

CITY OF BATESVILLE ARKANSAS
ORDINANCE NO. 2013-0502

**AN ORDINANCE REGULATING THE OPERATION OF PERSON TO PERSON
SOLICITORS WITHIN THE CITY OF BATESVILLE, ARKANSAS**

Whereas, the business of person to person direct solicitation, otherwise known as door to door sales, in the city limits of Batesville, Arkansas, is not currently regulated; and

Whereas, it is necessary to implement regulations to ensure said solicitation is undertaken in an orderly fashion and with due regard to the sanctity of private property as well as the privacy of the citizens of Batesville, Arkansas.

NOW, THEREFORE be it ordained by the City Council of the City of Batesville, Arkansas, that Title 4 of the Batesville Municipal Code concerning Business Licenses and Regulations is amended as follows:

“Section 4.29 Solicitors

Section 4.29.01 - Definitions

Solicitor means anyone who offers to sell services or merchandise or who offers to provide promotional or other materials designed to sell services or merchandise at that time or in the future of any kind to another person in the city by direct solicitation by way of person to person contact upon a private residence whether or not the person solicited is actually the occupant of such residence, or anyone who transports those persons, or acts as a supervisor for those persons within the city limits of Batesville. The following are specific provisions and exceptions to this definition:

1. No person who is invited upon residential property by the occupant shall be considered a solicitor so long as any solicitation made is pursuant to such invitation and provided that the occupant of such residence may cancel the invitation at any time.

2. The mere delivery of goods or services to a resident shall not be considered solicitation if the delivery was at the prior invitation of the occupant of the residence or if the person making such delivery is not doing so for the purposes of solicitation but merely to make deliveries of services, goods or other things for which delivery has been arranged at a previous time.

3. No person who does not personally contact an occupant of a residence shall be considered a solicitor, and specifically, solicitation by handbill, leaflet or otherwise which does not involve personal contact with the occupant shall not be considered soliciting.

Section 4.29.02 - Penalty

(a) No solicitor shall operate in the city without first obtaining the required permit and paying any required permit fee and posting any required bond, and any person violating the terms and provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall have a permit or privilege revoked for a period of time not greater than one year and in addition may be sentenced to:

1. A term of imprisonment for not more than one year;
2. Pay a fine of not more than \$1,000.00; or

3. Be sentenced to both such imprisonment and fine.
- (b) Each solicitor in violation of this article shall be deemed a separate offence.
 - (c) A permit issued to a solicitor charged with a violation of this article may be suspended while charges are pending hereunder.

Section 4.29.03 - Penalty for violation of bond requirement

- (a) No solicitor required to post a bond shall operate in the city without first submitting and obtaining approval of such bond, and any person violating this requirement shall be deemed guilty of a misdemeanor and upon conviction in the municipal court may:
 1. Have his permit or privilege revoked for a period of time not greater than one year.
 2. Be sentenced to pay a fine of not more than \$1,000.00 or;
 3. Both have his permit revoked for a period of time not greater than one year and be required to pay a fine of not more than \$1,000.00.
- (b) Each solicitor in violation of this article shall be deemed a separate offense.
- (c) A permit issued to a solicitor charged with a violation of this article may be suspended while charges are pending hereunder.

Section 4.29.04 - Enforcement

The Independence County Sheriff's Department and the department of code enforcement are charged with enforcement of this article.

Section 4.29.05 - Permit required

- (a) Every solicitor shall be required to obtain a permit from the city clerk during normal business hours, excepting all city holidays, prior to being allowed to solicit business within the city. The city clerk may require a criminal background check for each person operating as a solicitor or pursuant to a solicitor's permit issued to a corporation, partnership, association or entity hereunder, and the city clerk may charge an appropriate and reasonable fee as reimbursement to the city for the performance of said background checks. The city clerk shall refuse a permit to anyone presenting a criminal history and particularly a criminal history involving violent offenses, including, but not limited to, homicide, rape, assault, battery, or kidnapping, or property offenses including, but not limited to, theft, fraud, or forgery.
- (b) Solicitors living within the corporate boundaries of the city shall be exempt from payment of the fee for the permit.
- (c) No fee or bond shall be required for the issuance of a permit to a nonprofit organization pursuant to the terms of this article.

