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D. C.



City of Conway, Arkansas
Ordinance No. O-15-67

AN ORDINANCE TO PROTECT AGAINST CRIMINAL ACTIVITY, INCLUDING FRAUD AND BURGLARY, MINIMIZE THE UNWELCOME DISTURBANCE OF CITIZENS AND THE DISRUPTION OF PRIVACY AND TO OTHERWISE PRESERVE THE PUBLIC HEALTH, SAFETY AND WELFARE BY REGULATING, CONTROLLING AND LICENSING DOOR-TO-DOOR SOLICITORS AND PEDDLERS; REPEALING THOSE PORTIONS OF ORDINANCE NO. A-169 IN CONFLICT HEREWITH and NO. O-15-31 IN ITS ENTIRETY; DECLARING AN EMERGENCY; REPEALING ANY OTHER ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

Whereas, the City of Conway, Arkansas (the "City") is authorized and empowered under the provisions of Arkansas Code Annotated § 14-54-103 to regulate and license soliciting persons, hawkers and peddlers, as those terms are commonly applied; and

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

SECTION 1: Definitions.

The following words, terms, and phrases, and their derivations, when used in the Ordinance, shall have the meanings 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 residence without prior specific invitation or appointment from the resident, for the primary purpose of (1) 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 (2) 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 Conway Police Department.
- (d) *City* means the City of Conway, Arkansas.
- (e) *Contributions* mean and include the words alms, money, subscription, property or other donations under the guise of a loan or money or property.
- (f) *Department* means the Conway 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 goods, wares, merchandise or personal property of any nature and offering the same for sale. This definition also includes any person who solicits orders and as a separate transaction makes deliveries to purchasers as

part of the scheme to evade the provisions of this Ordinance. Peddler does NOT include a person who distributes handbills or flyers for a 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 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 or 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 the sale of 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.

(k) *Solicitation* includes all activities ordinarily performed by a solicitor as indicated under paragraph (j) of this Section.

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 Conway, Arkansas, without first obtaining a permit issued by the Conway Police Department; provided, however, that the following are exempted from the provisions of this Section and the 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 such solicitation;

(c) Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable 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 located within the corporate limits of the City of Conway, 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.

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 in this Section.

(b) A permit shall be obtained by a sponsoring person, company or organization for the conduct of any peddling or solicitation activities involving, in whole or in part, a sales force of (1) or more persons under 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 sales 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 of the State of Arkansas Department of Labor, including but not limited to Arkansas Code Annotated § 11-6-101 *et seq.*

SECTION 4. Permit Application.

Every person subject to the provisions of this Ordinance shall file with the Chief of the Conway Police Department a written permit application, on a form to be furnished by the Department, which shall include, or be accompanied by, all of 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;

(b) A brief description of the business or activity to be conducted;

(c) The hours and location for which the right to peddle or solicit is desired;

(d) If employed, the name, address and telephone number of the employer; or 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 agent to act for the employer 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) The complete results of a background check performed by the Arkansas State Police, to include a statewide criminal background check, a nationwide crime index/background check, and a sex offender registry check. The person applying for a permit under this Ordinance is responsible to request the above-described background check directly from the Arkansas State Police and to pay any cost of same.

(g) 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 Ark. Code Ann. § 26-77-102, would exempt the applicant from the licensing requirements of the Ordinance; and

(h) Two (2) photographs of the applicant which shall have been taken within sixty (60) days immediately prior to the date of filing of the application and accurately depicts the applicant. The photographs shall measure 2 inches by 2 inches and show the head and shoulders of the applicant in a clear and distinguishing manner. 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 Department, the applicant shall pay a fee to cover the cost to the City of processing the application, issuing the badge(s) (if applicable) and investigating the facts stated within the application. The fee shall be \$10.00 for each solicitor or peddler or sponsor for Juvenile Peddlers pursuant to Section 3.

SECTION 6. Application Review and Permit Issuance.

(a) Upon receipt of an application, the Chief, or authorized representative, shall review the application as deemed necessary to ensure the protection of the public health, safety and general welfare.

(b) If the Chief finds the application to be satisfactory, the Chief shall endorse his approval on the application and shall deliver the required permit to the applicant.

(c) The permit shall show the name, address and photograph of the permittee, the class of permit issued, the kind of goods or services to be sold or delivered, the date of issuance, and the length of time that the permit shall be in effect. The permit shall also show the permit number and identifying description of any vehicle to be used in carrying on the business for which the permit is issued.

(d) A record of all permits issued shall be maintained by the Department for a period of two (2) years and shall otherwise conform to the City's record retention policies and state law pursuant to Ark. Code Ann. § 14-2-203 *et seq.*

SECTION 7. Denial of Permit.

(a) Upon the Chief's review of the application, the Chief may refuse to issue a permit to the applicant under this Ordinance for any of the following reasons:

- (1) The location and time of solicitation or peddling would endanger the safety and welfare of the solicitors, peddlers or their customers;
- (2) An investigation reveals that the applicant falsified information on the application;
- (3) Any felony or misdemeanor charge is currently pending against the applicant in any jurisdiction.
- (4) The applicant has been convicted of any felony, or any misdemeanor involving theft, a delivery/trafficking a controlled substance, a sexual offense or violence, or has been incarcerated in prison at any time.
- (5) The applicant has been convicted of any crime or violation within the five (5) years preceding the date of application which the Chief determines to make the applicant a risk to the citizens of Conway;
- (6) The applicant fails to provide with his or her application the complete results of a background check conducted by the Arkansas State Police, as described in Section 4, subsection (f) of this Ordinance.
- (6) The applicant has an active arrest warrant or is otherwise a fugitive of justice;

- (7) The applicant is a person against whom a judgment based upon, or conviction for, fraud, deceit or misrepresentation has been entered within the five (5) years immediately preceding the date of application;
- (8) There is no proof as to the authority of the applicant to serve as an agent to the principal;
- (9) The applicant has been denied a permit under this Ordinance within the immediate past year, unless the applicant can and does show to the satisfaction of the Chief that the reasons for such earlier denial no longer exist; or
- (10) The applicant has previously had a permit revoked.

