

ORDINANCE NO. 2012-05

AN ORDINANCE TO REGULATE DOOR TO DOOR SOLICITATION AT PRIVATE RESIDENCES IN THE CITY OF FARMINGTON AND FOR OTHER PURPOSES.

WHEREAS, the City Council for the City of Farmington, Arkansas finds that residents of the City have an inalienable interest in their personal safety, well-being, and privacy in their residences, as well as their ability to provide or receive information regarding matters of personal belief, political or charitable activities, and goods and services lawfully in commerce;

WHEREAS, the City has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its citizens, which include the ability to protect citizens from fraud or from unwanted intrusions upon residential property;

WHEREAS, the City finds that there must be a balance between the substantial interest of the City and its citizens and the effect of the regulations in this chapter on the rights of those who are regulated, as well as judicial decisions outlining the boundaries of constitutional protection afforded and denied persons seeking to engage in door to door solicitation;

WHEREAS, in order to carry out the above stated purposes, the City Council for the City of Farmington enacts this ordinance for the regulation of door to door solicitation.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF FARMINGTON, ARKANSAS:

Section 1: Definitions for door to door solicitation.

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

- (A) Charitable activity means any activity represented to be carried on for unselfish, civic or humanitarian motives or for the benefit of others and not for private gain and means, and

includes patriotic, philanthropic, social service, health, welfare, benevolent, educational, civic, cultural or fraternal;

(B) Charitable organization means a non-profit organization holding a tax exemption certificate from the Internal Revenue Service pursuant to §501 et. seq., and any amendments thereto.

(C) City means City of Farmington, Arkansas.

(D) Peddler means any person who goes upon the premises of any private residence in the City, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale.

(E) Peddling includes all activities ordinarily performed by a peddler as indicated in the previous paragraph.

(F) Political purpose shall mean any form of communication related to a political issue, a particular candidate to a position or non-partisan office, a political committee, or to a political party;

(G) Religious purpose shall mean the use of money or property for the support of a church, religious society or other religious sect, group, or order.

(H) Solicitor means any person who goes upon the premises of any private residence in the City, not having been invited by the occupant thereof, for the purpose of taking or intending to take orders for the sale of goods, wares, merchandise or other personal property of any nature for future delivery, or for services to be performed in the future.

(I) Solicitation or soliciting includes all activities ordinarily performed by a solicitor as indicated in the previous paragraph.

(J) Principal means the person or other legal entity whose goods, merchandise, personal property or services are being peddled or solicited.

Section 2: Obtaining "No Soliciting/No Peddling" decal. The City Business Manager shall provide any resident of the City a decal which reads, "No Soliciting/No Peddling." This decal may be posted at the front of the private residence in the City, and by posting said notification, any solicitor or peddler has notice that soliciting or peddling at this address is prohibited by City ordinance.

Section 3: Principal permit. No peddling or solicitation shall be conducted within the City without a principal permit being issued. The cost for the principal to obtain a solicitor/peddler's permit is \$40.00, and shall be paid to the City Business Manager before any peddling or soliciting is conducted within the City. The permit shall expire on December 31 in the year the permit is issued. In addition to the principal's permit, the principal must also comply with the City's business license requirements. To obtain a permit, a representative of the principal shall provide a written, signed application stating:

(A) the name, address, telephone number, type of organization, and contact person for the principal applicant;

(B) the nature of the products or services involved;

(C) the proposed method of operation in the City;

(D) a list of persons who will peddle or solicit in the City on behalf of the principal in the City.

Section 4: Permit for peddlers/solicitors. In addition to the principal permit, each peddler or solicitor acting for the principal shall also obtain a permit from the City Business Manager before peddling or soliciting within the City. The cost to obtain a peddler/solicitor permit is \$5.00. In applying for

the permit, each applicant shall provide the following to the City Business Manager:

(A) the name of the principal applicant for whom they are going to act as a peddler or solicitor;

(B) the name, address, and telephone number of the person who is going to act as a peddler or solicitor, and in addition, they must also provide photo identification;

(C) a signed statement under oath that the person applying to be a peddler/solicitor has not been convicted of any felonies or any misdemeanors involving theft, sexual offenses, or drug offenses.

(D) a criminal background check from the Arkansas State Police which shows that the peddler or solicitor has not been convicted of any felonies, or any misdemeanors involving theft, sexual offenses, or drug offenses. No person shall be issued a permit as a peddler or solicitor that has been convicted of any of the offenses set out herein.

Section 5: Prohibition. It is unlawful for any solicitor or peddler to:

(A) peddle or solicit within the City without having a copy of this ordinance on their person, as well as a copy of their permit issued by the City Business Manager, as well as photo identification visible, which is provided by the principal, identifying the person peddling or soliciting;

(B) enter upon any private residence, knock on a door, ring the doorbell, or otherwise attempt to gain admittance at the residence when the premises has posted at the entry of the residence a decal bearing the words, "No Soliciting/No Peddling," "No Peddlers", "No Solicitors", "No Trespassing", or other words of similar import;

(C) conduct the activities of peddler or solicitor and knock on a door, ring the

doorbell, or otherwise attempt to gain admittance at the residence between the hours of 7:00 p.m. and 10:00 a.m. during regular standard time, and between the hours of 8:00 p.m. and 10:00 a.m. during daylight savings time;

(D) remain at the private residence when requested to leave, or to otherwise conduct business in a manner which a reasonable person would find obscene, threatening, intimidating or abusive;

(E) make any false or misleading statements about the product or service being sold, including untrue statements of endorsement;

(F) claim to have the endorsement of the City solely based on the City having issued a permit to that person;

(G) fail to disclose his or her name and the name of the principal who he represents at the outset of the initial conversation;

(H) fail to leave the premises or residence after having been asked by the owner or occupant thereof to do so.

