

ORDINANCE NO. 08-13-307

ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF STOCKBRIDGE, GEORGIA RELATING TO PEDDLERS, SOLICITATION, AND DOOR TO DOOR SALES SO AS TO PROVIDE FOR COMPREHENSIVE REGULATION OF SUCH COMMERCIAL ACTIVITY; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

THE COUNCIL OF THE CITY OF STOCKBRIDGE HEREBY ORDAINS:

SECTION 1. Ordinance. That Title 9, Chapter 9.12 of the current Stockbridge Code be deleted in its entirety, and a new Title 9, Chapter 9.12 be added to the Code of Ordinances, City of Stockbridge, Georgia, so as to read as follows:

9.12.010 - Definitions; permit required.

- (a) For the purposes of this article, "solicitation" shall mean the act of going door-to-door or house-to-house in the residential areas of the city and engaging in any type of selling, seeking donations, or any other business, occupation or vocation which involves any attempt to obtain money, orders, donations, subscriptions or the like; whether such activity be on a temporary or permanent basis, and whether or not it be for any charitable, non-profit or profit-making organization or enterprise.
- (b) "Solicitor" shall mean any person engaging in solicitation.
- (c) "Solicitation permit badge" shall mean a photographic identification badge to be issued to authorized solicitors by the City.
- (d) Any person engaged in or desiring to engage in any type of solicitation shall first register with the City Clerk by completing a personal information questionnaire, submitting to a background check, and then obtaining a solicitation badge in accordance with the procedure described in Section 9.12.090.

9.12.020 - Announced purpose of call.

At each dwelling, whether it be an apartment unit or private residence, every solicitor shall inform the occupant in unambiguous terms of the purpose of the call and shall not represent that the solicitor is participating in any contest, game, or other competitive endeavor, or that he is offering the occupant an opportunity to participate in any such contest, game, or competitive endeavor.

9.12.030 - Decorum required.

No solicitor shall use vulgar, insulting, or threatening language which by its very utterance tends to incite the immediate breach of the peace in the course of any solicitation, nor shall he remain upon the premises after the occupant of the premises has verbally indicated that

he does not wish to make a purchase or donation. For the purpose of this article, a solicitation shall be deemed to continue until the solicitor has left the premises.

9.12.040 - Posted property.

No solicitor shall enter a dwelling except at the express invitation of the occupant. No solicitation shall be made at any dwelling or in any group of apartments where a conspicuous "no Soliciting," "No Solicitation," "No Peddlers," or other similar sign is displayed at or near the main entrance or driveway of the premises.

9.12.050 - Prohibited acts.

It shall be a violation of this article:

- (1) For any person, business, partnership, corporation, association, organization, or a group of persons to engage in any solicitation without first obtaining a permit or, if exempted pursuant to Section 9.12.070, a confirmation letter;
- (2) For any person to violate any of the provisions of this article or to violate any other city ordinance while engaging in any solicitation;
- (3) For any person to violate any criminal law of this state or to violate any state or federal consumer protection law while engaging in any solicitation. For purposes of this section, "consumer protection law" includes, but is not limited to, the Georgia Fair Business Practices Act (O.C.G.A. § 10-1-390 et seq.), the Georgia Home Solicitation Sales Act (O.C.G.A. § 10-1-1 et seq.), O.C.G.A. § 43-17-1 et seq. (dealing with professional fund raising), and the Federal Consumer Credit Protection Act (truth-in-lending and truth-in-leasing);
- (4) For any person to lend, rent, or sell his permit card to another;
- (5) For any person to engage in any solicitation between the hours of 9:00 p.m. and 9:00 a.m., according to the standard time in effect at the time the violation is alleged to have occurred;
- (6) For any person to engage in any solicitation during a period in which his permit is in suspension or after his permit has been revoked;
- (7) For more than two (2) individuals to engage in solicitation upon any premises at the same time for the same goods or services; each individual member of a group engaged in solicitation in violation of this subsection shall be deemed to have violated this subsection;
- (8) For any person to make more than one (1) solicitation call at the same premises for identical goods or services within any consecutive two-week period without receiving a prior invitation therefor from the occupant of any such premises; this provision shall be construed to include solicitation upon the same premises by employees, agents, or representatives of any person more than once during the aforesaid period without a prior invitation as provided in this subsection;
- (9) For any person with a criminal record as described in Section 9.12.120, whether or not otherwise eligible for an exemption under Section 9.12.070, to engage in any solicitation;

- (10) For any person, at the time of initial contact with a prospective customer, to fail to verbally identify himself and the organization, company and product line he represents for the purpose of the solicitation;
- (11) For any person engaged in solicitation to misrepresent the purpose of his solicitation or use any false or deceptive statement or misrepresentation to induce a sale or contribution, or use any plan, scheme, or ruse which misrepresents the status or purpose of the person making the call; or
- (12) For any person to solicit or attempt to solicit at a place of residence at any entrance or part of the building other than the main entrance to the residence.