(b) The Chief's disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his application is disapproved not later than fifteen (15) days after receipt of the application and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form, or at the applicant's last known address.

SECTION 8. Permit Expiration.

All permits issued under the provisions of this Ordinance shall expire ninety (90) days from the date of issuance, unless an earlier expiration date is noted on the permit.

SECTION 9. Identification Badges.

(a) At the same time the permit is issued, the Chief shall issue to each permittee a badge, which shall be worn by the permittee in such a way as to be conspicuous at all times while the permittee is soliciting or peddling in the City.

(b) A canvasser, otherwise exempt from the provisions of this Article and Ordinance, may request the issuance of an identification badge from the City for the purpose of assuring City residents of the canvasser's good faith at the same fee detailed in Section 5.

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 any prospective customer or Department employee.

SECTION 11. Transfer Prohibited.

It shall be unlawful for any person other than the permittee to use or wear any permit or badge issued under the provisions of this Ordinance.

SECTION 12. Entry Upon Premises Unlawful.

It shall be unlawful for any person, whether licensed or unlicensed, while conducting the business of a canvasser, peddler, or solicitor, to enter upon any residential premises in the City where the owner, occupant or person legally in charge of the premises has posted, at the entry to the premises, or at the entry to the principal building on the premises in a manner which reasonably conveys notice to a person who enters the premises, a decal or sign bearing the words "No Peddlers," "No Solicitors," "No Trespassing" or words of similar import. Violation of this section does not preclude prosecution under state law for criminal trespass.

SECTION 13. Hours of Solicitation.

No person, while conducting the activities of a peddler or solicitor, whether licensed or unlicensed, shall enter upon any private property, knock on doors or otherwise disturb persons in their residences between the hours of 7:00 p.m. and 8:00 a.m.

SECTION 14. Permit Revocation.

Any permit issued under this Ordinance may be revoked or suspended by the Chief, after notice and hearing, for any of the following reasons:

- (a) Fraud, misrepresentation or false statement contained in the application for a permit;
- (b) Conducting peddling or solicitation activities in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety or general welfare of the public.

SECTION 15. Notice and Hearing.

Notice of a hearing for a revocation of a permit issued under this Ordinance shall be provided in writing and shall set forth specifically the grounds for the proposed revocation and the time and place of the hearing. Notice shall be mailed, postage prepaid, to the permittee at the address shown on the permit application or at the last known address of the permittee.

SECTION 16. Appeals

(a) Any person aggrieved by the action or decision of the Chief to deny, suspend or revoke a permit applied for under the provisions of this Ordinance shall have the right to appeal such action or decision to the Mayor or authorized representative within fifteen (15) days after the notice of the action or decision has been mailed to the person's address as shown on the permit application form, or to his last known address.

(b) An appeal shall be taken by filing with the Chief a written statement setting forth the grounds for the appeal.

(c) The Chief shall transmit the written statement to the Mayor within ten (10) days of its receipt and the Mayor shall set a time and place for a hearing on the appeal.

(d) A hearing shall be set not later than twenty (20) days from the date of receipt of the appellant's written statement.

(e) Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of action or decision.

(f) The decision of the Mayor on the appeal shall be final and binding on all parties concerned.

SECTION 17. Claims of Exemption.

Any person claiming to be legally exempt from the regulations set forth in this Ordinance, or from the payment of an application fee, shall cite to the Chief the statute or other legal authority under which exemption is claimed and shall present to the Chief proof of qualification for such exemption.

SECTION 18. Violations and Penalty.

(a) Violation of any of the provisions of this Ordinance shall be treated as a violation, and shall, upon conviction, be punishable by a fine of Two Hundred Fifty (\$250.00) Dollars.

(b) The penalty for subsequent offenses that occur within twelve (12) months of the prior offense shall be Five Hundred (\$500.00) Dollars.

(c) Each day of a continuing violation of the provisions of this Ordinance may be treated as a separate offense.

SECTION 19. Severability.

The provisions of this Ordinance are declared to be severable. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this Ordinance is declared or adjudged to be invalid or unconstitutional by a court of competent jurisdiction, such decision, declaration or adjudication shall not affect the remaining sections, sentences, clauses, phrases or portions of this Ordinance, but they shall remain in full force and effect; it being the legislative intent that this Ordinance shall remain in effect notwithstanding the validity of any part.

SECTION 20: Repealing Clause.

That all ordinances or resolutions or portions thereof of the City in conflict herewith are hereby repealed to the extent of such conflict, including those portions of Ordinance No. A-169 in conflict herewith and No. O-15-31 in its entirety.

SECTION 21: Effective Date of Ordinance.

That this ordinance is necessary for the protection of the peace, health and safety of the citizens of Conway, especially with peddlers having the ability to apply for permits at any time, and therefore, an emergency is declared to exist, and this ordinance shall go into effect from and after its passage and approval.

Passed on this 26th day of May 2015.

Approved:



Mayor Tab Townsell

Attest:



Michael O. Garrett
City Clerk/Treasurer

