

ORDINANCE NUMBER O-2022-06

AN ORDINANCE TO REGULATE DOOR-TO-DOOR SALES OR SOLICITATIONS AT PRIVATE RESIDENCES; TO PROVIDE FOR A PERMITTING PROCESS; TO REPEAL AND REPLACE ORDINANCE 2011-08; FOR OTHER PURPOSES AND DECLARING AN EMERGENCY

WHEREAS, ARKANSAS CODE ANNOTATED (A.C.A.) § 14-54-103 authorizes cities to license, regulate, tax, soliciting persons, hawkers, peddlers as those terms are commonly applied.

WHEREAS, THE CITY OF WARD GOVERNING BODY believes that its residents have an inalienable interest in their personal safety, well-being, and privacy in their residents as well as their ability to provide and receive information regarding matters of personal belief, political, or charitable activities and goods and services lawfully in commerce; and,

WHEREAS, THE CITY WARD has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its citizens, which includes the ability to protect its citizens from unwanted intrusions upon residential property; and,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WARD, ARKANSAS THAT;

SECTION 1 – DEFINITIONS: The following words, terms, and phrases, and their derivations, when used in this Ordinance, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

- a. Canvasser means any person who attempts to make personal contact with a resident at his/her resident without prior specific invitation or appointment from the resident, for the primary purpose of
 - i. Attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause; or,
 - ii. Distributing a handbill or flyer advertising a non-commercial event or service
- b. Charitable means and includes the words, patriotic, philanthropic, social service, health, welfare, benevolent, educational, civic, cultural, or fraternal, either actual or purported.
- c. Chief means the Chief of the Ward Police Department
- d. City means the City or Ward, Arkansas.
- e. Contributions mean and includes the words alms, money, subscription, property or other donations under the guise of a loan or money or property.
- f. Department means the Ward Police Department.
- g. 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 good, wares, merchandise or personal property of any nature and offering the same for sale. This definition also includes any persons who solicits orders and as a separate transaction makes deliveries to purchases as part of the scheme to eval the provisions of this Ordinance. Pedder DOES NOT include a person who distributes handbills or flyers for commercial purpose, advertising an event, activity, good, or service that is offered to a resident for purchase at a location away from his/her residence or at a time different from the time of the visit.

- h. Peddling includes all activities ordinarily performed by a peddler as indicated under paragraph (g) of this Section.
- i. Person means a natural person of any firm, corporation, association, club, society or other organization.
- j. 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 attempting to take orders for sales or goods, merchandise, wares or other personal property of any nature for future delivery, or for services to be performed in the future. This definition also includes any person who, without invitation, goes upon private property, to request contribution of funds or anything of value, or sell goods or services for political, charitable, religious, or other non-commercial purposes.

SECTION 2 – PERMIT REQUIREMENTS AND EXEMPTIONS: It shall be unlawful for any person eighteen (18) years of age or older to engage in peddling or solicitation activities within the City of Ward, Arkansas, without first obtaining a permit issued by the City; provided, however, that the following are exempted from the provisions of this Section and this Ordinance:

- a. Any solicitation made upon premises owned or occupied by an organization upon whose behalf the solicitation is made;
- b. Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of the solicitation;
- c. Any solicitation in the form of a collection at a regular meeting, assembly or service of a chartable person;
- d. Any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected shall be turned over to the named beneficiary
- e. A “canvasser” as defined in Section 1;
- f. Students grades kindergarten through 12th grade, enrolled in a public or private school peddling or soliciting for the benefit of their school or an organization thereof or for any private, nonprofit social club or

organization to which they belong, such as, but not limited to, FBLA, FCA, band, FHA, FFA, Boy Scouts or Girl Scouts, etc.

- g. Any municipal, county, state or federal governmental entity.

SECTION 3 – PERMIT FOR SPONSORING JUVENILE PEDDLERS:

- a. No person under the age of eighteen (18) years of age shall be permitted to engage in peddling except as provided by this Section.
- b. A permit shall be obtained by the sponsoring person, company, or organization for the conduct a peddling or solicitation activities involving, in whole or in part, a sales force of one (1) or more persons under the age of eighteen (18) years of age.
- c. The sponsor shall be responsible for supervising and controlling the conduct of all persons, including juveniles, peddling under the sponsor's permit.
- d. The sponsor shall require all individuals in its force to wear such identification so that it is clearly visible at all times when the individuals are peddling or soliciting.
- e. The sponsor shall comply with the child labor law requirements by the State of Arkansas Department of Labor, including but not limited to the A.C.A. § 11-6-11 *et seq.*

SECTION 4 – PERMIT APPLICATION: Every person subject to the provision of this Ordinance shall file with the City a written permit application, on a form furnished by the City, which shall include, or be accompanied by the following:

