

**CITY OF ELSMERE
ORDINANCE NO 1740-2017**

**AN ORDINANCE CREATING CHAPTER 122, "PEDDLERS, ITINERANT
MERCHANTS AND SOLICITORS LICENSE."**

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WHEREAS, the Mayor and City Council of the City of Elsmere ("City") has determined that a licensing program for Peddlers, Itinerant Merchants and Solicitors doing business within the City is necessary; and

WHEREAS, the City has determined that a Peddler, Itinerant Merchants and Solicitors License can be best implemented by requiring the licensing of all doing business within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF ELSMERE, KENTON COUNTY, KENTUCKY:

Section 1

That Chapter 122, "Peddler, Itinerant Merchants, and Solicitors License" is hereby created:

PEDDLER, ITINERANT MERCHANTS, AND SOLICITORS LICENSE

§ 122.01 GENERAL PROVISIONS.

(A) *Title.* This subchapter shall be known and may be cited as the "Peddler, Itinerant Merchants, and Solicitors License Ordinance," hereinafter referred to as this subchapter.

§ 122.02 DEFINITIONS.

(A) *Undefined words.* Words not specifically defined in this subchapter shall have the common definition set forth in a standard dictionary, or the city's Code of Ordinances, the most current version of the International Property Maintenance Code, or the statewide Building Code, or the Fire Safety Code.

(B) *Generally.* For the purpose of Chapter 121, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANTI-SOLICITATION PROPERTY. Any property in the city, which has been either:

1. Posted with signs with words "No Solicitors", or, "No Trespassing", or other words of similar import thereon.

2. Registered by an owner or occupant thereof with the City Clerk as property to which uninvited solicitors are prohibited.

ANYBODY. Any human being, or organization or combination thereof in the form of a corporation, partnership, joint venture, unincorporated association or otherwise.

BUSINESS. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

EVERYBODY. Every human being, or organization or combination thereof in the form of a corporation, partnership, joint venture, unincorporated association or otherwise.

GOODS. Merchandise of any description whatsoever, and includes, but is not restricted to wares and foodstuff.

ITINERANT MERCHANT. Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of such business uses any building, structure, vehicle, or any place with the city.

MOTOR VEHICLE SOLICITATION. The solicitation of the operator or occupant of any motor vehicle on any street or highway in the city, while the solicitor is standing outside the motor vehicle in the travel portion of the street or highway.

NOBODY. No human being, or any organization or combination thereof in the form of a corporation, partnership, joint venture, unincorporated association or otherwise.

PEDDLER.

1. Any person who travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or
2. Any person who, without traveling from place to place, sells or offers goods for sale from any public place within the city; or
3. A person who is a peddler is not an itinerant merchant.

REGISTERED SOLICITOR. A solicitor who has registered with the City Clerk therefore, by completing a Solicitor Registration Form provided thereby, which shall provide the following information about the solicitor:

1. Legal name and all aliases.
2. Date and place of birth.
3. Residence address and telephone number.
4. Name, address and telephone number of employer
5. Criminal history for the last three (3) years, including, without limitations, all offenses for which the solicitor has been prosecuted or convicted and the location thereof.
6. A copy of the solicitor's license to operate a motor vehicle.

7. The make, model, year, color, state of registration and registration number of each motor vehicle used by or for the solicitor.
8. Social Security Number and or Federal ID Number.
9. Copy of County or City Occupational License

STANDARDS FOR ISSUANCE.

1. Upon receipt of an application, an investigation, of the applicant's business reputation and moral character shall be made.
2. The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant fulfills any of the following conditions will constitute valid reason for disapproval of an application.
 - a) Has been convicted of a crime of moral turpitude;
 - b) Has made willful misstatements in the application;
 - c) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like;
 - d) Has committed prior fraudulent acts;
 - e) Has a record of continual breaches of solicited contracts; or
 - f) Has unsatisfactory moral character.

