

## Chapter 40 - PEDDLERS, SOLICITORS AND MOBILE VENDORS<sup>11</sup>

### Footnotes:

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**State Law reference**— Authority to license, tax, suppress or otherwise regulate hawkers and peddlers, V.T.C.A., Local Government Code § 215.031; cancellation of certain home solicited consumer transactions, V.T.C.A., Business and Commerce Code § 601.001 et seq.; certain peddlers regarded as retailers for purposes of sales and use taxes, V.T.C.A., Tax Code § 151.024.

### ARTICLE I. - IN GENERAL

#### Sec. 40-1. - Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*Interstate commerce* means soliciting, selling or taking orders for or offering to take orders for any goods, wares, merchandise, photographs, magazines, or subscriptions to magazines, which, at the time the order is taken, are in or will be produced in any federal district or territory, any commonwealth, or any state other than this state, and shipped or introduced into this city, and the fulfilling of those orders.

*Solicitor, peddler, itinerant merchant, or itinerant vendor* means any person, firm, company, partnership, corporation or association engaged in any activity mentioned in this chapter.

(Prior Code, § 8-77; Code 2004, § 112.15; Ord. No. 14-34; Ord. No. 19-73)

#### Sec. 40-2. - Violations.

Failure to comply with this chapter is declared as an offense or misdemeanor against the city.

(Prior Code, § 8-86; Code 2004, § 112.23; Ord. No. 14-34; Ord. No. 19-73)

Secs. 40-3—40-22. - Reserved.

### ARTICLE II. - SOLICITORS

#### DIVISION 1. - GENERALLY

#### Sec. 40-23. - Purpose.

This entire article is an exercise of the police power of the city for the public safety, comfort, convenience and protection of the city and its citizens, and all of the provisions hereof shall be construed for the accomplishment of that purpose.

(Prior Code, § 8-78; Code 2004, § 112.16; Ord. No. 14-34; Ord. No. 19-73)

Secs. 40-24—40-49. - Reserved.

#### DIVISION 2. - EXEMPTIONS

Sec. 40-50. - Sales to dealers or by authority of law.

The provisions of this article shall not apply to sales made to dealers by commercial travelers or sales agents in the usual course of business, nor to sales made under authority and by order of law.

(Prior Code, § 8-79; Code 2004, § 112.17(A); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-51. - Charitable, philanthropic and nonprofit organizations.

The provisions of this article shall not apply to any church, charitable or philanthropic organization, or any nonprofit organization, nor shall this article apply to the selling or taking of orders for sales of newspapers.

(Prior Code, § 8-81; Code 2004, § 112.17(C)(1); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-52. - Persons engaged in interstate commerce exempt from licensure; registration required.

The provisions of this article to licenses and license fees shall not apply to persons engaged in interstate commerce; provided, however, that it shall be unlawful for persons engaged in interstate commerce to go from house to house or place to place in the city without having first registered with the city secretary in the manner provided in this article.

(Prior Code, § 8-81; Code 2004, § 112.17(B)(1); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-53. - Application for exemption.

Any organization applying for an exemption from this article under this division shall provide the city with the following information, and the application shall be sworn to by the applicant and shall be filed at least three working days prior to the proposed solicitation:

- (1) The full name of the organization applying for permit to solicit and the address of the headquarters in the city; if the organization is a chapter or other affiliate of an organization having its principal office outside the city, the name and address of the parent organization;
- (2) The names and addresses of all officers and directors or trustees of the organization and the name and city of residence of all officers, directors, or trustees of the parent organization, if any;
- (3) The purpose for which the gross receipts derived from the solicitations or other activities are to be used;
- (4) The name of the person by whom the receipts of the solicitations shall be disbursed; if the receipts are to be transmitted to a parent organization for further disbursement, detailed information of method of handling disbursement of all funds and a detailed and complete financial statement of the parent organization for the last preceding year;
- (5) The name and address of the person who will be in charge of conducting the charitable solicitation campaign;
- (6) An outline of the method to be used in conducting the solicitation campaign;
- (7) The period within which the charitable, educational, or philanthropic solicitation campaign shall be conducted, including the proposed dates and the beginning and ending of the campaign;
- (8) The total amount of funds proposed to be waived;
- (9) The amount of all salaries, wages, fees, commissions, expenses, and costs to be expended or to be paid by anyone in connection with the campaign, together with the method in which those wages, fees, commissions, expenses, and costs are to be expended, and the maximum percentage of funds collected which are to be used to pay for the purposes of solicitation and collection;

- (10) A detailed and complete statement of the funds, if any, collected by the applicant during the preceding year from solicitations or other activities; and
- (11) A full statement of the character and extent of the charitable, education, patriotic, or philanthropic work done by the applicant within the city during the last preceding year. If the organization is a charitable organization or other organization, proof of its current status as an organization to which contributions are tax deductible for federal income tax purposes.

