

ORDINANCE 2020-11

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF SMYRNA, GEORGIA, BY REPEALING CHAPTER 74 IN ITS ENTITELY AND REPLACING IT WITH A NEW CHAPTER 74 “PEDDLERS AND SOLICITORS” AND FOR ALL OTHER LAWFUL PURPOSES

Sec. 74-1 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:

- a. Licensed solicitor* means any person who has obtained a valid permit as hereinafter provided, which permit is in the possession of the solicitor on his person while engaged in soliciting.
- b. Residence* means every separate living unit occupied for residential purposes by one or more persons contained within any type of building or structure.
- c. Soliciting* means any one or more of the following activities:
 - (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services of any kind, character or description whatever, for any kind of consideration whatsoever;
 - (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or publication; or
 - (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

Sec. 74-2. - Penalties.

Any person violating any of the provisions of this article shall be punished as provided in Section 1-8.

Sec. 74-3. - Permit required.

- (a) It shall be unlawful for any person to engage in the business of soliciting or calling on residences door-to-door without first having obtained a permit in accordance with the provisions contained in this article.

(b) The requirement of subsection (a) of this section is meant to apply to door-to-door solicitations for commercial transactions for profit only. The following are exempt from the requirement:

- (1) Solicitation for religious, charitable, political or other nonprofit purposes.
- (2) Officers or employees of the city, county, state or federal government, or any subdivision thereof, when on official business.

(c) Each person shall at all times while soliciting in the city carry upon his person the permit so issued and the same shall be exhibited by such solicitor whenever he is requested to do so by any police officer or by any person solicited.

(d) Each permit issued shall contain the name of the solicitor, the name and address of the person or association by whom the solicitor is employed or represents, a photograph of the solicitor and a physical description. The solicitor shall make themselves available for photographing and such other investigation as may be required by the city.

(e) The permit shall state the expiration date thereof. In no event shall a permit be valid for more than six months.

(f) The nonrefundable fee for a permit for a six-month period for each solicitor shall be as established by resolution.

Sec. 74-4. - Permit applications.

(a) Application for a permit shall be made upon a form provided by the city. The chief of police shall have applications available on request. The applicant shall truthfully state in full the information requested on the application:

- (1) Name and address of present place of residence and length of residence at such address; also business address if other than present address;
- (2) Addresses of places of residence during the past three years if other than present address;
- (3) Age of the applicant;
- (4) Physical description of the applicant;
- (5) Name and address of the person or association by whom the applicant is employed or represents and the length of time of such employment or representation;
- (6) Name and address of employer during the past three years if other than the present employer;

- (7) Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage;
 - (8) Period of time for which the certificate is applied;
 - (9) Proposed route, including streets to be included on each day, which applicant intends to follow;
 - (10) The date, or approximate date, of the latest previous application for permit under this chapter, if any;
 - (11) Whether the applicant has ever been convicted of a felony, a crime of moral turpitude or any other violation of any state or federal law;
 - (12) Names of magazines, books or journals to be sold;
 - (13) Names of the three most recent communities where the applicant has solicited house-to-house;
 - (14) Proposed method of operation;
 - (15) Description and license plate number of vehicles intended to be operated by the applicant;
 - (16) Signature of applicant; and
 - (17) Social Security number of applicants.
- (b) All statements made by the applicant upon the application or in connection therewith shall be under oath.
- (c) The applicant shall submit to a background investigation by the city police department or designee.
- (d) The chief of police or designee shall cause to be kept in his office an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all permits issued under the provisions of this chapter, and of the denial of applications. Applications for permits shall be numbered in consecutive order as filed, and every permit issued shall be identified with the duplicate number of the application upon which it was issued.

Sec 74-5- Permit Denial

- (a) No permit shall be issued to any person:
- (1) Who has been convicted of a felony or crime of moral turpitude within ten years of the date of the application;

- (2) Who has been convicted of a violation of any of the provisions of this chapter; or
- (3) Whose permit issued hereunder has previously been revoked as herein provided.
- (4) Who has made a false material statement in the application

Should the chief of police or designee deny an application under this article, written notice of the denial shall be provided to the applicant by the chief of police or designee setting forth the reason(s) for the denial, and advise the applicant of the right to appeal said decision to the city council within 30 days of the denial.

Sec. 74-5. - Permit suspension or revocation; hearings.

- (a) Any permit issued hereunder shall be suspended or revoked by the chief of police or designee if the applicant or holder of the permit is convicted of a violation of a felony, crime of moral turpitude or any of the provisions of this article, or otherwise becomes disqualified for the issuance of a permit under the terms of this article.
- (b) Whenever the chief of police or designee determines there is cause to suspend or revoke the permit issued hereunder, the chief of police or designee shall give the permit holder written notice at least 15 days prior to an administrative hearing of the time, place, purpose of the hearing, and a statement of the charge(s) upon which the administrative hearing before the chief of police or designee shall be held in accordance with this section.
- (c) The procedure for administrative hearings heard under this chapter by the chief of police or designee shall be set forth by the chief of police. The chief of police or designee shall reach a decision on the matter before them within ten business days following the close of the hearing and give written notice of said decision. The decision of the chief of police or designee shall be final unless the permit holder files a notice of appeal to the city council within 30 days of receiving notice of said decision.
- (d) The city council shall hear appeals from decisions by the chief of police or designee to deny applications for permits, as well as appeals from decisions by the chief of police or designee to suspend or revoke permits.

(e) Any such appeal to the city council shall be subject to de novo review and shall be in accordance with subsections (e), (f) and (g). A hearing before the city council shall be scheduled within 60 days following the receipt by the chief of police or designee of the applicant or permit holder's notice of appeal.

(f) Applicants or permit holders shall be given written notice of the date, time, and place when the matter at issue will be heard by the city council. The applicant or permit holder shall be afforded the opportunity to be heard and present evidence. Fifteen days' notice shall be deemed reasonable.

(g) The procedure for hearings of the city council or hearing officer under this chapter shall conform to the administrative hearings procedures generally undertaken by the city. Upon close of the public hearing, the city council or hearing officer shall reach a decision on the matter before it, and the decision of the city council or hearing officer shall be final unless the applicant or permit holder applies to the county superior court by filing a petition for writ of certiorari in compliance with all state laws governing such writs.

Sec. 74-6. - Routes.

To the extent practical, each solicitor shall identify the streets and routes which he will follow on each day he is engaged in the business of soliciting. If changes in routes are made, then such changes must be immediately reported to the chief of police's office.

Sec. 74-7. - Prohibitions.

(a) It is unlawful for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined if the occupant of said residence has made it clear, by written sign or otherwise, that solicitors are not invited.

(b) No solicitor may enter the residence of another unless first having been invited to do so by an individual 18 years of age or older occupying the residence.

(c) Any solicitor who has gained entrance to any residence shall immediately and peacefully depart from the premises when requested to do so by the occupant.

(d) It is unlawful for any person, whether licensed under this chapter or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of engaging in soliciting as herein defined, prior to 9:00 a.m. or after 7:30 p.m. on Mondays-Fridays, and prior to 10:00 a.m. or after 6:00 p.m. on Saturdays, Sundays, or any state and/or federal holidays.

PART II

SEVERABILITY - It is hereby declared to be the intention of the Mayor and City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

This ordinance shall take effect on November 1, 2020 and is adopted this 19th day of October, 2020.

(CITY SEAL)

The Honorable Derek Norton
Mayor, City of Smyrna, Georgia

ATTEST:

Heather K. Peacon-Corn
City Clerk, City of Smyrna, Georgia

Approved as to form: _____
Scott A. Cochran, City Attorney