

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E**

ORDINANCE NO. 009-2023

**RE: AN ORDINANCE DELETING REVISED GENERAL ORDINANCE CHAPTER III,
SECTION 1 (HAWKING OR PEDDLING MERCHANDISE) AND ADDING CHAPTER
IV, SECTION 5 (HAWKING OR PEDDLING MERCHANDISE OR SERVICES) OF
THE CODE OF UPPER TOWNSHIP**

WHEREAS, the Township Committee of the Township of Upper desires to adopt an ordinance amending Chapters 3, Section 1 and Chapter 4, Section 5 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, with respect to the requirements and regulations regarding hawking or peddling merchandise.

BE IT ORDAINED by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

SECTION 1. Chapter 3 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Delete Section 3-1 HAWKING OR PEDDLING MERCHANDISE in its entirety.

SECTION 2. Chapter 4 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

Add Section 4-5 HAWKING AND PEDDLING MERCHANDISE OR SERVICES as follows:

CHAPTER 4-5 HAWKING OR PEDDLING MERCHANDISE

§ 4-5.1. Definitions.

Background Review Officer

Shall mean the New Jersey State Police Woodbine Station Commander or his or her designee or such other individual as the Township may designate by resolution of the Township Committee.

Licensee

Shall mean any person licensed to vend merchandise pursuant to this section.

Merchandise

Shall mean any goods, wares, products, items, articles, or services of any kind, nature, or description offered for sale.

Person

Shall mean and include any individual, association, corporation, limited liability company, and any other entity.

Registry

Shall mean the Do Not Knock Registry, if one is established pursuant to this section.

Vend

Shall mean to hawk, peddle, sell, or offer for sale any merchandise on any property owned by another without first obtaining such property owner's express consent to enter onto such property for such purpose.

Vendor

Shall mean any person who vends including but not limited to all hawkers, peddlers, transient merchants, and itinerant vendors of any kind.

§ 4-5.2. Purpose.

The purpose of this section is to prohibit unfair competition and dishonest business practices and to promote the health and safety of Township residents by the regulation of the conduct of, and by the imposition of registration, license and background check requirements upon, all vendors of merchandise.

§ 4-5.3. Registration and License required.

No person shall vend in the Township any merchandise on foot or from any automobile, vehicle, wagon, cart, other conveyance, or stand, whether door-to-door or otherwise, without first registering and obtaining a license therefor, as hereinafter provided, with a certificate of good standing, if a domestic entity, and a certificate of authority to do business in New Jersey, if a foreign entity.

§ 4-5.4. Application for registration and license.

- a. Every employer of any person who proposes to vend merchandise in the Township, whether self-employed or employing others, shall register with the Township Clerk. Registration forms as required by the Township Clerk shall be submitted in person by the employer or the employer's authorized representative. Registration forms made on behalf of a corporation or other business entity shall be signed by a duly authorized officer and the seal of the corporation shall be attested by its secretary with a Certificate of Good Standing and, if a Foreign Entity, Certificate of Authority to conduct business in New Jersey. In connection with the registration, the employer must also submit the following documents:
 - 1. If the employer is a corporation or other business entity, the full names, residence addresses, and dates and places of birth of each major officer and each person owning or having any interest, either legal or equitable, aggregating in value 10% or more of the total capital of said entity together with the name and address of the registered agent, if any, and the address of the principal office.
 - 2. Proof of insurance coverage acceptable to the Township and its insurance carrier protecting the employer/licensee and the Township from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the employer's/licensee's vending of merchandise, with limits of not less than \$2,000,000 combined single limit. Such insurance shall name as an additional insured the Township of Upper, including all elected and appointed officials, all employees and volunteers, all boards and commissions and/or authorities, and their board members, and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advance written notice to the Township.

