

ORDINANCE NO. #1132

AN ORDINANCE OF THE CITY OF MARIANNA, FLORIDA AMENDING CHAPTER 46 OF THE CITY OF MARIANNA CODE ADDRESSING FOOD TRUCKS IN THE CITY OF MARIANNA; PROVIDING FOR SEVERABILITY AND FOR REPEALER; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Marianna City Commission met in regular session on May 3, 2022 and discussed provisions for food trucks; and held a Public Meeting to consider changes to the City of Marianna Land Development Code; and

WHEREAS, in exercise of its authority, the Marianna City Commission finds it necessary and desirable to adopt and does hereby adopt Ordinance #1132 amending Chapter 46 of the City of Marianna Land Development Code.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MARIANNA, FLORIDA THAT:

SECTION 1. Authority. The authority for enactment of this ordinance is Article 1, Section 1.06 and 1.07 of the Charter of the City of Marianna. Amendment consists of the attached hereto as Exhibit A, and made a part hereof and which will be incorporated in the Municipal Code of Ordinances of the City of Marianna.

SECTION 2. Amendment. Chapter 46 of the City of Marianna Code of Ordinances is hereby amended to read as follows in Exhibit A.

SECTION 3. Severability. Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any portion or provision of this ordinance is declared invalid, all other provisions there of shall remain valid and enforceable.

SECTION 4. Effective Date. This Ordinance shall become effective upon its adoption by the City Commission as provided by law.

PRESENTED AND READ BY TITLE TO THE CITY COMMISSION OF THE CITY OF MARIANNA, FLORIDA ON THE _____ DAY OF _____, 2022.

PASSED AND ADOPTED BY THE CITY COMMISSION OF MARIANNA, FLORIDA ON
THIS THE _____ DAY OF _____, 2022.

ATTEST:

Marianna City Commissioners

Kimberly J. Applewhite, City Clerk

Allen Ward, II, Mayor/Commissioner

Exhibit A

NOTE: STRIKE THROUGH INDICATES LANGUAGE DELETED AND UNDERLINE INDICATES LANGUAGE ADDED.

Chapter 46 - PEDDLERS AND SOLICITORS¹¹

[1] State Law reference— Solicitation of charitable funds act, F.S. § 496.01 et seq.; local regulation, F.S. § 496.132; peddling at camp meeting, F.S. § 871.03.

ARTICLE I. - IN GENERAL

Secs. 46-1—46-25. - Reserved.

ARTICLE II. - PERMIT

Sec. 46-26. - Required.

It shall be unlawful for any person to solicit orders for any goods, wares or merchandise, books, magazines or other things, or for the purpose of making demonstrations or exhibitions of goods, wares or merchandise or other things of value without having first procured a permit as provided by section 46-27.

(Code 1986, § 14-1)

Sec. 46-27. - Application; contents.

In order to procure a permit for any purpose mentioned in section 46-26, the applicant shall file with the chief of police a written application signed by the applicant and sworn to by him before some officer authorized to administer oaths under the laws of the state, which application shall contain the following information:

- (1) Date of application;
- (2) Name and address of applicant;
- (3) Name and address of the person by whom the applicant is employed or whom such applicant represents, if any;
- (4) The place of residence and nature of employment of applicant during the preceding year;
- (5) The nature and character of the goods, wares, merchandise or the subscription contracts for any magazine, newspaper, book or periodical to be offered by the applicant;

- (6) A personal description of the applicant;
- (7) If employed, credentials establishing the exact relationship of the applicant with the employer;
- (8) A photograph of the applicant taken within 60 days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches, showing head and shoulders of the applicant in a clear and distinguishing manner;
- (9) A statement as to whether or not the applicant has been convicted of any crime, including misdemeanor or the violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor; and
- (10) Such other information as the chief of police shall require should he deem it necessary for the protection or the safety of the residents of the city.

(Code 1986, § 14-2)

Sec. 46-28. - Investigation of applications; grant and refusal; records of applications.