SOLICITATION. The solicitation of contributions, the sales of goods or services or pledges, orders, or subscriptions therefore, including, without limitations, the activities of those historically known and identified as peddlers, hawkers, canvassers, itinerant vendors and transient merchants.

SOLICITOR. Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

UNINVITED RESIDENTIAL SOLICITATION. A solicitation at a residence in the city, or without prior appointment or other invitation therefore by an owner or occupant of the residence.

§ 122.03 LICENSE REQUIREMENT.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the city.

(B) The fee for the license required by this chapter shall be as set from time to time by the City Council.

(C) All license issued under this chapter shall expire sixty (60) days after the date of issuance thereof.

(D) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the city shall be sued to conduct the business licensed, separate licenses shall be issued for each place.

(E) The City Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor", the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

(F) The fee for the license required by this section shall be twenty-five dollars (\$25.00) per application, except for charitable applicants who shall be exempt from payment of the fee.

§ 122.04 PROHIBITIONS.

Nobody shall cause, permit, promote, suffer, allow, aid, assist, encourage, or engage in any for the following described solicitation:

- 1) Motor vehicle solicitation;
- 2) Uninvited residential solicitation by anybody other than a registered solicitor; or
- 3) Uninvited residential solicitation upon any anti-solicitation property.
- 4) That any authorized solicitation shall take place only during the hours of 10:00 a.m. until 7:00 p.m.

§ 122.05 REVOCATION PROCEDURE.

Any license or permit granted under this chapter may be revoked by the City Clerk or City Administrator after notice and hearing. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds for the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten (10) days prior to the date set for the hearing.

§ 122.06 STANDARDS OF REVOCATION.

(A) A license granted under this chapter may be revoked for any to the following reasons:

- 1) Any fraud or misrepresentation contained in the license application;
- 2) Any fraud, misrepresentation or false statement made in connection with the business being conducted under the license;
- 3) Any violations of this chapter;
- 4) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- 5) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals or general welfare of the public.

§ 122.07 APPEAL PROCEDURE.

Any person aggrieved by a decision under the previous sections shall have the right to appeal to the City Council. The appeal shall be taken by filing with the City Council, within fourteen (14) days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The City Council shall set the time and place for the hearing, and notice for such hearing shall be given to such person in the same manner as provided above.

Section 2

That § 122.99 "Penalty" is hereby created as follows:

§ 122.99 PENALTY.

Violations of any provision in Chapter 122 shall be subject to the following schedule of civil fines:

(A) *Criminal penalties.* Each violation of this chapter shall be a misdemeanor for which everybody convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of \$500 as set forth in KRS 534.050(2) (a) or a criminal fine not to exceed the maximum period of twelve (12) months as set forth in KRS532.090 (1), or both.

(B) *Civil penalties.* Each separate violation of this chapter is hereby classified as a civil offense, for which:

- 1) The maximum civil fine required by KRS65.8802(2)(b) that may be imposed for each separate violation of this chapter, is hereby established as five hundred dollars (\$500.00);
- 2) The specific civil fine required by KRS 65.8808(2)© that will be imposed for each separate offense and violation of this ordinance if the person who has committed the violation and offense does not contest a citation therefore, is hereby established as one hundred dollars (\$100.00); and

An enforcement officer may, in lieu of immediately issuing a civil citation therefor, give notice that the violation of this ordinance shall be remedied within a specific period of time

Section 3

That all ordinances or parts of ordinances in conflict with this ordinance are repealed.

Section 4

If any section, subsection, sentence, or clause of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 5

The City Clerk shall certify the adoption of this ordinance and cause the same to be published as required by law; and this ordinance shall take effect and be in full force from and after its approval as required by law. This Ordinance may be published in summary form.

CITY OF ELSMERE, KENTUCKY
A Municipal Corporation of the Home Rule
Class



MAYOR MARTY LENHOF

1st Reading: August 8, 2017

2nd Reading: September 12, 2017

Ayes: 4 Nays: 0

Published: 9/22/17_____

ATTEST:



Misty Ezell, City Clerk