

CITY OF SPRINGDALE
Committee meeting
AGENDA'S
Monday, August 29th, 2011
Multi-purpose Room #236
Meetings begin at 5:15 p.m.

Street & CIP Committee: 5:15 p.m.

1. Discussion concerning the renovation of the old IT Building, the resolution to be handed out on Monday night, presented by Wyman Morgan, Director of Admin & Financial Services.

Ordinance Committee: 5:30 p.m.

2. *Discussion* of AT & T agreement, presented by Jeff Harper, City Attorney. Pg's 1-8
3. *An Ordinance* repealing Sec. 42-77(b) of the Code of Ordinances of the City of Springdale, Arkansas; to declare an emergency and for other purposes. Pg's 9-10
4. *Discuss* Chapter 82 – Peddlers & Solicitors pg.'s 11-18

AGREEMENT

THIS AGREEMENT ("Agreement") dated _____, 2011 ("Effective Date") is made by and between Southwestern Bell Telephone, L.P., a Texas limited partnership doing business as AT&T Arkansas ("AT&T Arkansas") and the City of Springdale, Arkansas, a municipal corporation ("City"). AT&T Arkansas and City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

A. As a telecommunications provider, AT&T Arkansas has statewide authority under Ark. Code Ann. §23-17-101 to construct, operate and maintain its telecommunications facilities in the public rights of way ("ROW") throughout the state of Arkansas.

B. Under Ark. Code Ann. §14-200-101, the City is permitted to impose reasonable terms and conditions on AT&T Arkansas' use and occupation of the City's ROW and to collect a reasonable franchise fee for such use and occupation of its ROW.

C. AT&T Arkansas is in the process of upgrading its existing telecommunications network to provide and integrated Internet Protocol ("IP") enabled broadband platform of voice, data and video services ("IP Network"), the video component of which is a switched, two-way, point-to-point and interactive service ("IP-enabled Video Service"). The IP Network upgrade will involve the use of the City's ROW.

D. AT&T Arkansas believes that Ark. Code Ann. §23-17-101 covers the construction, operation and maintenance of the IP Network, and that AT&T Arkansas is not required to obtain a separate franchise or other authorization from the City to offer IP-enabled services including IP-enabled Video Services within the City over the IP Network.

E. AT&T Arkansas further believes that the City's right to regulate the construction of the IP Network in the City's ROW is limited to the right to impose reasonable conditions regarding the time, place, and manner of AT&T Arkansas' use and occupation of the City's ROW.

F. City believes that the provision of IP-enabled Video Services by AT&T Arkansas is beyond the scope of Ark. Code Ann. §23-17-101 and is subject to the City's cable television franchising authority.

G. Both Parties agree that the deployment of the IP Network and the provision of IP-enabled Video Services should not be delayed by litigation to establish the scope of Ark. Code Ann. §23-17-101 or the application of the City's franchise ordinance to IP-enabled Video Services.

H. City and AT&T Arkansas further agree that litigation to resolve this issue would be complex and protracted, and that it is in the best interests of both Parties and the residents of the City to reach a compromise of each other's positions and claims.

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, City and AT&T Arkansas agree as follows.

1. Term. The term of this Agreement shall commence on the Effective Date of this Agreement through the end of 2014. The term may be extended upon mutual agreement of the Parties.

2. Change of Law. The Parties agree to consult in the event that after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either City or AT&T, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either party, within thirty (30) days or receipt of the ruling, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the parties mutually may agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.

3. Compensation to City. During the term of the Agreement, AT& Arkansas shall pay to the City a fee of up to 4% of the gross revenues from subscription fees collected from each subscriber to AT&T Arkansas' IP-enabled Video Services product delivered over the IP Network in the City's rights of way; such product to be defined by AT&T Arkansas when it is offered to the public. The fee does not apply to non-video revenues or the non-video revenues of a bundled product containing video and non-video offerings. The fee will be forwarded to the City quarterly on the last of each quarter. Upon request, AT&T Arkansas shall make their records available to the City to demonstrate compliance with this paragraph for a period of three (3) years preceding the request.

4. Public, Educational and Governmental Programming.

(a) AT&T Arkansas shall provide some form of access for the City's noncommercial, public, educational and governmental ("PEG") programming through AT&T Arkansas' IP-enabled Video Services.

(b) AT&T Arkansas shall not be responsible for content of PEG programming.