- b. In addition to the registration of employers pursuant to paragraph a of this subsection, each person who proposes to vend merchandise on behalf of an employer who has registered pursuant to paragraph a of this subsection shall also make an application for a license to the Township Clerk in person. Any person desiring a license under this section shall file with the Township Clerk an original and one copy of an application, under oath, in writing, on a form furnished by the Township Clerk. The applicant shall set forth all information required by the application form. Incomplete applications will be rejected. In connection with the license, the applicant must also submit the following documents:
 - 1. Each applicant who shall personally engage in vending merchandise shall provide a criminal history background check from the New Jersey State Police together with two personal photographs meeting the requirements for a U.S. passport photograph. In lieu of the background check required by this subsection, an applicant who proposes to vend merchandise on behalf of an employer licensed pursuant to this subsection may instead provide a certification from the applicant's employer that the employer has reviewed the applicant's criminal history background check conducted by a reputable and recognized background check provider within the last 12 months and that the background check has indicated that the applicant has a clear criminal record and that a copy of the background check is included with the certification.
 - 2. If the applicant proposes to vend any food and/or beverages, such shall submit a written approval from the Cape May County Health Department as part of such applicant's license application.
- c. Fees.
 - 1. The Township Committee shall, by resolution, set forth the amount to be charged for each registration and license granted pursuant to sections a and b of this subsection.

§ 4-5.5. Investigation of applicant.

Upon receipt of an applicant's criminal history background check results that indicates any prior criminal history, the Township Clerk shall transmit the background check results to the Background Review Officer, who shall review the criminal history background check results and notify the Township Clerk of his or her approval or disapproval. In the event of a disapproval, such applicant may receive a license only with the approval of the Township Committee after a public hearing. If a background check or employer certification indicates that an applicant has a clear criminal record, no review or approval by the Background Review Officer shall be required.

§ 4-5.6. Issuance of license; expiration; list of licenses to be kept; license nontransferable.

Upon complying with the provisions of this section and upon approval by the Background Review Officer, the Township Clerk shall issue a license to the applicant. A license issued pursuant to this section shall be valid for one full year following the date such license is issued and shall then expire. Upon expiration of a license, the vendor must apply for a new license before vending merchandise in the Township. The Township Clerk shall keep an accurate list of all such licenses. Any license issued pursuant to this section shall be nontransferable.

§ 4-5.7. Exemptions.

- a. Any person holding a license issued pursuant to N.J.S.A. 45:24-9 shall be exempt from applying for a license and registering, or paying a fee as required by this section; provided, however, that such person shall be required to file a copy of his or her license issued pursuant to N.J.S.A. 45:24-9 with the Township Clerk; and provided, however, that such license holder shall be required to comply with all other provisions of this section. Such person shall re-file a copy of such license annually.

- b. This section shall not apply to any person engaged in the delivery of merchandise in the regular course of business to or upon the premises of persons who had previously ordered the same or were entitled to receive the same by reason of a prior agreement.
- c. This section shall not apply to any person engaged in the vending of merchandise in connection with special events sponsored by the Township or hosted on property held by the Township with permission of the Township Committee; provided, however, that such persons shall comply with any other requirements and regulations applicable to such activities.

§ 4-5.8. Form of license; badge to be displayed.

- a. The license issued pursuant to this section shall be carried at all times by any person vending merchandise in the Township. In addition, the licensee shall wear a clearly visible identification badge containing the licensee's name, recent photograph, employer, and the following words: "Licensed Vendor, Upper Township, New Jersey" together with the license year.
- b. Such license shall be exhibited by the licensee to any law enforcement officer or other person upon request.
- c. Each automobile, vehicle, wagon, cart, or other conveyance used in connection with vending merchandise shall clearly display the name of the company vending such merchandise and shall clearly display in a conspicuous place and manner the following words printed thereon: "Licensed Vendor, Upper Township, New Jersey."

§ 4-5.9. Restrictions.

