



Legislation Text

File #: 2015-0204, Version: 1

AMEND §116.02 DOOR TO DOOR SOLICITATION

AN ORDINANCE AMENDING §116.02 DOOR TO DOOR SOLICITATION AT PRIVATE RESIDENCES (D)(4) OF THE FAYETTEVILLE CODE IN ORDER TO PROVIDE AN IMPROVED AND EXPEDITED BACKGROUND CHECK PROCESS FOR APPLICANTS AND TO DECLARE AN EMERGENCY

WHEREAS, the City of Fayetteville requires permits and Arkansas State Police background checks for all door to door solicitors operating within the city limits; and

WHEREAS, the current background check process can take an inordinate amount of time to receive results and is not nationally comprehensive.

NOW THEREFORE, 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 amends §116.02 (D)(4) of the Fayetteville Code by repealing the existing language and replacing it with the following subsections (4) and (5) that an applicant must supply to the City as part of the permit process:

“(4) A statewide criminal background check and a nationwide crime index/background check, including sex offender registry, which shows that a peddler or solicitor has not, within the preceding five years, been convicted of any felonies, or any misdemeanors involving theft, sexual offense or violence, nor has been incarcerated in prison at any time during the last five years. No person shall be issued a permit as a peddler or solicitor that has been convicted of any of the offenses set out above nor in prison during the last five years.

(5) For international students or other persons without United States Citizenship and working with a valid visa or other government-issued identification, a copy of the visa or other valid documentation and a nationwide crime index/background check meeting the criteria in subsection (4) above shall be submitted.”

Section 2: Emergency Clause. That the City Council of the City of Fayetteville, Arkansas, in an effort to expand the criminal background check for door to door sollicitors nationwide and better ensure the protection and safety of Fayetteville citizens, hereby declares this ordinance, being necessary to preserve the public welfare and safety, must be effective immediately, and therefore declares an emergency exists so that this ordinance shall be in full force and effect from the date of its passage and approval.

City of Fayetteville Staff Review Form

2015-0204

Legistar File ID

5/5/2015

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Jeremy Pate

4/17/2015

Development Services /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of an ordinance amending the Fayetteville Code of Ordinances, Title XI Business Regulations, Chapter 116 Door to Door Solicitation, in order to provide an improved and expedited background check process for applicants.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>No</u>	Item Cost
Budget Adjustment Attached? <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF MAY 05, 2015

TO: Mayor Jordan, Fayetteville City Council

THRU: Don Marr, Chief of Staff

FROM: Jeremy Pate, Development Services Director 

DATE: April 14, 2015

SUBJECT: Door to Door Solicitor Ordinance – Background Checks

RECOMMENDATION:

Staff recommends approval of an ordinance amending the Fayetteville Code of Ordinances, Title XI Business Regulations, Chapter 116 Door to Door Solicitation, in order to provide an improved and expedited background check process for applicants.

BACKGROUND:

In 2013, the City Council passed an ordinance (No. 5593) sponsored by Alderman Tennant that created an annual permit process for door to door solicitors/peddlers. The ordinance requires a principal permit for the business or company performing the solicitation of a service or product sales, and each individual person acting as a door to door solicitor must also register with the City, providing a background check, identification and other documentation.

Both the Chamber of Commerce and City were contacted last summer and the City again this spring by local businesses concerned in their attempts to obtain a solicitation permit in a time-efficient manner. Many employed as door to door solicitors are college-aged students working during the summer months, and a quick turn-around is important for both the employer and the potential employee. The ordinance currently requires in §116.02(D)(4) a criminal background check “from the Arkansas State Police” and if the applicant’s driver’s license is from another state, we also require one from that state’s State Police. Staff sees a few issues with this requirement that we propose to change:

- 1) It takes 2-3 weeks for the Arkansas State Police to process and get a background check back to an applicant, at a minimum. Alternatively, local companies that conduct formal background checks can turn around the same background check in roughly 24 hours, using the same database. However, these companies go through the State Court Administrator’s online database system, instead of through the State Police. I spoke with Courthouse Concepts, a local business that the City utilizes for background checks, and they indicated they are using the same exact information. They rarely go through the State Police office, because of the time it takes. Changing the ordinance language to simply require a “statewide background check” I believe would resolve this issue and provide the same level of confidence in the validity of the background check. Two to three weeks can be a long time for a college student working through the summer, and

on more than one occasion a business has lost potential good summer employees because they needed to be making money and instead moved on to another job.

- 2) Someone from out of state also requires a background check in the state that issued their driver's license. Presumably this is to ensure that the out-of-state solicitor does not have any legal issues that could pose a threat to our citizens in their door-to-door solicitation. However, if that person committed a felony, sexual assault, misdemeanor involving theft or other crime that would disqualify them from obtaining a Fayetteville permit and it happened in an entirely different state, the City of Fayetteville would never catch it because we only check the current license of the state in which it was issued. I would recommend that instead we change the language to require a "nationwide crime index/background check", so that each person's name is run through a nationwide search, including the sex offender registry. This is a safety issue for our citizens. Again, Courthouse Concepts often conducts these types of searches. They report it takes a minimal amount of time and is much more inclusive than just checking the state where a driver's license is issued.
- 3) Finally, several of the solicitation permits we have seen are from international students in Fayetteville on a student visa. They cannot get a background check, because they don't have a state-issued id. Rather, we should address this with the nationwide background check and/or copy of a valid visa, which can be verified to reflect if any crimes have been committed by the individual.

DISCUSSION:

Staff has discussed this proposal with Alderman Tennant, the original sponsor of Ord. No. 5593, and he indicated he was supportive of us bringing it forward for consideration. Staff would also request that if appropriate and legal, an emergency clause be enacted for the ordinance to go into effect immediately, as it positively impacts the safety and well-being of our citizens in the coming spring/summer solicitation season by achieving a more comprehensive background check on door to door solicitors that will be knocking on doors and speaking with citizens throughout our community.

BUDGET/STAFF IMPACT: N/A

ORDINANCE NO. 5593

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 and will abide by all restrictions as to the when and where such vending will be allowed; 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.

NOW, THEREFORE, 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 2nd day of July, 2013.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer



TITLE XI BUSINESS REGULATIONS
CHAPTER 116: DOOR TO DOOR SOLICITATION

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FAYETTEVILLE CODE OF ORDINANCES
TITLE XI BUSINESS REGULATIONS

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 – Door to Door Solicitation at Private Residence

- (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. A representative or employee of a newspaper of general circulation in Fayetteville may leave a sample current copy of the newspaper with subscription information near the door of a private residence without being a "solicitor" as long as the representative/employee makes no efforts at that time to contact or speak with the resident.
- (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;

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- (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 and from the State Police of the State which issued the Driver's License of the applicant which shows that peddler or solicitor has not, within the preceding five years, been convicted of any felonies, or any misdemeanors involving theft, sexual offense or violence, nor has been incarcerated in prison at any time during the last five years. No person shall be issued a permit as a peddler or solicitor that has been convicted of any of the offenses set out above nor in prison during the last five years.
- (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 Development, 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 9:00 p.m. and 10:00 a.m.;
- (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.*
- 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 Fayetteville children through high school senior status.*
- (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),

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(E)(6), (E)(8), persons exercising their First Amendment political or religious free speech rights are otherwise exempted from this section.

(2) Fayetteville children through high school senior status must abide by the restrictions found in (E)(2)(3)(4) and (8) but are otherwise exempt from the remainder of this section.

(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.

(Ord. 5593, 07-02-13)

116.03–116.99 Reserved