(c) As soon as practicable, AT&T shall provide written notice that it has the technical capability to provide IP based access for the City PEG channel (in use of the Execution Date of this Agreement) over the platform AT&T wishes to use with this agreement. If technological feasibility requires a change in the current city technology, City may be required to support a change in or addition to current City technology now in use for PEG programming to make it compatible with AT&T Arkansas' IP enabled video technology.

(d) AT&T Arkansas will provide City capacity on its platform to carry the same number of PEG channels that city currently has activated as of the effective date of this public Internet. AT&T Arkansas will carry this PEG content on its video platform using capital grant to cover the initial set up costs incurred by the City to make this content available on the Internet. Should AT&T seek to improve its transmission method in a fashion that will substantially affect the integrity of the Internet sourced PEG solution (Compatibility), AT&T accepts the responsibility for necessary costs of capital improvements.

(e) PEG programming will be available via Internet for AT&T Arkansas' IP Video subscribers to view both on the TV and computer. PEG programming will be available via the Internet from the end user's computer for AT&T HomeZone subscribers who also have High Speed Internet Access.

5. Emergency Message. AT&T Arkansas shall carry all Federal, State and Local alerts provided over the Federal Emergency Alert System through AT&T's IP-enabled Video Services in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

6. Customer Service. AT&T Arkansas will offer IP-enabled Video Services and provide customer service consistent with the requirements of 47 C.F.R. Section 76.309(c). AT&T Arkansas will respond to complaints and outages in a diligent fashion.

(a). AT&T Arkansas shall give subscribers in the City thirty (30) days notice of any rate increases, channel lineup changes, or other substantive service changes.

(b) AT&T Arkansas shall restore any pavements, sidewalks, driveways that are disturbed during the installation, improvement or extension of IP-enabled Video services to a standard that is both commercially reasonable and in compliance with the ordinances of the Springdale.

(c) AT&T Arkansas shall not refuse to render IP-enabled Video Services based solely upon the income or minority status of any resident or group of residents.

7. Service Area. This Agreement shall apply to AT&T's service area within the municipal boundaries of Springdale as they exist upon the date of execution of this agreement and may hereafter be extended. AT&T shall make programming available, subject to technology or other economic feasibility, to all residential units within the

service areas, by use of IP-based video technology or other alternative video programming technology.

(a) On December 31, 2011 and the same date in every year thereafter, AT&T Arkansas shall tender an annual report indicating the status of its video programming service. The report shall : (i) indicate the number of subscribers; and (ii) the technology being used to provide such video programming.

(b) AT&T Arkansas shall be considered to have breached this agreement if AT&T Arkansas fails to diligently offer video programming through the City, unless: (i) delay is attributed to Force Majeure; (ii) delay is attributable to the City; (iii) delay is attributable to AT&T Arkansas' inability to obtain needed private easements; (iv) delay is attributable to special technical requirements; or (v) delay is justified by reasonable commercial standard of construction.

8. Obligations of City. During the term of this Agreement City will not attempt to not subject the provision of AT&T Arkansas' IP-enabled Video Services over the IP Network to regulation under any cable television franchise ordinance or similar ordinance. In addition:

(a) City agrees to subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of AT& Arkansas' existing telecommunications infrastructure.

(b) City agrees not to unreasonably block, restrict, or limit the construction and installation of the IP Network.

(c) City agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the IP Network in a timely and prompt manner.

9. Indemnification.

(a) AT&T Arkansas agrees to indemnify, defend, and hold harmless City, its officers, agents, and employees, from and against any liability of damages and for any liability or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by AT&T Arkansas' negligent construction, operation, or maintenance of its IP Network, provided that City shall give AT&T Arkansas written notice of its obligation to indemnify City within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, AT&T Arkansas shall not indemnify City for any damages, liability or claims resulting from the negligence or willful misconduct of City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any person or entity other than AT&T Arkansas in connection with PEG programming.

(b) With respect to AT&T Arkansas' indemnity obligations set forth above, AT&T Arkansas shall provide the defense of any claims brought against City by selecting counsel of AT&T Arkansas' choice to defend the claim, subject to the consent of City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent City from cooperating with AT&T Arkansas and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with City, AT&T Arkansas shall have the right to defend, settle or compromise any claim or action arising hereunder, and AT&T Arkansas shall have the authority to decide the appropriateness and the amount of any such settlement or compromise, AT&T Arkansas shall not settle the claim or action, but its obligation to indemnify City shall in no event exceed the amount of such settlement.

10. Breach of Agreement. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within 60 days.

11. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and use of a mediator when such discussions have failed.

