

Ordinance No. 16-764

AN ORDINANCE TO AMEND CHAPTER 7.44 SOLICITING ON PRIVATE PROPERTY

WHEREAS, some citizens have been inconvenienced and disturbed by unknown and not properly identified vendors and peddlers coming to their private residences to sell goods or request donations; and

WHEREAS, commercial vendors and peddlers who wish to sell door to door in Clarksville should be regulated to ensure these vendors have proper identification and will abide by all restrictions as to the when and where such vending will be allowed; and

WHEREAS, persons who wish to express religious and political beliefs have First Amendment Free Speech rights which cannot be impinged by the City and thus may not be prohibited from going door to door to exercise their First Amendment rights.

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

Section One. That the City Council of the City of Clarksville, Arkansas hereby amends Chapter 7.44 of the City of Clarksville's Municipal Codes as shown in Exhibit A attached hereto and made a part hereof.

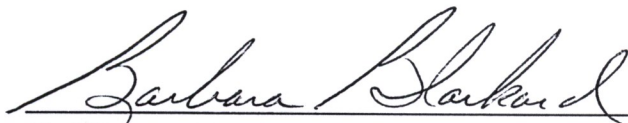
Passed this 9th day of May, 2016.

APPROVED:



Mayor Mark Simpson

ATTEST:



Clerk/Treasurer Barbara Blackard

“Exhibit “A”
Ordinance No. 16-764

Chapter 7.44

SOLICITING ON PRIVATE PROPERTY

Sections:

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7.44.02.08	Permits Waived for Political/Religious Speech-Children
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7.44.06	Appeal to City Council
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7.44.01 GOING UPON PRIVATE RESIDENTIAL PROPERTY

No solicitor or vendor shall enter in or upon any house, building, or other structure upon any land or property without the prior consent of the owner or occupant hereof where there is placed or posted on the premises in a conspicuous position, at or near the usual means of ingress, a sign or other form of notice stating or indicating that the owner or occupant forbids or otherwise does not desire persons engaged in soliciting or any similar activity to enter upon the premises.

7.44.02 DOOR TO DOOR SOLICITATION AT PRIVATE RESIDENCE

7.44.02.01 Definitions. 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:

1. Charitable activity means any activity carried on for unselfish, civic or humanitarian motives or for the benefit of others and not for private gain.
2. 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.

3. Peddler means any person who goes to the door 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.
4. Solicitor means any person who goes to the door 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, magazines, wares, merchandise or other personal property of any nature for future delivery, or for services to be performed in the future. Principal means the person or other legal entity whose goods, merchandise, personal property or services are being peddled or solicited.

7.44.02.02 Posting “no soliciting/no peddling” decal or sign.

A decal may be posted at the front of any 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 as provided for in 7.44.01.

7.44.02.03 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 \$100.00, and shall be paid to the City Treasurer’s office before any peddling or soliciting is conducted within the city. The permit shall expire on December 31 in the year the permit is issued. To obtain a permit, a representative of the principal shall provide a written signed application stating:

1. The name, address, telephone number, type of organization, and contact person for the principal applicant.
2. The nature of the products or services involved
3. The proposed method of operation in the city
4. A list of all persons who will peddle or solicit in the city on behalf of the principal.
5. A list of all vehicles to be used including their make, model, color, and license plate number.

7.44.02.04 Permit for peddler/solicitors.

In addition to the principal permit, each peddler or solicitor acting for the principal shall also obtain a permit from the City before peddling or soliciting within the city. The cost to obtain a peddler/solicitor permit is \$20.00. In applying for the permit each applicant shall provide the following:

1. The name of the principal applicant for whom they are going to act as a peddler or solicitor
2. 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.
3. A signed statement under oath that the person applying to be a peddler/solicitor has not been convicted of felonies or any misdemeanors involving theft, sexual offenses, or violence.
4. A criminal background check authorization form giving the City of Clarksville authorization to perform a criminal background check. A permit will not be issued to

any peddler or solicitor that has been convicted of any of the offenses set out above nor in prison during the last five years. The fee for the background check is \$75.00 for each peddler or solicitor.

5. For international students or other persons without United States Citizenship and working with a valid visa or other government-issued identification, a copy of the visa or other valid documentation and a nationwide crime index/background check will be performed by the city.

