



CITY OF CLAY, ALABAMA ORDINANCE 2017-09

AN ORDINANCE AMENDING ORDINANCE 2010-08

WHEREAS, the City Council of the City of Clay, Alabama, adopted Ordinance 2010-08, on the 6th day of December, 2010; and

WHEREAS, Ordinance 2010-08 is an Ordinance to Establish a Business License Code in the City of Clay, Alabama; and,

WHEREAS, the City Council believes it to be in the best interest of residents' safety to amend Ordinance 2010-08 to include an additional section of requirements for door to door solicitation.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Clay, Alabama as follows:

Section 30. This article shall have full force and effect throughout the corporate limits of the city and is intended to regulate commercial solicitation that physically occur at a residence, whether commonly known as soliciting, peddling, hawking, canvassing, or other similar terms. Non-profit organizations including but not limited to Girl Scouts, Boy Scouts, religious organizations, charitable organizations, political candidates, and children raising money for schools or educational purposes are exempt.

(a) Disqualifying factors

The following shall be considered factors which disqualify an applicant from obtaining a solicitor's permit

1. A person has been criminally convicted of (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the person has been formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) or have criminal charges currently pending against them for: homicide or manslaughter of any type, class, or degree; physically abusing, sexually abusing, or exploiting a minor; the sale or distribution of controlled substances; sexual assault of any type, class, or degree; or theft, robbery, burglary, or assault of any type, class, or degree.
2. A person has been criminally convicted of (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) for a felony in the last ten years.
3. A person has been confined or imprisoned in a federal or state prison within the last ten (10) years.

4. A person has been criminally convicted (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) of a misdemeanor within the past five years involving a crime of moral turpitude according to the laws of this state, or violent or aggravated conduct involving persons or property.

5. A person has a final, nonappealable civil judgment entered against them within the last five years involving fraud or intentional misrepresentation;

6. A person is currently on parole or probation to any court, penal institution, or governmental entity, which include being under house arrest or subject to a tracking device;

7. A person has an outstanding warrant from any jurisdiction; Or

8. A person is currently subject to a protective order, based on physical or sexual abuse, issued by a court of competent jurisdiction.

(b) Notice regulating residential soliciting:

1. Form of notice. Any occupant of a residence may give notice of a desire to refuse soliciting by posting a reasonable visible and legible sign upon or near the main entrance door or main entrance gate to the residence, or on or near the property line adjacent to the sidewalk leading to the residence. Where the notice states “No Solicitation” or “No Trespassing,” or words of similar import, then all forms of solicitation are prohibited at such residence.

2. Effect of notice. Any such sign so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence regarding soliciting at such residence.

3. Duty to abide by notice. It shall be the duty of every solicitor upon going onto any residential premises in the city to first examine for the notice provided for in this section and, if one is found to exist, it shall be a violation of this article to fail to abide by the notice by immediately and peacefully departing from the premises without making any effort to conduct or engage in solicitation, which includes, in any manner, attempting to attract the attention of or secure an audience with the occupant of the residence in an effort to solicit.

(c) Duty of solicitors

1. In no event will any solicitor enter inside or follow a person into a residence without the express invitation or permission of the occupant who must be a competent individual. Any solicitor who has gained entrance into any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

2. It is a violation for any solicitor through ruse, deception, or fraudulent concealment of a purpose, to solicit or to take action calculated to secure an audience with an occupant of a residence.

3. A solicitor while soliciting shall not intentionally or recklessly make any physical contact with, or touch another person without the person’s consent.

4. A solicitor shall not continue repeatedly soliciting and shall immediately and

peacefully leave premises after the occupant of the residence has expressly declined the solicitation.

5. A solicitor shall not engage in abusive, threatening, harassing, intimidating, or coercive conduct toward the occupant of a residence.

(d) Time limit on soliciting

It is unlawful for any person, whether or not issued a solicitor's permit, to go upon any residential premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in, or attempt to engage in, soliciting on any day prior to 8:00 a.m. or after 8:00 p.m., unless the solicitor has the express invitation or permission of the occupant who is a competent individual.

(e) Restrictions on methods of solicitation

1. A solicitor shall not falsely represent, directly or by implication, that the solicitor is acting on behalf of a governmental organization, a charitable organization, or any person other than the person for whom the solicitor is actually acting.

2. A solicitor shall not intentionally make any materially false or fraudulent statement in the course of soliciting.

3. A solicitor shall use their real name and shall not use a fictitious name, an alias, or any name other than their correct name.

(f) Solicitation Permitting

A commercial solicitor shall be required to obtain a solicitor's permit prior to soliciting and failure to do so shall constitute a violation of this article. At all times while soliciting, the solicitor shall be required to carry and conspicuously display the photo identification tag hereinafter provided for. A solicitor's permit shall not be required for a noncommercial solicitor including but not limited to Girl Scouts, Boy Scouts, religious organizations, charitable organizations, political candidates, and children raising money for schools or educational purposes.