12. Insurance. AT&T Arkansas shall maintain, throughout the term of this Agreement, insurance in the minimum amounts as follows:

Workers Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (CSL) \$2,000,000 General Aggregate
Auto Liability (including all owned, non-owned, and hired vehicles)	\$1,000,000 per occurrence (CSL)
Umbrella Liability	\$1,000,000 per occurrence (CSL)

13. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City: City of Springdale, Arkansas
201 Spring Street
Springdale, AR 72764

Attn: Doug Sprouse, Mayor

If to AT&T Arkansas: AT&T Arkansas
1111 W. Capitol
Room 1005
Little Rock, AR 72201

Attn: Tim Pickering or current General Attorney

14. Modifications. This Agreement may be amended or modified only by a written instrument executed by both Parties.

15. Assignment. AT&T Arkansas may not assign or transfer this Agreement or any interest therein without the prior consent of City except to any affiliate of AT&T Arkansas.

16. Entire Agreement. This Agreement embodies the entire agreement and understanding of City and AT&T Arkansas with respect to AT&T Arkansas' use of the City ROW in connection with the offering and provision of IP-enabled services including IP-enabled Video Services within the City using facilities constructed and placed within understandings and representations by either party on the matters set forth herein.

17. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

18. Miscellaneous.

(a) AT&T Arkansas and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

(b) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

(c) AT&T Arkansas and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

(d) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

(e) Nothing contained in this Agreement is intended or shall be construed as amending, modifying or otherwise affecting any other agreements, authorizations or memoranda which City and AT&T Arkansas have now. Further, nothing contained in this Agreement is meant to change, limit, modify, restrict or limit any current rights or jurisdiction that either City or other governmental entities currently have nor is this Agreement intended to change, limit, modify, restrict or limit any rights AT&T Arkansas currently has under existing federal and state law and under existing City ordinances and existing construction permits issued by City.

19. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

20. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

21. Authority of City Council. This Agreement is not intended to limit the authority of the Springdale City Council regarding the use of streets, easements, and public rights of way ("ROW") by public utilities, specifically including those that communicate information. The City Council expressly reserves the right to increase the fee imposed in paragraph 3 of this Agreement to that which is imposed on other video service providers in order to generally maintain competitive neutrality, so long as such fee does not exceed the maximum rate authorized under Section 622 of the Federal Communications Act (47 U.S.C. Section 542).

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of _____ ("Effective Date").

AT&T ARKANSAS

By: _____
Name: Edward Drilling
Title: President – AT&T Arkansas

CITY OF SPRINGDALE, ARKANSAS

By: _____
Name: Doug Sprouse
Title: Mayor



ORDINANCE NO. _____

AN ORDINANCE REPEALING SEC. 42-77(b) OF THE CODE OF ORDINANCES OF THE CITY OF SPRINGDALE, ARKANSAS; TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES.

WHEREAS, on the 24th day of May, 2011, the City Council passed Ordinance No. 4507 and, in part, made it unlawful for an owner or occupant of real property to fail to cut weeds and grass to the back of the street curb on certain streets within the City of Springdale, Arkansas;

WHEREAS, the City Council finds that much of this property is in an agricultural zone, and the ordinance is difficult to enforce;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS that Sec 42-77(b) is hereby repealed in its entirety.

Sec. 42-77. Clearance of unsightly or unsanitary conditions on real property.

- (a) It shall be unlawful for the owner or occupant of real property to permit the accumulation or development of weeds, garbage, rubbish, inoperative motor vehicles or other unsightly or unsanitary things or conditions on real property within the city.

Exception: As to inoperative motor vehicles as set out herein, this section does not apply to any inoperative motor vehicle held in conjunction with a business enterprise lawfully licensed by the city for the storage, servicing, or repair of motor vehicles so long as the property where the inoperative vehicle is located is in compliance.

- ~~(b) It shall be unlawful for an owner or occupant of real property to fail to cut weeds and grass to the back of the street curb, if such curb exists, on the following streets within the City of Springdale: Highway 265/Old Missouri Road, Thompson Avenue, Don Tyson Parkway, Robinson Avenue, Emma Avenue, Sunset Avenue, Huntsville/Elm Springs Road, Wagon Wheel Road, Butterfield Coach Road, and Harbor Avenue.~~

- (be) The dumping of tree cuttings, tree trunks, fill dirt and other appropriate fill material may be permitted to reclaim gullies and ravines upon application to, and approval by, the city planning commission under the following conditions:

- (1) Written certification by the applicant that he is the legal owner of the property or that he has the written permission of the property owner.
- (2) Access must be completely restricted to the applicant only.
- (3) All material must be covered by fill dirt and smoothed over at intervals not to exceed two weeks.

