

COUNCIL BILL NO. 2007-510

ORDINANCE NO. 2007-215

AN ORDINANCE repealing Article II, Home Solicitation Sales, of Chapter 90, Peddlers and Solicitors, of the Code of Ordinances of the City of Joplin, and enacting in lieu thereof a new Article II, Home Solicitation Sales, of Chapter 90, Peddlers and Solicitors, of the Code of Ordinances of the City of Joplin to implement certain fee changes.

WHEREAS, the City has not raised fees since 1977 and the costs of services have substantially increased and exceed revenues, and,

WHEREAS, the Council of the City of Joplin desires to increase fees to meet the reasonable expenditures of this function.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That Article II, Home Solicitation Sales, of Chapter 90, Peddlers and Solicitors, be repealed and a new Article II, Home Solicitation Sales, of Chapter 90, Peddlers and Solicitors, of the Code of Ordinances of the City of Joplin be enacted in lieu thereof to read as follows:

CHAPTER 90 PEDDLERS AND SOLICITORS
ARTICLE II. HOME SOLICITATION SALES
DIVISION 1. GENERALLY

Sec. 90-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employer means any person employing any person in the capacity of agent, servant, employee, representative (on an exclusive or nonexclusive basis) or independent contractor (on an exclusive or nonexclusive basis).

Home solicitation sales means a sale of goods or services by cash or credit in which the seller, his representative, or a person acting for him solicits and/or consummates a sale of goods or services at the home or residence of the buyer. Home solicitation sales shall include those solicitations and sales made as a result of unsolicited contacts at the home or residence, and also those sales made at the home as a result of appointments solicited by the seller by telephone or by the buyer by telephone in response to an advertisement made by the seller. Home solicitation sales shall not include sales made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services of a similar nature are offered or exhibited for sale by the seller.

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Solicitation means the going in or upon one or more private residences in the city by any person, whether or not having been requested or invited to do so by the owner or occupant of such private residence, for the purpose of soliciting orders for the sale of goods, wares, merchandise or any article or thing of whatever description intended for the use or benefit of the recipient thereof, property, either real or personal, tangible or intangible, or services, or for the purpose of peddling or hawking any of such things, or for the purpose of making or requesting appointments or procuring interviews or arranging for demonstrations or explanations preliminary to any actual solicitation of orders, selling or hawking of any of such things.

Sec. 90-32. Applicability of article.

Every home solicitation sale made in the city, for which the total contracted price is \$10.00 or over for all sales made to the resident of a household during a calendar day of 24 hours, shall be subject to the provisions of this article.

Sec. 90-33. Article not to affect interstate commerce.

Nothing in this article shall be construed or enforced so as to be in derogation of interstate commerce.

Sec. 90-34. Exemptions from article.

As used in this article, the term "solicitor" shall not be construed to include the following:

- (1) Farmers or truck gardeners selling, offering for sale or soliciting orders for any products grown, raised or produced by them.
- (2) Vendors of milk, bakery products, groceries or other food products of any kind, duly licensed in the city to sell the such products from truck or wagon.
- (3) Persons peddling, soliciting or canvassing where the proceeds from such peddling, soliciting or canvassing are to be used for charitable or religious purposes.
- (4) Salesmen or agents for wholesale houses or firms who solicit orders from or sell to retail dealers in the city for resale or other commercial purposes, or to manufacturers for manufacturing or other commercial purposes.
- (5) Children of or under the age of 16 years, except when they are acting as agents of adults covered by this article.
- (6) Route salesmen for laundry, dry cleaning, rug cleaning, garment storage, linen supply, towel supply and diaper services, operated from clearly identifiable vehicles, and newspaper delivery on a regular route.

Sec. 90-35. Evidence of practice of solicitation.

Any person or employer who goes in or upon any one residence for the purpose of solicitation shall be deemed prima facie to have committed solicitation, and a continued practice need not be shown.

Sec. 90-36. Compliance with article.

Whoever commits solicitation shall be guilty of creating a nuisance and is in violation of this article, except as provided in this article.

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Sec. 90-37. Cancellation rights of buyers.

(a) In addition to any right otherwise to revoke an offer or cancel a contract, the buyer or seller in a home solicitation sale may revoke an offer or promise to purchase, cancel a contract, or rescind a consummated sale and purchase until midnight of the third day after the day on which the buyers sign an agreement or offer to purchase, sign a contract to purchase, or consummate a sale and purchase.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement, contract or offer to purchase. Notice of cancellation given by the buyer need not take any particular form, and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(c) Notification by mail shall be considered given at the time mailed, and notification by other writing shall be considered given at the time delivered to the creditor's designated place of business.

(d) The buyer may not cancel a home solicitation sale if the seller in good faith makes a substantial beginning of performance of services before the buyer gives notice of cancellation, and in the case of goods, if the goods cannot be returned to the seller in substantially as good a condition as when received by the buyer.

(e) If goods are not returned to the seller, the buyer shall tender delivery thereof at the location where the seller made delivery to the buyer. If the seller or creditor does not take possession of the property within 20 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

(f) The right to cancel granted in this section may not be waived by the parties, either by express or implied agreement. Except as provided in subsection (d) of this section, receipt of goods or services shall not be construed as affecting the right to cancel in any way.

Sec. 90-38. Written purchase agreement; notification of buyer's rights.

(a) In a home solicitation sale, unless the goods or services are provided as set forth in section 90-37(d), the seller must present to the buyer and obtain his signature on a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs, and contains a statement of the buyer's rights which complies with the provisions of this article. This statement must appear in the agreement or offer to purchase under a conspicuous caption in ten-point boldface type and contain the following information and statements:

Notice of cancellation

(_____)

(Date of transaction must be filled in at the time by seller.)

