit any offense punishable by fine or imprisonment or violate the terms of this chapter.
- B. The identification cards for an entire vendor group may be revoked by the Township Manager or the Chief of Police, or their designee, if the vendor's customary practice is deemed to be of an aggressive nature or if there are repeated violations of aggressive behavior by one or more of the vendor's employees.

§ 119-8. Penalty.

Any person violating any of the provisions of this ordinance shall, upon conviction of the summary offense, be subject to a fine of not more than Three Hundred Dollars (\$300.00) for each offense or shall be imprisoned for a period not to exceed ninety (90) days, or both.

SECTION II. REPEALER.

All Ordinances or parts of Ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Ordinance No. 64-148 is hereby repealed in its entirety.

SECTION III. REVISIONS.

The Upper Merion Township Board of Supervisors does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its Ordinance, including this provision.

SECTION IV. SEVERABILITY.

In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.

SECTION V. EFFECTIVE DATE.

This amendment shall become effective five (5) days after date of adoption.

SECTION VI. FAILURE TO ENFORCE NOT A WAIVER.

The failure of Upper Merion Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

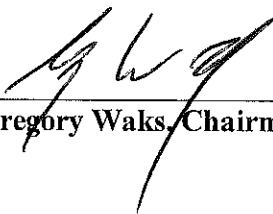
ORDAINED AND ENACTED by the Board of Supervisors for Upper Merion Township, Montgomery County, Pennsylvania, this 18th day of September, 2014.

ATTEST:



David Kraynik, Township Manager

**UPPER MERION TOWNSHIP
BOARD OF SUPERVISORS:**

By: 

Gregory Waks, Chairman

Advertised proposed ordinance in Times Herald September 3, 2014.
Proof of Publication Dated: September 3, 2014.
Hearing Held: September 18, 2014.
Ordinance Adopted: September 18, 2014.
Ordinance Entered: September 18, 2014 as Township Ordinance 2014-825.