- a. Proof of age, address and identification of the applicant, to be provided through the applicant's driver's license, articles of incorporation (for sponsors), or other legally recognized form of identification issued by a government agency.
- b. A brief description of the business or activity to be conducted;
- c. The hours and location for the right to peddle or solicit is desired;
- d. If employed, the name, address and telephone number of the employer; if acting as an agent, the name, address and telephone number of the principal who is being represented, with credentials in written form establishing the relationship and the authority of the employee or principal, as the case may be;
- e. A statement as to whether or not the applicant has been convicted of a felony, misdemeanor or ordinance violation (other than traffic violations), the nature of the offense or violation, the penalty or punishment imposed, the date when and place where such offense occurred, and other pertinent details thereof;

- f. Proof of possession of any license or permit which, under federal, state, or local laws or regulations, the applicant is required to have in order to conduct the proposed business, or which, under any such law or regulation, including but not limited to A.C.A. § 26-77-102, would exempt the applicant from the licensing requirements of the Ordinance; and,
- g. Two (2) 2-inch by 2-inch (passport type photo) showing the head and shoulder of each applicant shall be included with the application. One photo will be used for the applicant's badge and one will be maintained with the application. Juveniles peddling under a sponsor's permit as set out in Section 3 shall not be required to display an identification photograph.

SECTION 5 – FEES: At the time the application is filed with the City, the applicant shall pay a fee to cover the cost to the City of processing the application, issuing a badge(s) (if applicable) and investigating the facts stated within the application.

- a. The fee shall be \$10.00 for each solicitor, peddler, or juvenile sponsor who obtains a permit under Section 2 or 3 for a "for-profit" company or organization, except as noted below.
- b. Juvenile Sponsor and peddlers identified under Section 2f are exempt from any permit fee if solicitating or peddling for a "non-profit" entity.

SECTION 6 – APPLICATION REVIEW AND PERMIT ISSUANCE:

- a. Upon receipt of an application, the Permit Clerk, shall review the application for completeness and check, at minimum, the following public data bases for derogatory information
 - i. National Sex Offender Registry: <https://www.ark.org/offender-search/index.php>
 - ii. Better Business Bureau: <https://www.bbb.org/>
 - iii. Others, as needed
- b. If the Permit Clerk finds the application to be satisfactory to this point, the application will be reviewed by the Chief of Police, or his designee and returned to the Permit Clerk with his/her recommendation for approval or disapproval.
- c. If approved, the Permit Clerk shall create the necessary permit badge(s) and contact the permit applicant to obtain the badge(s).
- d. Applications and all associated documentation shall be maintained according to the City's Record Retention Policy and state law pursuant to A.C.A. § 14-203 *et seq.*

SECTION 7 – DENIAL OF PERMIT:

- a. Upon review of the application, the City may refuse to issue a permit to the applicant under this Ordinance for any of the following reasons:
 - i. An investigation reveals that the applicant falsified information on the application;
 - ii. Any felony or misdemeanor charge is currently pending against the applicant in any jurisdiction;
 - iii. The applicant has been convicted of any felony, any misdemeanor involving theft, a delivery/trafficking a controlled substance, a sexual offense or violence, or has been incarcerated in prison at any time.
 - iv. The applicant has an active arrest warrant or is otherwise a fugitive of justice;
 - v. There is no proof as to the authority of the applicant to serve as an agent to the principal;
 - vi. The applicant has been denied a permit under this Ordinance with the immediate past year; unless the applicant can show proof that the reason(s) for such earlier denial no longer exists;
 - vii. Or the applicant has previously had a permit revoked.
- b. The reason(s) for disapproval shall be noted on the application and the applicant shall be notified that his/her application has been disapproved not later than fifteen (15) days after receipt of the application and that no permit will be issued. Notice of denial will also be mailed to the address shown on the application.

SECTION 8 – PERMIT EXPIRATION: All permits issued under the provisions of this Ordinance shall expire ninety (90) days from the date of issuance unless otherwise noted on the permit.

SECTION 9 – IDENTIFICATION BADGES:

- a. Identification badges issued with the permit must be worn in such a way that it can be seen at all times while the permittee is soliciting or peddling in the City.
- b. A canvasser, otherwise exempt from the provisions of this Ordinance, may request the issuance of an identification badge from the City for the purpose of assuring residents of the canvasser's good faith. There is no charge for this service.

SECTION 10 – PERMIT EXHIBITION: Every person required to obtain a permit under the provisions of this Ordinance shall exhibit the permit when requested to do so by a prospective customer or City employee.