7.44.02.05 Prohibition.

It is unlawful for any solicitor or peddler to:

1. Peddle or solicit within the city without having a copy of this section on their person, as well as a copy of their permit issued by the City Clerk, as well as photo identification visible, which is provided by the principal, identifying the person peddling or soliciting
2. Enter upon any private residence, knock on the door, ring the doorbell, or otherwise attempt to gain admittance at the residence when the premises' owner or tenant has posted at the primary entrance of the residence a decal or sign bearing the words "no soliciting/no peddling" "no peddlers," "no solicitors," "no trespassing," or other words of similar import
3. Conduct the activities of peddler or solicitor and knock on the door, ring the doorbell, or otherwise attempt to gain admittance at the residence after sunset to 10:00 a.m.
4. 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.
5. Make any false or misleading statements about the product or service being sold, including untrue statements of endorsement
6. Claim to have the endorsement of the city based on the city having issued a permit to that person
7. Fail to disclose his or her name and the name of the principal whom he represents at the outset of the initial conversation
8. Fail to immediately leave the premises or residence after having been asked by the owner or occupant thereof to do so.

7.44.02.06 Exemptions.

1. Officers or employees of the City, County, State or Federal government, or any subdivision thereof shall be exempt from the requirements of this section when on official business.
2. A representative or employee of a newspaper of general circulation in Clarksville may leave a sample current copy of the newspaper with subscription information near the door of a private residence without being a "solicitor" as long as the representative/employee makes no efforts at that time to contact or speak with the resident.

7.44.02.07 Free permits for nonprofit corporations not seeking donations.

After supplying adequate proof to the city that the non-profit charitable organization is a charity with a current §501 (c)(3) IRS exception, the City may issue the permits required by this section without charge to the persons desiring to exercise their free speech rights as long as no solicitations or donations are made and no donations accepted.

7.44.02.08 Permits waived for political and religious free speech and for children through high school senior status

1. Permits are waived for political or religious free speech allowing for the following:
 - a. Anyone going door to door is prohibited from going to the door of a citizen who has posted a “no solicitation” type sign.
 - b. They may only go door to door during the daytime/evening hours allowed in Section 7.44.02.05.
2. Children through high school senior status must abide by the restrictions found in Section 7.44.02.05.

7.44.03 Revocation of permit. Any permit issued pursuant to the provision of this section may be suspended or revoked for good cause by the City. Good cause for such suspension or revocation shall any violation of this section.

Examples of grounds that could support suspension or revocation of permit

1. Valid complaints from residents.
2. Determining that you are in violation of the permit requirements.
3. You are operating in violation of any federal or state law or city ordinances.
4. The permit was procured through fraud or misrepresentation.

7.44.04 Notice. If the City has reason to believe that grounds exist that could justify the suspension or revocation of your permit, the City Clerk or his representative, shall mail a letter, by first class mail, to the Business Mailing Address shown on the application notifying the business owner of the possible grounds to suspend or revoke the permit. The letter will set a due process hearing to be held not less than five (5) nor more than ten (10) business days from date of letter. The Clerk shall also telephone the business owner using the Business Phone number provided on the Application and provide the same information as is within the letter.

7.44.05 Conduct of the Due Process Hearing.

1. The City shall provide a committee consisting of the Mayor or his representative, the City Clerk or her representative, and a resident of the City chosen at large. The city will provide reasonable space for the due process hearing and shall receive evidence from city employees or others about the grounds to suspend or revoke the permit.

2. The Permit Holder shall then be granted an opportunity to explain or provide evidence to rebut any allegations and to show why the permit should not be suspended or revoked.
3. After the Permit Holder has had a reasonable opportunity to explain his side, the Committee can do one of the following, depending on their judgement concerning the seriousness of any proven ground:
 - a. Revoke the Permit
 - b. Suspend the Permit for not more than thirty (30) days
 - c. Place the Permit Holder on probation status for not more than ninety (90) days on condition that the grounds causing the problems be remedied by the permit holder and not allowed to reoccur. If the Permit Holder complies with the probation, the probation status shall be lifted and no further action shall be taken. If the Committee determines that the business license owner has failed to correct the problems or new grounds for suspension or revocation have occurred, the Committee shall conduct a second due process hearing and consider all previous evidence as to whether or not the permit should be suspended or revoked.
 - d. Refuse to revoke or suspend the permit which shall remain valid. Any complaint about the events leading to the hearing shall not be considered again.

7.44.06 APPEAL TO City Council

Any person or entity whose permit has been suspended or revoked pursuant to 7.44.05, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written appeal. The City Council will review and conduct a hearing within ten business days of receipt of appeal. The permit owner may be present to present evidence and explanations as to why the permit should not be suspended or revoked. The City Council will then make one of the following determinations:

1. Determine their permit should be suspended for not more than thirty (30) days.
2. Determine their permit should be revoked.
3. Determine that no suspension or revocation is warranted.

7.44.07 PENALTY

- A. Fines. No business or other entity who is required by this chapter to obtain a permit, shall operate without having and making available to the public a valid and current City of Clarksville Door to Door Solicitation Permit. Operating without a permit or operating in violation of any section of this code, shall be punishable by a fine of \$250.00 per day. Each day a violation occurs is considered a separate offense.