The chief of police shall investigate each applicant for permits required by this article. The chief of police shall have ten days within which to make such investigation. He shall refuse a permit when he finds that the applicant has been convicted of a criminal violation. He shall keep each application on file, together with a record of his action thereon, subject to inspection by any person at any reasonable time.

(Code 1986, § 14-3)

Sec. 46-29. - Fee; disposition.

The person applying for such permit shall pay the sum of \$10.00 for each permit issued, which moneys shall be deposited in the general fund account of the City.

(Code 1986, § 14-4)

Sec. 46-30. - Garden or farm produce excepted.

This article shall not apply to the sale or soliciting of orders for the sale of farm, agricultural, grove, horticultural, floricultural, tropical piscicultural or tropical fish farm products grown or produced by such person in the state. The sale of such commodities as authorized by and including any exceptions in F.S. § 205.064, is included in this section.

(Code 1986, § 14-5)

Secs. 46-31—46-50. - Reserved.

ARTICLE III. - TRANSIENT MERCHANTS, ITINERANT MERCHANTS AND ITINERANT VENDORS

DIVISION 1. - GENERALLY

Sec. 46-51. - Definitions.

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

Transient merchant, itinerant merchant or itinerant vendor means any person, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, public room in hotels, lodging houses, apartments, shops, or any street, alley, or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction; provided, however, that such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery. The person so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

(Code 1986, § 14-21)

Cross reference— Definitions generally, § 1-2.

Sec. 46-52. - Penalty for violation of article.

Any person violating any of the provisions of this article shall, upon conviction thereof, be punished as provided in section 1-14.

(Code 1986, § 14-35)

Secs. 46-53—46-65. - Reserved.

DIVISION 2. - PERMIT

Sec. 46-66. - Required.

It shall be unlawful for a transient merchant, itinerant merchant or itinerant vendor to engage in such business within the city without first obtaining an itinerant merchant permit, therefore in compliance with the provisions of this article. An itinerant merchant permit shall be issued to only one person and shall not be transferable.

(Code 1986, § 14-22; Ord. No. 900, § 2, 9-3-02)

Sec. 46-67. - Application.

Applicants for an itinerant merchant permit under this article, shall file a written sworn application signed by the applicant, with the city clerk, showing:

- (1) The name of the person having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the city.
- (2) The local address of such person while engaged in such business.
- (3) The permanent address of such person.
- (4) The capacity in which such person will act, that is, whether as proprietor, agent or otherwise.
- (5) The name and address of the person for whose account the business will be carried on, if any; and, if a corporation, under the laws of what state the same is incorporated.
- (6) The place in the city where it is proposed to carry on the applicant's business and the length of time during which it is proposed that the business shall be conducted.
- (7) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by the applicant in the city; the invoice value and quality of such goods, wares and merchandise; whether the same are proposed to be sold from stock in possession or from stock in possession and by sample; at auction; by direct sale or by direct sale and by taking orders for future delivery, where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time the application is filed.
- (8) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and, if required by the city clerk, copies of all such advertising whether by handbills, circular, newspaper advertising or otherwise, shall be attached to the application as exhibits thereto.

- (9) Whether or not the person having the management or supervision of the applicant's business has been convicted of a crime, misdemeanor or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefor.
- (10) Credentials from the person for which the applicant proposes to do business, authorizing the applicant to act as such representative.
- (11) Such other reasonable information as to the identity or character of the person having the management or supervision of the applicant's business or the method or plan of doing such business as the city clerk may deem proper to fulfill the purpose of this article in the protection of the public good, to include the physical description of the applicant (race, sex, height, weight, eye color, hair color, complexion and body build) and driver's license.

(Code 1986, § 14-23; Ord. No. 900, § 2, 9-3-02)

Sec. 46-68. - Investigation of applicant and issuance.