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If this agreement was solicited at your residence and you do not want the goods or services, you may cancel, without further obligation, this agreement by mailing a notice to the seller at the address shown below, within three business days following the above date. You shall return the goods to the seller in substantially the same condition as when you obtained them. The seller will cancel all contracts and negotiable instruments executed by you and return any property given by you to the seller within ten days from the date of the transaction. If seller does not pick up the purchased goods within 20 days from the date of your cancellation, you may retain or dispose of the goods without any further obligation. The notice must be mailed to: (_____). The name and mailing address of the seller must be filled in at the time of sale.

(b) A home solicitation sales contract which contains the notice of cancellation forms and content provided in the Federal Trade Commission's trade regulation rule providing for a cooling-off period for door-to-door sales shall be deemed as complying with the requirements of this section so long as the Federal Trade Commission's language provides at least equivalent information to the consumer concerning his right to cancel as is required by this article.

Sec. 90-39. Effect of cancellation of purchase.

(a) Return of payment, documents and other items to buyer. Except as provided in this article, within ten days after a buyer has canceled a home solicitation sale as provided in this article, the seller must tender, at the location where the contract was signed, the contract or agreement, deposit, partial or total payment, trade-in, or any consideration whatsoever made, in addition to the payment and any note or other evidence of indebtedness.

(b) Finance charges; security interests. When a buyer exercises his right to cancel as provided in this article, he is not liable for any finance or other charges, and any security interest becomes void upon such cancellation.

Secs. 90-40--90-60. Reserved.

DIVISION 2. REGISTRATION CERTIFICATE

Sec. 90-61. Required; license requirements.

It shall be unlawful for any solicitor to engage in such business or act within the meaning and the application of this article within the corporate limits of the city without first obtaining and possessing a valid certificate therefor in compliance with the provisions of this article and after having obtained a license from the director of finance if required by any other provision of this Code or ordinance of the city.

Sec. 90-62. Application.

a. Any person desiring a certificate required by this division shall file an application therefor with the director of finance, supplying all of the information required by the director, such information to include but not be limited to:

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- (1) The name and date of birth of the applicant.
- (2) The address of the applicant.
- (3) Home telephone number.
- (4) Business address and telephone number.
- (5) Physical description of the applicant.
- (6) Record of any convictions other than minor traffic violations.
- (7) Employer's name, address and telephone number.
- (8) Name and description of the item to be sold, or solicited for sale, and if a product is to be sold, whether it is to be delivered immediately or at a later date.
- (9) If sale of a product is to be solicited, whether the product is to be mailed to the purchaser or delivered to the applicant, and if the product is to be mailed, the originating point of the product.

b. The police department shall perform a background check for the finance department on each applicant for a solicitor's license prior to the issuance of a license.

Sec. 90-63. Fee.

No application for a certificate required by this division shall be considered until the applicant shall have first paid to the director of finance the sum of \$30.00 for the issuance of a solicitor's license.

Sec. 90-64. Issuance.

The director of finance shall issue the certificate required by this division, upon the payment of the registration fee provided for in this division, within 24 hours of application by the applicant, unless the following day is a holiday, a Saturday or a Sunday, and in such event the registration shall be issued on the next succeeding regular business day of the city.

Sec. 90-65. Term; renewal.

No certificate issued under this division shall be valid for a period longer than one year from the date of issuance, and a certificate shall automatically expire at such time as an applicant changes his employer. No certificate shall be renewed after the expiration or revocation, but applicants may apply for a new certificate.

Sec. 90-66. Contents.

The solicitor's certificate shall contain all or any part of the information on the application for registration, the date of issuance and expiration, the signature of the director of finance or his designee, and the following legend: "THE CITY OF JOPLIN DOES NOT ENDORSE OR GUARANTEE THE PRODUCT OR SERVICE OF THE BEARER OR HIS COMPANY."

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Sec. 90-67. Possession; display.

Solicitors shall carry their identification at all times while engaged in soliciting in the city, and it shall also be the duty of any such solicitor to exhibit his certificate when requested by any householder or law enforcement officer.

Sec. 90-68. Transfer.

Certificates issued under the provisions of this division shall not be transferable.

Sec. 90-69. Denial and/or Revocation.

(a) Grounds. Certificates applied for or issued under the provisions of this division may be denied prior to issuance of the license or revoked by the Finance Director or his appointee for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for the certificate.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on his business as solicitor.
- (3) Any violation of this article.
- (4) Conviction of or prior conviction of a crime or misdemeanor.
- (5) Conducting his business in an unlawful manner, or in such manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the people.

(b) The fee set forth in 90-63 shall be forfeited if the certificate is denied or revoked.

Sec. 90-70. Appeals.

Any person aggrieved by the action of the city by and through its agents in the denial of an application for a solicitor's certificate, or in a decision with reference to the revocation or reinstatement of a certificate, shall have the right of appeal to the Municipal Court. Such appeal shall be taken by filing with the Court Administrator, within ten days after the notice of action complained of has been mailed to such person's last known business address, a written statement setting forth fully the grounds for appeal. The Municipal Court shall set a time and place for hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in this division for notice of hearing on revocation.

Sec. 90-71. Records.

The director of finance shall keep a record for five years of all certificates issued, denied or revoked under the provisions of this division.

Secs. 90-72--90-90. Reserved.

Section 2. That this ordinance shall become effective January 1, 2008.

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PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 15th day of
October, 2007.

Jon Tupper, Mayor

ATTEST:

Barbara L Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W Head, City Attorney