(Prior Code, § 8-81; Code 2004, § 112.17(C)(2); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-54. - Fees.

A fee in the amount provided in the city fee schedule must be submitted with the application for exemption. If the applicant can prove indigence or inability to pay, then other arrangements may be made upon recommendation by the chief of police of the city and approved by the city manager.

(Prior Code, § 8-81; Code 2004, § 112.17(C)(3); Ord. No. 14-34; Ord. No. 19-73)

Secs. 40-55—40-81. - Reserved.

DIVISION 3. - REGISTRATION

Sec. 40-82. - Application fee.

Solicitors exempted from licensure but required to register shall file an application with the city secretary, on a form provided by him, together with the fee provided in the city fee schedule.

Sec. 40-83. - Contents.

The application for registration shall include the following information:

- (1) The name, home address and local address, if any, of registrant;
- (2) The name and address of the person, if any, that he represents or for whom or through whom orders are to be solicited or cleared;
- (3) The nature of the articles or things which are to be sold or for which orders are to be solicited;
- (4) Whether the registrant, upon any sale or order, shall demand, receive, or accept payment or deposit of money in advance of final delivery;
- (5) The period of time which the registrant wishes to solicit or sell in the city;
- (6) Any outline and method to be used in conducting the solicitations;
- (7) The names of other communities in which the applicant has worked as a solicitor or canvasser in the past 12 months;
- (8) If he was employed by a different company in other communities, the name of those companies shall also be stated;
- (9) If the applicant is a corporation, or if the individual is employed by a corporation, the date and place of incorporation; and
- (10) A physical description of the applicant which includes race, sex, height, weight, hair and eye color, date of birth, driver's license number, and the name of the state issuing the driver's license.

(Prior Code, § 8-80; Code 2004, § 112.17(B)(1)(a)—(j); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-84. - Proof of identification required.

The registrant at the time of the registration shall submit for inspection by the city secretary written proof of his identity which may be in the form of an automobile operator's license, identification letter or card issued to the registrant by the person for whom, or through whom, orders are to be solicited or cleared.

(Prior Code, § 8-80; Code 2004, § 112.17(B)(2); Ord. No. 14-34; Ord. No. 19-73)

Secs. 40-85—40-111. - Reserved.

#### DIVISION 4. - LICENSES

Sec. 40-112. - Required; exception.

It shall be unlawful for any person to go from house to house or from place to place in the city soliciting, selling, or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, magazines or subscriptions to magazines, without having first applied for and obtained a license to do so from the city secretary. It shall be unlawful to sell or solicit in the city, as aforementioned, without carrying that license while engaged in that soliciting or selling.

(Prior Code, § 8-84; Code 2004, § 112.20; Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-113. - Application.

Any person desiring to go from house to house or from place to place in the city to sell or solicit orders for goods, wares, merchandise, services, photographs, magazines or subscriptions to magazines shall make written application to the city secretary for a license to do so, which application shall show:

- (1) The name and address of the applicant;
- (2) The name and address of the person, if any, that he represents;
- (3) The kind of goods offered for sale;
- (4) The period of time the applicant wishes to sell or solicit in the city; and
- (5) Whether the applicant upon any sale or order shall demand, accept, or receive payment or deposit of money in advance of final delivery.

(Prior Code, § 8-85; Code 2004, § 112.21(A); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-114. - Fees.

- (a) A license for a solicitor, a peddler, an itinerant merchant or an itinerant vendor shall be available for an annual or daily period for the fee specified in the city fee schedule.
- (b) In the event the annual fee is paid, a license shall be issued that shall be valid for one year from the date of its issuance. However, when any annual license is issued, the licensee shall notify the city secretary each day that the licensee is engaged in any activity requiring licensure pursuant to this article, and the licensee shall register with the city secretary.
- (c) Upon payment of the daily license fee, a daily license shall be issued that shall be valid for one day.
- (d) The fees provided for in this section shall be used for the purpose of defraying expenses incident to the issuing of the licenses.