Upon receipt of the application required by section 46-67, an investigation of the person's business responsibility or moral character will be made as necessary to the protection of the public good. The clerk shall submit a copy of the application to the chief of police for fingerprints, photographs, and a criminal investigation with state and federal agencies. Those agencies shall report any criminal justice information to the clerk within 60 days after receipt of the fingerprints and copy of the application. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the city clerk shall so certify in writing, and permit shall be issued by the city clerk. The city clerk shall keep a full record in his/her office of all permits issued and provide a copy to the city code enforcement officer. Such permit shall contain the number of the permit, the date the permit is issued, the nature of the business authorized to be carried on, the amount of the permit fee paid, the expiration date of the permit the name of the person authorized to carry on the business, and the name and address of the company.

(Code 1986, § 14-24; Ord. No. 900, § 2, 9-3-02; Ord. No. 906, § 2, 8-5-03)

Sec. 46-69. - Fees.

Applicants under this article shall pay a fee of \$250.00 to the city clerk for each permit issued, plus all processing fees associated with the background checks from state and federal agencies. The city clerk will deposit the moneys collected into the general fund account of the city.

(Code 1986, § 14-25; Ord. No. 900, § 2, 9-3-02; Ord. No. 906, § 2, 8-5-03)

Sec. 46-70. - Service of process.

Before any permits, as provided in this article, shall be issued for engaging in business as an itinerant merchant in the city, such applicant shall file with the city clerk an instrument nominating and appointing the city clerk, or the person performing the duties of such position, his

true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transacted under such permit. Immediately upon service of process upon the city clerk, the city clerk shall send to the permit holder or applicant at his last known address, by registered mail, a copy of the process.

(Code 1986, § 14-26; Ord. No. 900, § 2, 9-3-02)

Sec. 46-71. - Posting.

- (a) Upon receipt of the application, there will be a waiting period of not more than 60 days, after which the clerk shall issue an itinerant merchant permit in the form of a laminated identification card, which shall bear the photograph of the permit holder, the permit holder's full name, date of birth, race and sex, the name and address of the permit holder's employer or statement "self-employed," the signature of the permit holder, a permit number, an expiration date, and the telephone number consumers may call to verify validity of the permit.
- (b) The permit issued under this article shall be posted conspicuously in the place of business named therein. Separate licenses shall be issued for each place of business and shall be posted conspicuously in each place of business.

(Code 1986, § 14-27; Ord. No. 900, § 2, 9-3-02)

Sec. 46-72. - Transfer.

No permit shall be transferred without written consent from the mayor as evidenced by an endorsement on the face of the permit by the city clerk showing to whom the permit is transferred and the date of the transfer.

(Code 1986, § 14-28; Ord. No. 900, § 2, 9-3-02)

Sec. 46-73. - Duty of police to enforce.

- (a) It shall be the duty of the police officers and the code enforcement officer of the city to examine all places of business and persons in their respective territories, subject to the provisions of this article, to determine if this article has been complied with and to enforce the provisions of this article against any person found to be violating this article.
- (b) It shall be the duty of any police officer or code enforcement officer of the city to require any person seen peddling to produce his itinerant merchant permit or home solicitation permit issued by the city, and to enforce the provisions of this chapter against any person found to be violating the same.
- (c) The city clerk shall not issue an itinerant merchant's permit if the chief of police verifies any of the following have occurred:

- (1) The applicant has been convicted of:
 - a. A felony involving fraud, deceit or offense involving moral turpitude, unless such conviction occurred at least five years prior to the date of the application, or any offense involving sexual misconduct with minors, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution or pandering, unless such conviction occurred at least five years prior to the date of application; or
 - b. An offense involving the use of or threat to use force or violence upon the person of another, unless such conviction occurred at least five years prior to the date of the application.

For the purposes of this subsection, conviction shall include any disposition of a criminal case resulting in the imposition against the applicant of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the applicant has been formally adjudicated guilty.

- (2) The applicant has made any false, misleading, or fraudulent statement of fact or a material omission of fact in the permit application or in any document required by the city in conjunction herewith; or
- (3) The applicant has had a permit or license, similar to the one being applied for, denied, revoked or suspended for any of the above causes by the city or by any other state or local agency within five years prior to the date of application.