9.12.060 - Penalty for violation of article.

Any person charged with a violation of this article shall be apprehended by the police department or summoned to appear in the municipal court and, if found guilty, shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) and/or imprisoned in the common jail of the county for a period not to exceed sixty (60) days for each offense.

9.12.070 - Exemptions.

- (a) Persons, businesses and organizations engaging in religious, non-profit, charitable or political activities not involving solicitation, or who are otherwise exempted from local regulation by operation of state or federal law, or by the Constitution of the United States, or of the state, are exempt from the requirements of this article.
- (b) Representatives or agents of charitable or non-profit organizations, or non-profit corporations registered with the Secretary of State, or tax-exempt organizations which have been recognized as such by the Internal Revenue Service of the U.S. Treasury Department, which intend to engage in solicitation, shall be treated as exempt from the provisions of Sections 9.12.010, 9.12.080, 9.12.090, 9.12.100, and 9.12.110, provided that the organization first supplies proof of the recognized status to the City Clerk and has received from the city written confirmation of its exempt status. The organization shall furnish each of its agents or representatives with a copy of the confirmation letter and furnish the city with a list of such agents or representatives to include name, date of birth, race, gender, and Social Security number. The organization shall promptly notify the city of changes in the list.
- (c) Any person who calls upon prospective customers at their prior invitation shall be treated as exempt from the provisions of sections 9.12.010, 9.12.080, 9.12.090, 9.12.100, and 9.12.110.

9.12.080 – Permit application.

- (a) The City Clerk shall prepare a questionnaire for the purpose of obtaining pertinent information regarding the physical description, identity and background of each applicant for a permit. The questionnaire shall include the following:

- (1) Name, local address, and telephone number;
 - (2) Date and place of birth;
 - (3) Driver's license number and issuing state;
 - (4) Social Security number;
 - (5) Race and gender;
 - (6) Height and weight;
 - (7) Eye color and hair color;
 - (8) Name, address and telephone number of the organization represented;
 - (9) Name and telephone number of immediate supervisor;
 - (10) Product or service; and
 - (11) A list of all criminal charges, convictions, and the disposition of each charge, other than minor traffic violations.
- (b) The questionnaire form shall also bear the following statement: "O.C.G.A. § 16-10-71 provides that a person who makes a lawful oath or affirmation or who executes a document knowing that it purports to be an acknowledgment of a lawful oath or affirmation commits the offense of false swearing when, in any matter or thing other than a judicial proceedings, he knowingly and willfully makes a false statement."
- (c) The City shall review the application and cause to be performed a background check on the applicant for the purpose of ascertaining whether the applicant has pled to or has been convicted of a felony, or a misdemeanor involving violence or moral turpitude. After ascertaining that the questionnaire has been properly completed, the City Clerk shall approve the application subject to the payment of a permit fee as provided in Section 9.12.080.

9.12.090 - Fee; issuance.

Upon payment of the required permit fee of twenty dollars (\$20.00) to the City Clerk, the applicant shall receive a copy of his permit approval if said application is approved. The applicant shall then be photographed and provided with a solicitation permit badge which shall bear the applicant's photograph, name, and organization and which shall identify the applicant as a solicitor.

9.12.100 – Permit expiration and reapplication.

- (a) All permits expire sixty (60) days from the date of issuance.
- (b) Each permit shall indicate thereon the expiration date.
- (c) Any solicitor desiring to continue solicitation within the city after the expiration of his permit must apply for a new permit pursuant to Sections 9.12.080 and 9.12.090 of this chapter.

9.12.110 – Display of permit.

Each permit holder will be furnished a device suitable for attaching the solicitation permit badge to the outer clothing of the permit holder. No solicitor shall engage in any solicitation without wearing and displaying his solicitation permit badge in a conspicuous manner.

9.12.120 - Denial or revocation.