- (e) Each individual working for a solicitor, peddler, itinerant merchant, or itinerant vendor shall have a separate permit and shall be charged a separate fee.

(Prior Code, § 8-86; Code 2004, § 112.21(B)(1)—(3); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-115. - Bond.

- (a) If the application for a license shows that the applicant shall receive, demand, or accept final payment or deposit of money in advance of final delivery of goods, wares, merchandise, services, or anything of value sold, then the application shall be accompanied by a bond in the penal sum of \$2,500.00, executed by the applicant as principal and a surety company licensed to do business as such in the state.
- (b) This bond shall be conditioned upon making of final delivery of the goods, wares, merchandise, services, or anything of value in accordance with the terms of the order obtained in which bond shall be used for the benefit of all persons, firms, or corporations who may pay in advance or make any advance deposit on the purchase of the orders, and the bond shall so stipulate in its terms.

(Prior Code, § 8-86; Code 2004, § 112.21(B)(6); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-116. - Use of motor vehicle; liability insurance.

If the solicitor or peddler operates from a motor vehicle and conducts sales from the motor vehicle, then, in addition to the information required in the application in section 40-113, he shall furnish, with his application to the city, proof of appropriate liability insurance coverage on that vehicle in an amount not less than \$10,000.00 per accident. Evidence of liability insurance shall be approved by the city attorney, covering the operation of that business in minimum amounts of:

- (1) \$25,000.00 for injury to each person;
- (2) \$50,000.00 personal injury liability for each accident; and
- (3) \$5,000.00 property damage.

(Prior Code, § 8-86; Code 2004, § 112.21(B)(6); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-117. - Revocation.

- (a) In addition to any other applicable penalty, a license issued under this section may be revoked by the city secretary or his designee for any of the following reasons:
  - (1) Fraud, misrepresentation or false statement contained in the application for the license.
  - (2) Fraud, misrepresentation or false statement made by the licensee in the course of carrying on activities as a vendor, peddler or solicitor.
  - (3) Any violation of this chapter by the licensee.
  - (4) Conviction of the licensee of any crime or misdemeanor involving moral turpitude.
  - (5) Violation of any applicable provision of state law including the failure to pay and required state or local tax.
  - (6) Conducting any activity for which the licensee shall be authorized under this chapter in an unlawful manner, or in a manner as to constitute a breach of the peace, or to constitute a menace to the health, safety or general welfare of the city.

- (b) The city secretary or his designee shall give notice in writing of the revocation of a license under this section. Such notice shall be presumed to be given when mailed postage prepaid, to the licensee at the address appearing on the application.

Sec. 40-118. - Appeals.

The licensee or applicant may appeal denial of issuance or revocation of a license under this article to the city council by submitting a letter to the city manager's office within ten days of the action complained of. A hearing on the denial will be scheduled for the next regular meeting of the council, or a special meeting of the council to be held within 15 days of the appeal. The council will render a decision on the appeal within ten days of the hearing.

(Prior Code, § 8-86; Code 2004, § 112.22; Ord. No. 14-34; Ord. No. 19-73)

Secs. 40-119—40-149. - Reserved.

DIVISION 5. - REGULATIONS

Sec. 40-150. - Display of license.

The license or permit, if issued, shall be prominently displayed by the solicitor, peddler or like persons, at the time of contact with the customer and shall be worn on the exterior clothing of the solicitor.

(Prior Code, § 8-86; Code 2004, § 112.21(B)(4); Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-151. - Private premises.

It shall be unlawful for any person to go in and upon the premises of a private residence in the city, unless requested or invited to do so by the owner or occupant of that private residence, for the purpose of soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, magazines or subscriptions to magazines.

(Prior Code, § 8-82; Code 2004, § 112.18; Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-152. - Hours.

It shall be unlawful for any person to go from house to house or from place to place in the city soliciting, selling, or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, magazines or subscriptions to magazines, except during the hours from 8:00 a.m. until 6:00 p.m. CST, or until 7:00 p.m. CDT, as the case may be.

(Prior Code, § 8-83; Code 2004, § 112.19; Ord. No. 14-34; Ord. No. 19-73)

Sec. 40-153. - Noise restrictions.

No licensee under this article, nor anyone in his behalf, shall shout, make any outcry, blow a horn, ring a bell, or use any other sound device including any loudspeaking radio or amplifying system upon any of the streets, alleys, parks, or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom 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 that the licensee proposes to sell.