A person denied an itinerant merchant's permit pursuant to subsections (1)a. and b. of this section may not apply for a license for a period of one year following the denial.

The clerk, upon denying an application, shall promptly notify the applicant of the denial and state the particular grounds for such denial.

(Code 1986, § 14-29; Ord. No. 900, § 2, 9-3-02)

Sec. 46-74. - Records.

The city clerk shall deposit the record of fingerprints of the permittee together with a permit number, with the chief of police. The chief of police shall report to the city clerk and code enforcement officer any complaints against any person permitted under the provisions of this article and any conviction for violation of this article. The city clerk and code enforcement officer shall keep a record of all such permits and of such complaints and violations.

(Code 1986, § 14-30; Ord. No. 900, § 2, 9-3-02)

Sec. 46-75. - Revocation.

The permits issued pursuant to this article may be revoked by the mayor, after notice and hearing, for any of the following causes:

- (1) Any fraud, misrepresentation or false statement contained in the application for permit;
- (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
- (3) Any violation of this article;
- (4) Conviction of the permit holder of any felony or of a misdemeanor involving moral turpitude;
- (5) Conducting the business permitted under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- (6) Any violation of the hours of solicitation (10:00 a.m. to 4:00 p.m.); and
- (7) Any violation by the holder of the permit of any of the ordinances of the city or of any state or federal law.

(Code 1986, § 14-31; Ord. No. 900, § 2, 9-3-02)

Sec. 46-76. - Notice of revocation hearing.

Notice of hearing for revocation of a permit shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his last known address at least five days prior to the date set for the hearing.

(Code 1986, § 14-32; Ord. No. 900, § 2, 9-3-02)

Sec. 46-77. - Appeal.

Any person aggrieved by the decision of the city clerk in regard to the denial of application for permit, or in connection with the revocation of a permit, shall have the right to appeal to the city commission. Such appeal shall be taken by filing with the city commission, within 14 days after notice of the decision by the city clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The city commission shall set the time and place for a hearing on the appeal, and notice of the hearing shall be given to the person in the same manner as provided in this article for notice of hearing on revocation. The order of the city commission on such appeal shall be final.

(Code 1986, § 14-33; Ord. No. 900, § 2, 9-3-02)

Sec. 46-78. - Expiration.

All permits issued under the provisions of this article shall expire 180 days after the date of issuance of such permit, unless a prior date is fixed therein.

(Code 1986, § 14-34; Ord. No. 900, § 2, 9-3-02)

Sec. 46-79. - Prohibitions.

It is unlawful for any individual solicitor, agent or peddler, as defined in this chapter, to:

- (1) Distribute handbills or similar advertising by throwing or placing the same in or upon any automobile or other vehicle in the city.
- (2) Shout, blow a horn, ring a bell, or use any sound device, including any loud-speaking radio or sound amplifying system upon any of the streets, alleys, parks or other public place of the city, or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.
- (3) Sell or offer to sell any goods, wares or merchandise from vehicles while on any public streets or rights-of-way within the city limits, to include sidewalk areas.
- (4) Conduct solicitation among vehicles in traffic.
- (5) Conduct solicitation within 1,000 feet of the property line of a school, publicly operated park or recreational facility within the town.
- (6) Erect any signage in violation of the City of Marianna Sign Ordinance.
- (7) Cause or permit the accumulation of trash, garbage, or debris at the permit site without proper disposal thereof.
- (8) Beg or solicit gifts or money or to exhibit his person for the purpose of obtaining gifts or money.
- (9) Enter the premises of a private residence or commercial property for the purpose of selling or soliciting orders for goods, wares or merchandise, personal services or information, when a "No Solicitors" sign is posted.

