

Prepared by:  
Deidre Luker  
City Attorney  
312 W. Main St.  
Russellville, AR 72801

## **ORDINANCE NO. 2020-8**

### **AN ORDINANCE TO ESTABLISH REQUIREMENTS OF OBTAINING A CITY PERMIT PRIOR TO HOME SOLICITATION IN THE CITY OF POTTSVILLE, ARKANSAS AND REVOKING ORDINANCE NO. 93-6**

**WHEREAS**, the Pottsville City Council passed and approved Ordinance No. 93-6; and

**WHEREAS**, the Pottsville City Council believes it is in the best interest of the citizens of Pottsville and the administration of the City to revoke and replace Ordinance No. 93-6 as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF POTTSVILLE, ARKANSAS:**

**SECTION 1:** Prior to any "home solicitation sales" no person, party, company, or other entity shall solicit or request contributions or sell goods, tickets of admission, advertising, or any other such thing of value prior to registering and receiving a permit for such solicitations at the following address:

Pottsville City Hall  
c/o Pottsville Code Enforcement  
173 E. Ash Street  
Pottsville, AR 72858  
Phone: (479) 968-3029

**SECTION 2: Permit Fee.** Each application for such a requested permit for solicitation shall be assessed in the sum of Fifty Dollars (\$50.00) for said permit.

#### **SECTION 3: Definitions.**

(A) "Home solicitation sales" means a cash sale or consumer credit sale of goods, other than insurance, or other services which the seller or person acting for him engages in a personal solicitation of the sale other than appropriate trade premises in an amount more than Twenty-Five Dollars (\$25.00). This shall not include a sale made pursuant to prior negotiations between the parties at a business establishment, at a fixed location, or goods or services were offered or exhibited for sale, or a sale in which the buyer has initiated to contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit the seller sells the buyer the right to receive additional services or goods other than the

replacement parts necessarily used in the performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

(B) "Appropriate Trade Premises" means the premises in which the owner or seller normally carries on a business or where goods are normally offered or exposed for sale in the course of business carried on at those premises.

(C) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes.

(D) "Services" means work, labor, and services furnished in connection with the repair, alteration, or improvement of residential premises, but does not include the services of lawyers, real estate brokers, securities dealers or investment counselors, physicians, optometrists, or dentists.

(E) "Seller" means any person, partnership, corporation, or association engaged in the "door-to-door" or telephone sale of consumer goods or services.

#### **SECTION 4: Bond.**

(A) Any party or parties making home solicitation sales within the City of Pottsville offering or selling merchandise or services and not having a regular permanent place of business in the city, prior to engaging in such activity, shall execute a bond with good and sufficient surety payable to the City for the use and benefit of any person damaged by a breach thereof. The bond shall ensure performance of services, delivery of merchandise, and proper application of monies received therefor.

(B) The bond shall be in an amount, approved by the Code Enforcement Officer or designated agent, which amount is found, after considering the money likely to be involved or the value of services to be rendered or merchandise to be delivered, to be adequate to protect the public against fraud or dishonest dealing. The bond shall not be an amount less than \$500.00 cash or equivalent commercial bond.

(C) A fee of \$15.00 shall be paid to the City by each person executing such a bond in order to defray the costs of administering this Section. The fee so collected shall be deposited into the General Fund.

#### **SECTION 5: Charitable Solicitation on Streets.**

(A) No person shall solicit donations on the streets for charitable, religious, or other bonafide non-profit purposes without a permit from the City.

(B) To obtain such a permit, a person shall submit in writing to the City an application to be provided giving the name, headquarters, address of the organization they represent and shall solicit for, and the names and addresses of any and all solicitors and any and all other information which may be required by the City.

(C) The Code Enforcement Officer or designated agent shall administer the provisions of this Section and promulgate regulations governing the procedure for application and issuance of permits.

#### **SECTION 6: Permit for Charitable Solicitors for Hire.**

A person soliciting funds for charitable purposes either by means of the sale of tickets or otherwise where such person receives remuneration for such services or is in any manner financially interested in the results of such ticket sale, shall, before engaging in any such business, secure a permit. Before any such permit shall be issued, the Code Enforcement Officer or designated agent shall investigate the objects of charity involved and shall approve the objects as being bonafide projects.

