

AGENDA REQUEST

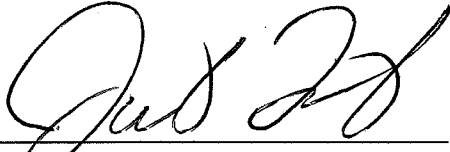
FOR: COUNCIL MEETING OF June 18, 2013

**FROM:
ALDERMAN JUSTIN TENNANT**

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance to enact §116.02 Door to door solicitation at private residences of the Fayetteville Code

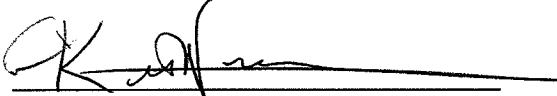
APPROVED FOR AGENDA:



Alderman Justin Tennant

6-4-2013

Date



City Attorney Kit Williams

May 24, 2013

Date

ORDINANCE NO. _____

AN ORDINANCE TO ENACT §116.02 DOOR TO DOOR SOLICITATION REGULATIONS FOR PRIVATE RESIDENCES INTO THE FAYETTEVILLE CODE

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 Fayetteville should be regulated to ensure these vendors have proper identification, will abide by all restrictions as to the when and where such vending will be allowed and will not bother citizens who have registered with the City of Fayetteville that they do not wish commercial vendors to come to their residence; 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 as long as they do not seek nor accept money, pledges or donations.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby enacts § 116.02 **Door to door solicitation at private residences** of the Fayetteville code as shown in Exhibit A attached hereto and made a part hereof.

PASSED and APPROVED this 18th day of June, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, MAYOR

By: _____
SONDRA E. SMITH, City Clerk

Exhibit A

116.02 – Door to door solicitation at private residences.

(A) *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.

- (5) *Principal* means the person or other legal entity whose goods, merchandise, personal property or services are being peddled or solicited.

(B) *Obtaining “no soliciting/no peddling” decal or sign.* The Planning Department shall provide any resident of the city a decal which reads, “no soliciting/no peddling.” This decal may be posted at the front of the 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. A resident may also post a “no soliciting” sign pursuant to §116.01.

(C) *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 \$40.00, and shall be paid to the business 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. In addition to the principal’s permit, the principal must also comply with the city’s business license requirement pursuant to Chapter 118: **Business Registry and License** of the Fayetteville Code. 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 in the city.

(D) *Permit for peddlers/solicitors.* In addition to the principal permit, each peddler or solicitor acting for the principal shall also obtain a permit from the Planning Department before peddling or soliciting within the city. The cost to obtain a peddler/solicitor permit is \$5.00. In applying for the permit, each applicant shall provide the following to the Planning Department:

- (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 from the Arkansas State Police which shows

that peddler or solicitor has not been convicted of any felonies, or any misdemeanors involving theft, sexual offenses or violence. No person shall be issued a permit as a peddler or solicitor that has been convicted of any of the offenses set out herein.

(E) *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 Planning Department, 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 entry 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 between the hours of 7:00 p.m. and 10:00 a.m. during regular standard time, and between the hours of 8:00 p.m. and 10:00

a.m. during daylight savings time;

(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.

(F) *Penalty.* Any violation of this section shall be deemed a nuisance and punishable by a fine as provided by §10.99 of the Fayetteville Code.

(G) *Exemptions.* Officers or employees of the City, County, State or Federal government, or any subdivision thereof shall be exempt for the requirements of this section when on official business.

(H) *Free permits for nonprofit corporations not seeking donations.*

(1) After supplying adequate proof to the Planning Department that the nonprofit charitable organization is a charity with a current §501 (c)(3) IRS exception, the Planning Department 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 for donations are made and no donations accepted.

(I) *Permits waived for political and religious free speech and for Girl Scouts.*

(1) Although everyone going door to door must respect and not go to the door of a citizen who has personally posted a "no solicitation" type sign, may only go door to door during the daytime/evening hours allowed in (E)(3), and must conform to the requirements of (E)(4), (E)(6), (E)(8), persons exercising their First Amendment political or religious free speech rights are otherwise exempted from this section.

(2) The Girl Scouts of America must abide by the restrictions found in (E)(2)(3)(4) and (8) but are otherwise exempt from the remainder of this section during their Girl Scout cookie door to door sale drive as long as they have on their Girl Scout uniforms or other proper identification as Girl Scouts.

(J) *Revocation of permit.* Any permit issued pursuant to the provision of this section may be suspended or revoked for good

cause by the Director of Development Services. Good cause for such suspension or revocation shall include any violation of this section, or any other reason for suspensions or revocation as set out in §118.03 of the Fayetteville Code and said violations are hereby incorporated herein by reference. The procedure for suspension or revocation under this section shall be the same procedure as set out in §118.03 of the Fayetteville Code and said procedure is hereby incorporated herein by reference.

FAYETTEVILLE CODE OF ORDINANCES
TITLE XI BUSINESS REGULATIONS

CHAPTER 116: DOOR TO DOOR SOLICITATION

**116.01 Going Upon Private Residential
Property**

- (A) 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 thereof 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.
- (B) The provisions of this section shall not apply to the sale or soliciting of orders for the sale of fruits, vegetables, or other products of the farm, including meat from domestic animals or livestock, so far as the sale of such commodities is authorized by law.

(Code 1965, §13-10; Ord. No. 1390, 4-13-64; Ord. No. 1987, 2-15-74; Code 1991, §116.01)

Cross reference(s)--Vending and peddling in parks, §97.086; Soliciting from public roadways or sidewalks prohibited, §74.05; Advertising, Ch. 110; Penalty, §10.99; State law ref.: Transient Vendors §14-54-1407.

116.02–116.99 Reserved