- (10) Contact, disturb or annoy, directly or by means, tools or equipment, any other person in the city for the purpose of promoting or selling any real or personal property or any service, except those specifically permitted under valid city licenses or permits.
- (11) Conduct solicitation in areas designated either physically or in a development order issued by the city for public, commercial, industrial, office, or residential parking.
- (12) Conduct solicitation in any manner, which constitutes a danger to the public health, safety or welfare.
- (13) Remain upon any residential, commercial, industrial or office property after the owner or occupant requests the solicitor depart.
- (14) Approach side, back or rear doors on residential, commercial, industrial, office or governmental property within the city.
- (15) Distribute or cause to be distributed any paper, handbill, circular, dodger or other advertising matter on any residential, industrial, governmental or commercial property without the consent of the owner or lessee, or on any of the streets, avenues, parks or other public space within the city, without the consent of the city.
- (16) Obstruct, impede or interfere with the free flow of pedestrian or vehicular traffic.
- (17) Take polls, sale or distribute and request information from motorists upon the public road rights-of-way.
- (18) Operate on property owned by the city.
- (19) Operate within 100 feet of a street or roadway intersection, nor within five feet of a public sidewalk.
- (20) Have any exclusive right to any location in the public streets, alleys, or other public places, nor shall any be permitted a stationary location, nor shall he be permitted to operate in such a way as would restrict or interfere with the ingress and egress of an abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or create an obstruction to adequate access for fire, police or sanitation vehicles. No person shall obstruct the free, convenient, and normal use of any public street, highway or road by impeding, hindering stifling, retarding or restraining traffic or passage thereon, by standing or approaching motor vehicles of a police officer or code enforcement officer exercised in good faith shall be deemed conclusive as to whether the peddling activity constitutes a traffic or pedestrian impediment or hazard or access obstruction. A peddler shall move his location at least 200 feet from the last location occupied before stopping to conduct business and shall not return to the same location until 24 hours has elapsed.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-80. - Exemptions.

Exempt from the provisions of this article are the following persons and activities:

- (1) Garage and yard sales on residential properties within the city.
- (2) Sales operations at city approved fairs, carnivals, bazaars, or like expositions or attractions of a duration of less than seven days sponsored exclusively by, not-for-profit charitable, philanthropic, civic, political, educational or religious organizations.
- (3) Holiday seasonal sales in any business or industrial districts sponsored exclusively by: not-for-profit charitable, philanthropic, civic, political, educational or religious organizations.
- (4) ~~Approved food trucks or mobile food vending units occupying space in a City of Marianna food truck park.~~

Mobile Food Dispensing Vehicle (MFDV) or Hot Dog Carts licensed by the Florida Department of Business & Professional Regulation Division of Hotels and Restaurants occupying space on commercial or industrial zoned private property or in a City of Marianna designated food truck park.

When operating on commercial or industrial zoned private property, the Mobile Food Dispensing Vehicle (MFDV) or Hot Dog Cart must have the following:

- a. a notarized permission form from the property owner; and
- b. an approved application on file with the City of Marianna Public Works Department.

(Ord. No. 900, § 2, 9-3-02; Ord. No. 1106, § 2, 12-1-20)

Sec. 46-81. - Interstate commerce not regulated.

The provisions of this article shall not apply to any sale, act or thing, the regulation or licensing of which would constitute regulation or licensing of interstate commerce.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-82. - Religious institutions.

Nothing in chapter 46 of this Code shall be construed as being applicable to any religious institution organized and operated exclusively for religious purposes and not operated for the pecuniary profit of any person, if the solicitations by such established church or religious society are conducted among the members, thereof by other officers or members voluntarily and without

remuneration for making such solicitation, or if the solicitors are in the form of collections or contributions at the regular assemblies or services of any such established church or religious society.

(Ord. No. 900, § 2, 9-3-02)

Secs. 46-83—46-86. - Reserved.

ARTICLE IV. - DOOR-TO-DOOR SELLING

DIVISION 1. - GENERALLY

Sec. 46-87. - Definition.