#### **SECTION 7: Additional Prohibitions.**

Additionally, it shall be unlawful for any solicitor or peddler to:

- (1) Peddle or solicit within the City without having a copy of their permit issued by the City of Pottsville, as well as a photo identification visible, identifying the person peddling or soliciting;
- (2) Enter upon any private residence, knock on a door, ring a doorbell, or otherwise attempt to gain admittance at the residence when the premises has posted at the entry of the residence a decal or sign bearing the words, "No Soliciting/No Peddling," "No Soliciting," "No Peddling," "No Trespassing," or other words of similar import;
- (3) Conduct the activities of peddler or solicitor and knock on a door, ring a doorbell, or otherwise attempt to gain admittance at the residence between the hours of 8:00p.m. and 8:00a.m.;
- (4) Remain at or fail to leave the premises or residence when requested to leave, or to otherwise conduct business in a manner in which a reasonable person would find obscene, threatening, intimidating, or abusive;
- (5) Claim to have the endorsement of the City based on the City having issued permit to that person;
- (6) Fail to disclose his or her name and the name of the principal who he or she represents at the outset of the initial conversation;

Nothing herein shall be construed to prohibit the distribution of advertising literature so long as the person distributing same does not seek to sell or take orders for merchandise or services while distributing the advertising material.

#### **SECTION 8: Exemptions**

The following shall be exempt from the provisions of this ordinance as set forth below:

- (1) Officers or employees of the City, county, or state or federal government, or any subdivision thereof when on official business;

(2) After supplying adequate proof to the City Clerk that the nonprofit charitable organization is a charity with a current Section 501(c)(3) IRS exception, the Clerk may issue the permit required by this Ordinance without charge to the persons desiring to exercise their free speech rights as long as no solicitation for donations are made and no donations are accepted.

(3) Although everyone going door to door must respect and not go to the door of a citizen who has posted a "no solicitation" type sign, and may only go door to door during the hours allowed in Section 7 above, and must conform to the requirements of F(4),(5), and (6), persons exercising their First Amendment political or religious free speech rights are otherwise exempted from this section.

(4) Students enrolled in grades kindergarten through 12<sup>th</sup> grade, enrolled in a public or private school located within the City of Pottsville, Arkansas, peddling or soliciting for the benefit of their school or an organization thereof or for any private, nonprofit social club or organization to which they belong, such as, but not limited to, FBLA, FFA, FHA, band, choir, Boy Scouts or Girl Scouts must abide by the restrictions found in F(2),(3),(4), and(6) but are otherwise exempt from this section.

#### **SECTION 9: Penalty.**

Any person, firm, partnership, corporation, or other entity who knowingly and willfully commits a violation of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than \$250.00 or to imprisonment not exceeding one (1) year, or both a fine and imprisonment.

#### **SECTION 10: Damages.**

For a violation which is subject to provisions of this Chapter, the consumer shall recover from the persons violating this Chapter an amount equal to:

1. Ten percent (10%) of the transaction total or One Hundred Dollars (\$100.00), whichever is greater; and,
2. The actual damages, including any incidental, consequential, and special damages sustained by the consumer as a result of the violation.

#### **SECTION 11: Repealing Clause.**

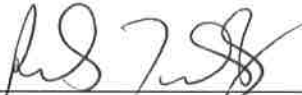
(A) The Pottsville City Council hereby revokes Ordinance 93-6 in its entirety.

(B) Any and all prior resolutions, ordinances, or parts of the same, which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 12:** If any provision of this ordinance or the application thereof to any person or circumstances is declared to be invalid, such invalidity shall not affect the other provisions or applications of the ordinance which may be given effect without the invalid provision(s) or application(s), and to this end the provisions of this ordinance are declared severable.

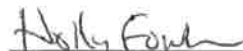
**SECTION 13: EMERGENCY CLAUSE:** This Ordinance is necessary for the preservation of the public peace, safety and welfare of the citizens of Pottsville, Arkansas. Therefore, an emergency is declared to exist and this Ordinance shall be in full force and effect upon its passage.

PASSED AND APPROVED THIS 26th day of October 2020.

  
\_\_\_\_\_  
RANDY TANKERSLEY, MAYOR

ATTEST:

I, Holly Fowler, City Clerk of Pottsville, Arkansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 2020-8 passed by the Pottsville City Council on the 26<sup>th</sup> day of October 2020.

  
\_\_\_\_\_  
HOLLY FOWLER