Section 6: Penalty.

(A) Violation of this ordinance includes:

(1) Doing an act that is prohibited or made or declared unlawful; an offense or a misdemeanor as prescribed by ordinance or state law.

(2) Failure to perform an act that is required to be performed by ordinance.

(3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(B) Violations of this ordinance do not include the failure of a city officer or city employee to perform an official duty, unless it is provided that failure to perform the duty is to be punished as provided in this section.

(C) Except as otherwise provided, a person convicted of a violation of this ordinance shall be punished by a fine not exceeding \$1,000, or double such sum for each repetition thereof. If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed \$500 for each day that the violation is unlawfully continued.

(D) If a violation of this ordinance is also a misdemeanor under state law, the penalty for the violation shall be as prescribed by state law for the state offense.

(E) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.

(F) Violations of this ordinance that are continuous with respect to time, are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.

Section 7: Exemptions. The following shall be exempt to all provisions of this ordinance, except as specifically stated herein:

(A) Officers or employees of the City, county, state, or federal government, or any subdivision thereof when on official business;

(B) Charitable activities on behalf of a charitable organization, or activities related to a religious purpose or political purpose. Notwithstanding the exemption from the remaining provisions of this ordinance, no charitable activities on behalf of a charitable organization, or activities related to a

religious purpose or political purpose shall be conducted between the hours of 8:00 p.m. and 10:00 a.m.

Section 8: Revocation of permit. Any permit issued pursuant to the provisions of this ordinance may be suspended or revoked for good cause by the Farmington City Council as provided herein. Good cause for such suspension or revocation shall include, but is not limited to:

(A) The existence of unsanitary conditions, noise, disturbances, or other conditions at, near or in the premises which causes or tends to create a public nuisance, which may injuriously affect the public health, safety or welfare, or which unnecessarily affects the adequate allocation of public safety resources;

(B) The commission of, or permitting or causing the commission of, any act in the operation of the business which is prohibited by any ordinance, rule or law of the city, state or federal government;

(C) Fraudulent practices and misrepresentation in the operation of the business;

(D) Concealment or misrepresentation in procuring the business license;

(E) The business for which the license has been issued is unlawful or is prohibited by any ordinance, code, rule or law of the city, state or federal government;

(F) The license was issued by mistake or is in violation of any of the provisions of this ordinance; or

(G) The premises used to conduct said business has been condemned, declared a fire hazard or declared unsafe for business occupancy pursuant to applicable building, property maintenance, or fire codes.

Section 9: Suspension/Revocation procedure.

(A) The city council, on its own motion or initiative, or upon the written complaint of any person or city staff, may, by resolution, set a hearing date to determine whether good cause exists to suspend or revoke a license issued pursuant to this article.

(B) A notice of the hearing, along with a copy of the resolution setting the hearing date, shall be served by certified mail with return receipt requested, to the person holding the business license at the address shown on the business license application. Such notice and resolution shall also be hand delivered to licensee at the address shown on the business license application, if the person is present. If the person is not present, the notice and resolution may be delivered to the person in actual charge of the premises at the time of delivery. If the business is closed, a copy of the notice and resolution shall be posted in a conspicuous location on the property.

(C) The notice and resolution shall inform the licensee of the allegations which constitute the basis for the hearing, and shall provide that the licensee will be given the opportunity to appear and be heard at the hearing.

(D) At the hearing, the city council will make a determination as to whether good cause exists to suspend or revoke the license. This determination shall be made only after the licensee has been afforded a reasonable opportunity to be heard on the issue.

(E) In the event the city council finds good cause to suspend the license, it shall have the authority to place reasonable conditions and restrictions on the licensee during the suspension period. Any violation of these conditions and restrictions shall result in the revocation of the license.

(F) In the event the city council finds that good cause exists to revoke the license, the city council shall, by ordinance, revoke the license and shall direct the city clerk to notify the licensee of the revocation of the license, and to direct the licensee to immediately cease all business activity at the business location. Notice shall be completed in accordance with subsection (B) herein.

(G) Any person conducting business activity in violation of a revocation ordinance shall be punishable by those penalties prescribed Section 6 of this ordinance, and each sales transaction shall constitute a separate and punishable offense.

(H) Any business or person who has had a license revoked pursuant to the provisions of this article shall not be eligible for another license until the business or person has complied with the requirements of Sections 3 and 4 of this ordinance and has obtained city council approval before a new license may be considered.


Section 10: Severability Clause. In the event any part of the ordinance is declared inoperative or invalid as a result of a statute or judicial decision, then only that portion expressly so declared to be inoperative or invalid shall be affected thereby and all other provisions hereof shall remain in full force and effect.

Section 11: That the City Council of the City of Farmington, Arkansas further determines that this ordinance is necessary to protect the well-being, tranquility, personal safety, and privacy of its citizens; therefore, this ordinance shall become effective on January 1, 2013.

PASSED AND APPROVED this 10th day of September, 2012.

APPROVED:

By:


Ernie Penn, Mayor

ATTEST:

By: Kelly Thomas
Kelly Thomas
City Clerk/Recorder