Door-to-door selling is defined to mean the practice of going in and upon private residences or private businesses in the incorporated area of Marianna, Florida by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences, for the purpose of soliciting orders for, or for the sale, lease, or rental of consumer goods, wares, merchandise or services. The term door-to-door selling shall also include any transaction in which the seller or a person acting for the seller engages in a personal solicitation of the sale, lease or rental at a place other than at the seller's fixed location business establishment where goods or services are offered or exhibited for sale, lease or rental, and the buyer's agreement or offer to purchase is given to the seller and the sale, lease or rental is consummated at a place other than at the seller's fixed location business establishment.

(Ord. No. 900, § 2, 9-3-02; Ord. No. 906, § 2, 8-5-03)

Sec. 46-88. - Penalty for violation of article.

Any person violating any of the provisions of this article shall upon conviction thereof, be punished as provided in section 1-14 of this Code.

(Ord. No. 900, § 2, 9-3-02)

DIVISION 2. - SOLICITATION PERMIT

Sec. 46-89. - Required.

- (a) It shall be unlawful for any person to engage, on behalf of himself or others, in the business of door-to-door selling without having first obtained a solicitation permit from the office of the city clerk.

(b) The following are excluded from the operation of this article:

- (1) Bona fide agents, business representatives, or salesmen making calls or soliciting orders at the usual place of business of a customer regarding products or services for the use in connection with the customer's business;
- (2) Solicitors, salesmen, or agents making a call or business visit upon the express invitation, oral or written, of an inhabitant of the premises or his agent;
- (3) Telephone solicitors, salesmen, or agents making calls which involve transactions that are unsolicited by the consumer and consummated by telephone and without any other contract between the buyer and the seller or its representative prior to delivery of the goods or performance of the services;
- (4) Solicitors, salesmen, or agents conducting a sale, lease or rental of consumer goods, or services by sample, catalog, or brochure for future delivery;
- (5) Minors or students conducting sales associated with school or youth civic organization fundraisers.
- (6) Minors conducting home solicitation sales under the supervision of an adult supervisor who holds a valid home solicitation sale permit. Minors excluded from operation of this section must, however, carry personal identification which includes their full name, date of birth, residence address, employer, and the name and permit number of their adult supervisor. The city clerk shall issue courtesy identification cards containing that information to minors, upon application; and
- (7) Those sellers or their representatives that currently have an itinerant merchant permit.

(Ord. No. 900, § 2, 9-3-02; Ord. No. 906, § 2, 8-5-03)

Sec. 46-90. - Application, fees and issuance.

- (a) Application for a solicitation permit shall be made to the city clerk on a form provided by the clerk, which shall contain at least the following information:
 - (1) A complete set of fingerprints of the applicant taken by an authorized law enforcement agency;
 - (2) The signature of the applicant;
 - (3) The full name, local residence address and home phone number of the applicant;
 - (4) The permanent residence address of the applicant;
 - (5) The name and address of the applicant's employer and the business phone number;
 - (6) The applicant's sex and race;
 - (7) The applicant's date of birth; and

- (8) A statement as to whether or not the applicant has been convicted of or has pleaded guilty or nolo contendere to any crime, the nature of the offense, and the punishment or penalty assessed thereof.
- (b) Each such application shall be accompanied by a filing fee in the amount of \$50.00 plus all processing fees associated with the background checks from state and federal agencies payable to the city clerk to cover the cost of filing and processing the application, to be retained by the city clerk. The clerk shall submit a copy of the application to the chief of police for fingerprints, photographs, and a criminal background investigation with state and federal agencies. Those agencies shall report any criminal justice information to the clerk within 60 days after receipt of the fingerprints and copy of the application.
- (c) Upon receipt of the application, there will be a waiting period of not more than 60 days, after which the clerk shall issue a home solicitation permit in the form of a laminated identification card, which shall bear the photograph of the permit holder, the permit holder's full name, date of birth, race and sex, the name and address of the permit holder's employer or statement "self-employed," the signature of the permit holder, a permit number, an expiration date, and the telephone number consumers may call to verify validity of the permit. The permit shall be worn by the solicitor in a prominent place for display and identification at all times while engaged in the business of door-to-door selling.