- (d) Solicitors under the age of 18 are exempt from the provisions of this article unless the solicitor is acting as an agent or employee of a person or organization which would otherwise be required to obtain a permit and post a bond pursuant to the terms of this article.

Section 4.29.06 - Bond Requirement

Every solicitor who has no regular place of business or property situated within the city shall enter into a bond with good and sufficient surety payable to the city for the use and benefit of any person damaged by breach of the permit, to insure performance of services, delivery of merchandise and proper application of moneys received.

Section 4.29.07 - Fee

The fee for a permit required in this article shall be five hundred dollars (\$500.00) for any corporation, partnership, association or entity which is not a natural person, and any member of such entity may utilize the permit. The permit fee for natural persons shall be fifty dollars (\$50.00). Any permit issued shall be good until December 31 of the year of issue or until suspended or revoked as provided in this article.

Section 4.29.08 - Bond

Good and sufficient surety for a bond shall be made in the amount of \$1,000.00 for each solicitor required to submit such bonds pursuant to the requirements of Batesville Municipal Code § 4.29.06. In the case of a corporation,

partnership, association or entity, good and sufficient surety for a bond shall be made in the amount of \$1,000.00 per person acting as a solicitor on behalf of the corporation, partnership, association, or entity, and may be submitted in an aggregate amount. Such bond(s) shall be submitted to the city clerk who shall approve the bond(s) if it is good and sufficient to secure the payment of \$1,000.00 upon breach of performance of services, delivery of merchandise or proper application of moneys received.

Section 4.29.09 - Exception to Fee and Bond Requirement

Exception to fee and bond requirements for nonprofit organizations.

Although required to obtain a permit unless otherwise exempted, excluded or excepted in this article, no member or representative of a nonprofit organization shall be required to pay any fee for the permit or post any bond if such nonprofit organization would qualify as a charitable organization for contribution purposes as defined in 26 USC 170(c). The city clerk shall have the discretion to require proof of qualification of such entity as charitable nonprofit organization or proof of an individual's affiliation with the organization prior to issuing a free permit.

Section 4.29.10 - Remedy

A person damaged by a breach of the bond provided for in this article is entitled, pursuant to a court order, to recover on the bond the amount of his damages proved, plus costs in a civil action in any court having jurisdiction, but this section in no way limits any other remedies which such person may have.

Section 4.29.11 - Carrying Permit Required; Time Restriction

- (a) Each solicitor must carry his permit on his person while soliciting, or in the case of a corporation, partnership, association or entity, the representative of that entity must carry a copy of the permit of the entity on his person, and failure of a solicitor or his representative to comply with this requirement may result in suspension or revocation of the permit or the right of a particular representative to use his entity's permit. All permits issued must state on the permit that the permit is required to be carried while solicitation is conducted.
- (b) There shall be no solicitation, as that term is defined herein, during the late evening and early morning hours. Solicitation shall be allowed between the hours of 9:00 a.m. and 7:00 p.m. local time.
- (c) A violation of this section shall be deemed a violation of the chapter and is subject to penalties expressed herein.

Section 4.29.12 - Appeal


- (a) Any decision of the city clerk to deny the issuance of a permit pursuant to this article may be appealed in writing to the city council, which shall hear and decide the appeal within 30 days of the filing of the appeal with the clerk.



(b) Any citation issued pursuant to this article shall be filed in district court or in a court of competent jurisdiction. Any appeal of the decision thereof shall be according to Arkansas law."

PASSED AND APPROVED on this 28 day of May, 2013.

APPROVED: 
RICK ELUMBAUGH, MAYOR

ATTEST: 
DENISE JOHNSTON, CLERK