

CITY OF BLACK DIAMOND WASHINGTON

ORDINANCE NO. 11-965

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO BUSINESS LICENSES FOR SOLICITORS; AMENDING CHAPTER 5.12 "SOLICITORS," BY REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 5.12; REQUIRING A SOLICITOR'S LICENSE, IMPOSING LICENSE FEES, LIMITING SOLICITATION HOURS, PROVIDING FOR THE RIGHT TO APPEAL, AND, ESTABLISHING PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, code cities have authority under their police power to license and regulate door-to-door peddlers and solicitors and to impose reasonable license fees that bear a reasonable relationship to public health, safety, and welfare; and

WHEREAS, the Black Diamond Municipal Code ("BDMC") solicitor license provisions were first enacted in 1974 (codified at Ch 5.12 BDMC) and have not been revised in several years; and

WHEREAS, such regulations must include exceptions for first amendment protected activities and activities otherwise protected under state law,

WHEREAS, since adoption of the solicitor license provisions by the City in 1974 there have been many developments in the regulation of solicitors that should be reflected in the BDMC; and

WHEREAS, the City Council finds that it is necessary to regulate solicitors by requiring a background check and solicitor's license and restricting their selling hours and duration for the purpose of preventing fraud, crime, undue public annoyance, and unethical and dishonest solicitation and canvassing practices within the City; and

WHEREAS, all application fees to be charged for the issuance of solicitor licenses are not to be considered as revenue, but are charges for the purpose of covering the expenses of administering this article.

WHEREAS, the Black Diamond City Council finds it is in the best interest of the public health, safety, and general welfare of its citizens to update its solicitor licensing code for the purpose of regulating and licensing solicitors;

NOW, THEREFORE, the City Council of the City of Black Diamond, Washington, do ordain as follows:

Section 1. BDMC Chapter 5.12, Solicitors, Repealed and Replaced. Black Diamond Municipal Code Chapter 5.12, Solicitors, is hereby repealed its entirety and re-enacted to read as follows:

5.12.010 – Definitions.

For the purpose of this chapter, the following terms shall have the meanings respectively ascribed to them in this section:

A. “Solicitor” means any individual who, without prior invitation from the occupant, goes from house to house, or place to place, in the city, selling or taking orders for, or offering to sell or take orders for, goods, wares, merchandise or services, for present or future delivery, or for the making, manufacturing or repairing of any article or thing whatsoever, for present or future delivery except those selling to merchants for resale.

B. “Bona fide,” in defining those religious, charitable, political, educational, and community service organizations not operated for profit which are exempt from licensing requirements, means those organizations which are entitled to that status under the Internal Revenue Code which allows a taxpayer to declare gifts to such organizations as a charitable deduction.

C. “Person” means any individual, partnership, firm, company, society, association, club or other group or organization acting by themselves or by a servant, agent or employee.

5.12.020 – License – Required– Exceptions.

It is unlawful for any person to act as a solicitor within the meaning and application of this chapter unless such person shall have first secured a license therefore in the manner provided for by this chapter. It is a violation of this chapter to solicit without a valid license or to solicit on premises that conspicuously display a “no solicitors” sign, or a sign with similar language. Provided, this chapter shall not apply to solicitors for bona fide religious, charitable, political, educational, community service organizations, or farmers, gardeners, producers or manufacturers of farm produce and edibles, nor shall this chapter apply to vendors of books, periodicals or newspapers. The requirement for a solicitor’s license is in addition to the general business license required pursuant to BDMC Chapter 2.58.

5.12.030 – License – Fees.

An applicant may apply for a 30-day or an annual solicitor's license. The license fees for solicitors shall be, paid in advance without pro-ration, in the amount set forth in the city's consolidated list of fees, as authorized in BDMC 2.62.010. A separate fee shall be required for each individual solicitor's license applicant.

5.12.040 – License – Application.