- (a) No solicitor's permit shall be issued to any person who has been found guilty of any misdemeanor involving violence or moral turpitude any time within five (5) years prior to the date of application; nor shall a permit be issued to any person convicted of a felony, except that a permit may be issued to a convicted felon if it appears that he either has been pardoned or that he has been free from any legal restriction for a period of five (5) or more years prior to the date of the application. For the purposes of this article, the terms "conviction" and "found guilty" shall be deemed to include verdicts or pleas of guilty or nolo contendere, except those that cannot be considered by law (such as first offender acts), entered by a court of this state, a court of any sister state, or any federal district court. Any permit issued as the result of willful false statements or omissions in the solicitor's application for the permit shall be deemed null and void from the time of its issue.
- (b) The permit of any solicitor, who is convicted of a felony, or of a misdemeanor involving moral turpitude or violence, shall be deemed revoked from the time of the conviction. The permit of any solicitor convicted of having violated any provision of this article after issuance of the permit shall be deemed revoked from the time of the conviction.
- (c) Any revocation occurring pursuant to the provisions of this article shall be effective by operation of law, whether or not any formal notification to the solicitor is given or received.

9.12.130 – Surrender of permit.

- (a) Any permit issued pursuant to the provisions of this article for the use of any person is, and shall remain, the property of the city. Each permit holder shall surrender his solicitation permit badge to the City Clerk no later than three (3) business days following the expiration or revocation of the permit.
- (b) Should any permit holder be arrested and charged with violating any law while engaging in solicitation, either within the city or in any other jurisdiction, then the city (or county as applicable) police chief or his designee shall be authorized to demand the immediate surrender of such permit holder's solicitation permit badge.
- (c) Any permit holder who is forced to surrender his permit pursuant to subsection (b) of this section shall be entitled to appeal such decision pursuant to Section 9.12.140.

9.12.140 - Appeal upon denial, surrender or revocation.

- (a) In any case in which it appears to the City Clerk that the solicitor's permit should not be issued to an applicant, the City Clerk shall so inform the applicant and, upon the applicant's request, shall furnish the applicant with a reasonably detailed written statement of the reasons why the permit will not be issued.
- (b) If the City Clerk refuses to authorize the issuance of a permit, or in the event that a permit is surrendered pursuant to the provisions of Section 9.12.130, the applicant or permit holder shall have the right of review thereof by appeal to the governing body.
- (c) Such appeal shall be by written petition filed in the office of the City Clerk within fifteen (15) days after notification of the action of the City Clerk.
- (d) A hearing shall be conducted on each appeal within sixty (60) days of the date of filing with the City Clerk.
- (e) The decision of the governing body shall be final unless appealed within thirty (30) days of the date of such decision by certiorari to the Superior Court of Henry County.

SECTION 2. Repeal. That the existing Title 9, Chapter 9.12 be repealed from the Code of Ordinances, City of Stockbridge, Georgia.

SECTION 3. Intention of the Governing Body. It is the intention of the governing body, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Stockbridge, Georgia, and the sections of the ordinance may be renumbered to accomplish such intention.

SECTION 4. Approval of Execution. The Mayor is hereby authorized to sign all documents necessary to effectuate this Ordinance.

SECTION 5. Attestation. The City Clerk is authorized to execute, attest to, and seal any documents which may be necessary to effectuate this ordinance, subject to approval as to form by the City Attorney.

SECTION 6. Codification and Severability.

(a) It is hereby declared to be the intention of the City Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were upon their enactment believed by the City Council to be fully valid, enforceable and constitutional.

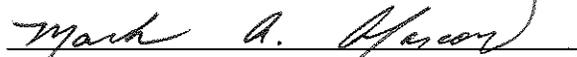
(b) It is hereby declared to be the intention of the City Council that to the greatest extent allowed by law each and every section, paragraph, sentence, clause or phrase of this ordinance is severable from every other section, paragraph, sentence, clause or phrase of this ordinance. It is hereby further declared to be the intention of the City Council that to the greatest extent allowed by law no section, paragraph, sentence, clause or phrase of this ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this ordinance.

(c) In the event that any section, paragraph, sentence, clause or phrase of this ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the ordinance and that to the greatest extent allowed by law all remaining Sections, paragraphs, sentences, clauses, or phrases of the ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION 7. Repeal of Conflicting Provision. Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 8. Effective Date. This ordinance shall become effective immediately upon its adoption by the City Council and final approval as provided in Section 3.23 of the City's Charter.

SO ORDAINED this 8th day of April, 2013.


MARK A. ALARCON, Mayor

ATTEST:


RHONDA A. BLACKMON, City Clerk (SEAL)

APPROVED AS TO FORM:


WILLIAM J. LINKOUS, III, City Attorney
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