(g) Permit application; notice

1. Permit Applications shall be made on forms provided by the City Manager for such purpose and shall be signed and verified by oath or affirmation by the applicant if a natural person or, in the case of an association, partnership, or limited liability company, by a member or partner, or in the case of a corporation by an executive officer, or any person specifically authorized by the corporation to sign the application to which shall be attached written evidence of his authority. Prior to or after the issuance of a permit, applications shall be immediately updated should there be a change in any of the information provided, or additional information to be added. It shall be the responsibility of the applicant to inform the city of any information changes.

2. Each applicant shall provide an address where all notices required to be issued under this article are to be sent and if there is a local address, then such address shall be that address. Where the City Manager is required to provide written notice under this division to an applicant or permit holder or appellant such notice shall be accomplished by personal delivery or by first class or certified mail to the address on the application.

Notice shall be deemed to have been received upon delivery or, if mailed, then three days after mailing.

(h) Application Fee

At the time of submission of an application, each applicant shall pay a non-refundable fee, in an amount to be determined by the City Manager, which is sufficient to defray the costs incurred by the city for processing the application and issuing the photo identification tag.

(i) Permit Issuance

1. Upon receipt of a completed application and completion of any investigation, then the city clerk-treasurer shall issue a solicitor's permit or master permit, as appropriate, unless he finds any one of the following reasons for denial exists:

(a) The application for permitting is not complete;

(b) False or misleading statements are found to be included in the application for a permit;

(c) The applicant has a disqualifying factor or does not otherwise meet the requirements of this article;

(d) Within the 12 months preceding the date of the application, the applicant has had a prior permit issued pursuant to this article revoked or denied;

(e) Within the 12 months preceding the date of the application, the applicant has been convicted of or has charges pending for a violation of this article;

(f) The applicant has failed to pay the application fee; or

(g) The applicant or business has not obtained proper business licensing or the business license has been denied, revoked, suspended, or not renewed.

2. If an application is denied, the city clerk-treasurer shall provide the applicant with written notice of the denial along with the reason for the denial.

3. Each solicitor's permit shall be issued as the photo identification tag which shall be worn constantly by the permittee in a conspicuous place on his or her person while conducting solicitation activities in the city. A person commits an offense if the person wears or displays a photo identification tag issued to another person or alters a photo identification issued hereunder. Any solicitor who by affidavit notifies the city clerk-treasurer that his or her tag has been lost or stolen shall be issued a replacement tag upon payment of the fee for the tag.

4. Permits are hereby expressly issued upon the condition that the holder thereof shall abide by the provisions of this article, and operate in conformance with the statements or representations contained in the permit application, which includes the nature of the solicitation activity and the timing of solicitation. All permits issued pursuant to this article are not transferrable.

5. In no event shall the holder of a permit issued under this article represent or imply that the issuance of the permit or display of the photo identification tag means that the city in any way endorses the purpose or method of the solicitation.

6. Unless revoked sooner, permits issued pursuant to this division shall be valid until December 31 of the year in which the permit has been issued. Upon expiration of a permit or where not renewed, it shall be unlawful to continue to solicit or to display the expired permit or photo identification tag for the purpose of soliciting.

7. Permits may be renewed in the same manner as the original issuance.

- (j) Revocation or suspension of permit
1. A solicitor's permit may be revoked or suspended by the City Manager for any of the following reasons:
 - a. The City Manager finds that any fact or event which would constitute a basis for denial of permit is true or has become true since the application was completed; or
 - b. The solicitor conducts solicitation activities in violation of any provision of this article.
 2. Upon revocation or suspension the City Manager or the appointed designee shall immediately provide written notice to the permit holder and business stating the action and the reason supporting such action.
 3. The City Manager shall have the authority to seize any and all permits and photo identification tags possessed by persons conducting business as a solicitor while the official notification process and any appeals process is underway if the City Manager and/or his designated appointee finds that there is an immediate threat to the public health or safety if the soliciting is allowed to continue. Upon seizure of the permit tag all solicitation activities conducted under the authority of that permit shall cease.

(k) Appeals

A person who is denied a solicitor's permit, or whose permit is revoked or suspended by the City Manager, may appeal the decision to the City Council by filing a written notice of appeal with the City Manager, stating the action appealed from and grounds for the appeal, within 30 days after notice has been served. Upon receipt of written notice, the City Manager shall place the appeal on the following City Council Agenda.

ADOPTED THIS THE 14th DAY OF NOVEMBER, 2017.

Charles Webster
Mayor

ATTEST: _____
Ronnie Dixon
City Manager



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CERTIFICATION:

I, the undersigned City Manager of the City of Clay, Alabama, hereby Certify that the above and foregoing copy of (1) **Ordinance** is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Clay, Alabama, on the 14th Day of November 2017, as same appears in the official records of said City.

Posted at City Hall, Clay Library, Seniors Centers, and the United States Post Office all being in the City of Clay this the 15th Day of November 2017.

Ronnie Dixon
City Manager