A. Any person desiring to secure a solicitor's license shall apply therefore in writing on forms provided by the city, and the application shall state as to each applicant as follows:

1. The name, telephone number, social security number, date of birth, and address of each applicant;
2. The name, telephone number, and address of the person by whom employed;
3. The nature or character of the goods, wares, merchandise or service to be offered; and
4. A personal description of each applicant.

B. The application shall be accompanied by a copy of the driver's license or Washington State identification card of each applicant; provided that, other evidence of identity may reasonably be required by the city clerk or his or her designee to verify the identity of the applicant. All applicants for a solicitor's license shall consent to a criminal background check as provided on the application form.

5.12.050 – License – Issuance – Expiration.

A. If the City Clerk or his or her designee determines after an investigation that the facts in the application are true, that none of the criteria set forth in subsection (B) apply, and that the applicant proposes to engage in a lawful and legitimate commercial or professional enterprise, he or she shall then approve the application and issue the license applied for. The 30-day license shall expire thirty (30) days after the date of issuance. The annual license shall expire at the end of the calendar year in which the license is issued. Except as provided in this chapter, no license shall be issued until the conclusion of an investigation. The Chief of Police is given the authority to fingerprint the applicant pursuant to RCW 35A.21.370.

B. The City Clerk or his or her designee shall deny a solicitor's license for any one of the following reasons:

1. The applicant or, if applicable, his or her employer failed to secure a valid business license in the City of Black Diamond pursuant to Chapter 2.58 BDMC;

2. The applicant has, within the previous ten years, been convicted of a crime or offense directly relating to his or her fitness for a solicitor license, and including, but not limited to, those crimes or offenses involving moral turpitude, fraud or misrepresentation;

3. The applicant has been charged with a crime or offense of the type defined in subsection (B)(1) of this section, and disposition of that charge is still pending;

4. The applicant has been refused a license under the provisions of this chapter; provided, however, that any applicant denied a license under the provisions of this chapter may reapply if and when the reasons for denial no longer exist; or

5. The applicant made any false or misleading statements in the application.

5.12.060 – License – To be carried.

The license shall be carried at all times by each solicitor for whom issued, when soliciting or canvassing in the city, and shall be exhibited by any such solicitor whenever requested to do so by any police officer or any person solicited.

5.12.070 – License – Revocation.

Any license issued under this chapter shall be revoked by the City Clerk or his or her designee whenever the solicitor or his or her employer ceases to possess the qualifications required by this chapter or violates any of the ordinances of the city or of any state or federal law, or otherwise, directly relating to his or her fitness for a solicitor's license. Any person who violates this chapter shall be subject to the penalties set forth in BDMC Section 1.12.010.

5.12.080 – Appeal of License Denial or Revocation.

Any person wishing to appeal a decision to deny or revoke a solicitor's license shall follow the appeal procedures for a business license denial or revocation set forth in BDMC Section 2.58.100.

5.12.090 – Orders.

All orders taken by licensed solicitors shall be in writing, stating the solicitor's name as it appears on the license, and address, of both the solicitor and his or her employer, the terms thereof, and the amount, if any, paid in advance, and one copy shall be given to the purchaser.

5.12.100 – Time of solicitations.

A. No solicitations shall be made except between the hours of ten a.m. and eight p.m.

B. No solicitations shall be made on city-recognized holidays.

5.12.110 – Violation – Penalty.

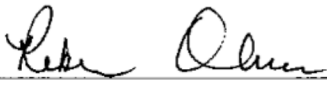
Any person found guilty of violating any part of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine not exceeding one hundred dollars and/or thirty days in jail.

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.

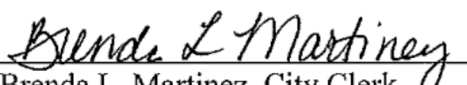
ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 15TH DAY OF SEPTEMBER, 2011.

CITY OF BLACK DIAMOND



Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

Approved as to form:

Chris D. Bacha, City Attorney

Filed with the City Clerk:

Passed by the City Council: *9/15/2011*

Ordinance No. *11-965*

Date of Publication: *9/23/2011*

Effective Date: *9/28/2011*