(Ord. No. 900, § 2, 9-3-02; Ord. No. 906, § 2, 8-5-03)

Sec. 46-91. - Duty to enforce.

- (a) It shall be the duty of the police officers and code enforcement officer of the city to examine all places of business and persons in their respective territories, subject to the provisions of this article, to determine if this article has been complied with, and to enforce the provisions of this article against any person found to be violating this article.
- (b) It shall be the duty of any police officer or code enforcement officer of the city to require any person seen conducting door-to-door sales to produce his solicitation permit issued by the city, and to enforce the provisions of this chapter against any person found to be violating the same.
- (c) The city clerk shall not issue a solicitation permit if the chief of police verifies any of the following have occurred:
- (1) The applicant has been convicted of:
- a. A felony involving fraud, deceit or offense involving moral turpitude, unless such conviction occurred at least five years prior to the date of the application, or any offense involving sexual misconduct with minors,

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keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution or pandering, unless such conviction occurred at least five years prior to the date of application; or

- b. An offense involving the use of or threat to use force or violence upon the person of another, unless such conviction occurred at least five years prior to the date of the application.

For the purposes of this subsection, conviction shall include any disposition of a criminal case resulting in the imposition against the applicant of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the applicant has been formally adjudicated guilty;

- (2) The applicant has made any false, misleading, or fraudulent statement of fact or a material omission of fact in the permit application or in any document required by the city in conjunction herewith; or
- (3) The applicant has had a permit or license, similar to the one being applied for, denied, revoked or suspended for any of the above causes by the city or by any other state or local agency within five years prior to the date of application.

A person denied a solicitation permit pursuant to subsections (1) a. and b. of this section may not apply for a license for a period of one year following the denial.

- (d) The city clerk, upon denying an application, shall promptly notify the applicant of the denial and state the particular grounds for such denial.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-92. - Transfer.

Solicitation permits shall not be transferable.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-93. - Records.

The city clerk shall deposit the records of fingerprints of the permittee, together with a permit number, with the chief of police. The chief of police shall report to the city clerk and code enforcement officer any complaints against the person permitted under the provisions of this article and any conviction for violation of this article. The city clerk and the code enforcement officer shall keep a record of all such permits and of such complaints and violations.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-94. - Revocation.

The permits issued pursuant to this article may be revoked by the mayor, after notice and hearing, for any of the following causes:

- (1) Any fraud, misrepresentation or false statement contained in the application for permit;
- (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
- (3) Any violation of this article;
- (4) Conviction of the permittee of any felony or of a misdemeanor involving moral turpitude;
- (5) Conducting the business permitted under this article in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to the health, safety or general welfare of the public;
- (6) Any violation of the hours of solicitation (10:00 a.m. to 4:00 p.m. Monday through Saturday); and
- (7) Any violation by the holder of the permit of any of the ordinances of the city or of any state or federal law.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-95. - Notice of revocation hearing.

Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permittee at his last known address at least five days prior to the date set for the hearing.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-96. - Appeal.

Any person aggrieved by the decision of the city in regard to the denial of application for license, or in connection with the revocation of a license, shall have the right to appeal to the city commission. Such appeal shall be taken by filing with the city commission, within 14 days after notice of the decision by the city clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The city commission shall set the time and place for the hearing on the appeal, and notice of the hearing shall be given to the person in the same manner as provided in this article for notice of hearing for revocation. The order of the city commission on such appeal shall be final.

(Ord. No. 900, § 2, 9-3-02)

Sec. 46-97. - Expiration.

All home solicitation permits under the provision of this article shall expire 180 days after the date of issuance of such permit, unless a prior date is fixed therein.

(Ord. No. 900, § 2, 9-3-02; Ord. No. 906, § 2, 8-5-03)

Sec. 42-68. - Fees established.