- a. No vendor licensed pursuant to this section or N.J.S.A. 45:24-9 shall be allowed to stand or remain in any one place for the purpose of vending merchandise for a period longer than 15 minutes except where such licensed person does so upon the property of another with the express consent of any owner, representative or agent of an owner, or occupant of such property.
- b. No person licensed pursuant to this section or N.J.S.A. 45:24-9 shall vend any merchandise on Sundays or federal or New Jersey state holidays.
- c. Vending of merchandize on any public beach, public park, public way, public parking lot, or any public place shall be prohibited unless it has been specifically authorized by the Township Committee or its designee. Vending on public streets shall only be permitted on such streets and at such times as designated by resolution of the Township Committee.
- d. No person shall enter upon the property of another to vend merchandise if the property displays a sign stating "No Soliciting", "No Solicitors", "No Trespassing", "No Knock", or any other prohibition of similar intent.
- e. Any vendor shall immediately vacate any property of another upon receiving a request by any owner, representative or agent of an owner, or occupant of such property to vacate the premises, and shall not enter upon such property again for a period of at least 30 days for the purpose of vending merchandise.
- f. No person may enter onto the property of another to vend merchandise before 9:00 a.m. or after 5:00 p.m.
- g. No person shall use a license issued to another person pursuant to this section and no licensee shall permit such license to be used by another person.
- h. Vendors shall not drink alcoholic beverages, use drugs, or be under the influence of drugs or alcohol when vending merchandise.
- i. Vendors shall not harass the public.

§ 4-5.10. Suspension or revocation of license.

Any person who, while vending merchandise, violates any of the provisions of this section, any criminal or quasi-criminal statute, regulation, or rule of the State of New Jersey, any regulation approved by the Township Committee, or any direction or order of any law enforcement officer or state, county, or Township official shall, in addition to being subject to the penalties provided for in subsection 4-5.11, be liable, after a hearing, to have his license suspended or revoked by the Township Committee. Any person whose license is revoked pursuant to this subsection shall be ineligible to receive a new license for a period of one year.

§ 4-5.11. Violations and penalties.

Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 90 days, or both. Each and every separate violation of this section shall constitute a separate offense for purposes of this subsection.

§ 4-5.12. Special events waiver.

The Township Committee, by resolution, may waive any of the regulations contained in this section.

§ 4-5.13. Do Not Knock Registry.

- a. The Township may by resolution of the Township Committee create a "Do Not Knock Registry" to permit residents to register to be excluded from any vending of merchandise upon such resident's property. The Registry, if created, shall identify registered properties by street address and shall exclude the name(s) of the owner(s) or occupant(s).
- b. No person may vend merchandise on any property that is listed on the Do Not Knock Registry.
- c. The property of a resident that is placed on the Do Not Knock Registry at the resident's request shall remain on the Do Not Knock Registry until such time as the resident advises the Township Clerk, in writing, that the resident wishes to have the property removed from the list or until such time as the property is sold. Upon the sale of a property, the Township Tax Collector shall advise the Township Clerk to remove such property from the Do Not Knock Registry if listed and shall advise the purchaser of the right to have the property listed on the Do Not Knock Registry.
- d. The Township Clerk shall distribute a copy of the Registry to every licensee at the time of issuance of a license pursuant to this section or, in the case of an individual licensed pursuant to N.J.S.A. 45:24-9, at the time such individual files with the Township Clerk a copy of such individual's license. The licensee shall not vend merchandise at any premises identified on the current Registry. All licensees are required to obtain updates to the Registry at the beginning of each week, which will be available in the Clerk's office.

§ 4-5.14. No Solicitation Signs.

The Township may, by resolution of the Township Committee, make available to residents of the Township signs, stickers, or other form of notice stating "No Soliciting" or otherwise indicating that solicitation is prohibited upon a property where such notice is displayed. The cost to a resident to obtain such sign, if any, shall be established by resolution of the Township Committee.

SECTION 3: EFFECTIVE DATE: This ordinance shall take effect immediately upon the following publication as required by law.

SECTION 4: REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 5: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 6: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

ATTEST:

Joanne R. Herron, Township Clerk

Kimberly Hayes, Deputy Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 27TH DAY OF MARCH, 2023 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 24TH DAY OF APRIL, 2023 AT 4:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: March 27, 2023

Publication: April 6, 2023

Newspaper(s): The Press of Atlantic City

Second Reading & Public Hearing: April 24, 2023

Final Adoption: April 24, 2023

Final Publication Date: April 29, 2023

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on April 24, 2023 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on April 29, 2023.

JOANNE R. HERRON, Township Clerk