SECTION 11 – PROHIBITION: It is unlawful for a solicitor or peddler to:

- a. Allow for any person other than the permittee to use or wear any permit or badge issued under the provisions of this Ordinance.
- b. To solicit or peddle with a copy of the applicant permit available.
- c. Enter upon any private residence, knock on any door, ring a doorbell, or otherwise attempt to gain admittance at the residence when the premises have posted at or near the entrance to their residence a sign, decal, or sticker with the words “No Soliciting”, “No Peddling”, “No Trespassing” or words of similar impact.
- d. Conduct the permitted activities of the solicitor or peddler after 7 pm or sunset (whichever occurs first) nor before 10 am Monday through Saturday
- e. Solicit or peddle on a Sunday.
- f. Remain at a residence when requested to leave.
- g. Conduct business in a manner in which a reasonable person would find obscene, threatening, intimidating, or abusive.
- h. Make false or misleading statements about the product or service being sold, including untrue statements of endorsement.
- i. Claim to have the endorsement of the City solely based on the City having issued a permit and badge to that person, company, or organization.
- j. Fail to disclose the name of the principal whom he/she represents at the outset of the conversation.
- k. Fail to leave the premise or residence after having been asked or told by the owner or occupant to do so. Violation of Section does not preclude prosecution under state law for criminal trespass.

SECTION 12 – PERMIT REVOCATION: Any permit issued under this Ordinance may be revoked or suspended by the City may be revoked for any of the following reasons:

- a. Fraud, misrepresentation or false statement contained within the application.
- b. Conducting, peddling, or solicitation activities in such a manner as to create a public nuisance, constituent a breach of the peace or endanger the health, safety, or general welfare of the public.
- c. Violation of any of the items listed in Section 11.

SECTION 13 – NOTICE AND HEARING: Upon revocation of a permit issued under this Ordinance, the applicant and sponsor (if applicable), shall be notified in writing by certified mail to the address listed on the application. This notice shall include the reason(s) for revocation, and the right to appeal to the Mayor.

SECTION 14 – APPEALS:

- a. Any person, or company, or organization who's permit issued under this Ordinance has been revoked or suspended, shall have the right to appeal such action or decision to the Mayor or authorized representative¹ within fifteen (15) days after the notice has been mailed to the applicant's address as shown on the application.
- b. The appeal should be sent, in writing, to the City Clerk setting forth the grounds for the appeal. An email from the applicant outlining the ground for appeal is acceptable.
- c. The City Clerk, within five (5) business days of receiving the written appeal from the applicant, shall forward same to the Mayor.
- d. The Mayor, upon receiving the appeal from the City Clerk, shall set the place, date, and time of the hearing on the appeal.
 - a. The hearing shall be set for not later than twenty (20) days from the date the applicant's appeal was received by the Mayor.
 - b. The Mayor will cause the applicant to be notified via US Mail and via email (if available) of the place, date and time of the hearing on the appeal.
- e. Hearings under this Ordinance are open to the public and covered under applicable FOIA laws.
- f. The decision of the Mayor is final and binding to all parties concerned.

SECTION 15 – CLAIMS OF EXEMPTION: Any person, company or organization claiming to be legally exempt from any provision of this Ordinance, shall submit proof with the application. Such request for exemption may only be approved by the Mayor or his authorized representative.

SECTION 16 – VIOLATION AND PENALTY:

- a. Violation of the provision of this Ordinance shall be treated as a violation and shall, upon conviction, be punishable by a fine of not more than \$250.00.
- b. The penalty for subsequent offenses that occur within twelve (12) months of the prior conviction, shall be punishable by a fine of not more than \$500.00.
- c. Each day of a continuing violation of the provisions of this Ordinance may be treated as a separate offence.

¹ The City Clerk is the Mayor's authorized representative under this Ordinance should the Mayor not be otherwise available

SECTION 18 – CONSUMER PROTECTION: The Arkansas Home Solicitation Sales Act provides consumers with three days to cancel a sale made in the home or a location that is not the seller’s permanent place of business.

- a. Under the Act, consumers have until midnight of the third business day after the sale to cancel purchases of \$25 or more and demand a full refund. Consumers may cancel for any reason, or no reason at all.
- b. Under the Act, the salesperson must verbally inform consumers of their cancellation rights at the time of the sale, and provide two copies of a cancellation form as well as a copy of the contract or receipt

SECTION 19 – SEVERABILITY: If, for any reason, any portion or portions of this ordinance shall be held invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, and that such valid portions shall be and remain in full force and effect.

SECTION 20 – ORDINANCE 2011-08: Ordinance 2011-08 is hereby repealed and replaced.

SECTION 21 – EMERGENCY CLAUSE: That this Ordinance is necessary for the protection of the peace, health and well-being of the citizens of Ward, an emergency is hereby declared to exist and this Ordinance shall become effective upon the date/time of passage and approval.

PASSED AND ADOPTED THIS 18th DAY OF April, 2022

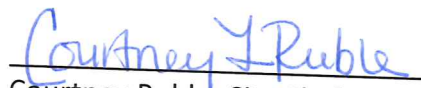
YEAS: 4 NAYS: 0

APPROVED:



Charles Gastineau, Mayor

ATTEST:



Courtney Ruble, City Clerk

CITY SEAL