Failure to comply with the above conditions will be grounds for revocation of the permit and may result in the issuance of a citation pursuant to subsections (a) and (b) of this section.

- (ce) Nothing covered by this article is intended to preclude or conflict with the provisions of chapter 102 and all substances not governed by chapter 102 are to be governed by this article. This article is intended to supplement chapter 22.

Emergency Clause. It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be in effect immediately upon its passage and approval.

9

PASSED AND APPROVED this _____ day of _____
2011.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Jeff C. Harper, City Attorney

Little Rock

Little Rock, Arkansas, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 17 - LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS >> ARTICLE V. - PEDDLERS, SOLICITORS, CANVASSERS, ETC. >>

ARTICLE V. - PEDDLERS, SOLICITORS, CANVASSERS, ETC. [681]

Sec. 17-126. - Penalty.

Sec. 17-127. - Bond for solicitors, peddlers, hawkers, etc.

Sec. 17-128. - Charitable solicitations on streets.

Sec. 17-129. - Soliciting along major or minor arterial streets.

Sec. 17-130. - Permit for charitable solicitors for hire.

Secs. 17-131—17-150. - Reserved.

Sec. 17-126. - Penalty.

Any person convicted of a violation of any of the provisions of this article shall be punished as provided in section 1-9.

Sec. 17-127. - Bond for solicitors, peddlers, hawkers, etc.

- (a) Solicitors of book and magazine subscriptions, itinerant peddlers, hawkers, and any person engaged in selling or offering for sale merchandise or services at retail within the city to the ultimate consumers and not having a regular permanent place of business in the city shall, prior to engaging in any such activity, 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 moneys received therefor.
- (b) The bond shall be in an amount, approved by the chief of police, which amount is found, after considering the money likely to be involved or the value of services to be rendered or merchandise delivered, to be adequate to protect the public against fraud or dishonest dealing. The bond shall not be in an amount less than five hundred dollars (\$500.00).
- (c) A fee of five dollars (\$5.00) shall be paid to the city by each person executing such a bond in order to defray the cost of administering this section. The fee so collected shall be deposited in the general fund.
- (d) A person damaged by a breach of the bond is entitled to recover on the bond the amount of his damages proved, plus costs in a civil action in any court having jurisdiction.
- (e) The chief of police shall administer the provisions of this section.

(Code 1961, § 28-1)

Sec. 17-128. - Charitable solicitations on streets.

- (a) No person shall solicit donations on the streets for charitable, religious or other bona fide nonprofit purposes without a permit from the city.
- (b) To obtain such a permit, a person shall submit in writing to the city an application giving the name and headquarters address of the organization they represent and 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 city manager shall administer the provisions of this section and promulgate regulations governing the procedure for application and issuance of permits.

(Code 1961, §§ 28-2 — 28-4)

Sec. 17-129. - Soliciting along major or minor arterial streets.

Soliciting on or along major or minor arterial streets of the city is prohibited.

(Code 1961, § 28-9)

Sec. 17-130. - 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 such business, secure a permit therefor from the city collector's office. Before the city collector shall issue any such permit he shall cause the chief of police to investigate the objects of charity involved and shall approve the objects as being bona fide projects.

(Code 1961, § 28-6

Secs. 17-131—17-150. - Reserved.

FOOTNOTE(S):

⁽⁵⁸⁾ **State Law reference**— Authority to define, license, tax and regulate transient or itinerant dealers or vendors, A.C.A. § 14-54-1407; municipal authority to license, tax and regulate peddlers, **solicitors**, etc., A.C.A. § 14-54-103; Transient Merchant Licensing Act of 1983, A.C.A. § 17-42-101 et seq.; authority to legislate on matters pertaining to municipal affairs, A.C.A. § 14-43-601 et seq. (Back)

FF Smith

Fort Smith, Arkansas, Code of Ordinances >> - >> Chapter 13 - LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS >> ARTICLE VIII. - PEDDLERS >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

- Sec. 13-206. - Definition.
- Sec. 13-207. - Penalties.
- Sec. 13-208. - Compliance.
- Sec. 13-209. - Adoption of statute.
- Sec. 13-210. - Hours of operation.
- Sec. 13-211. - False representation.
- Sec. 13-212. - Remaining after notice to leave.
- Sec. 13-213. - Identification.
- Sec. 13-214. - Soliciting and peddling prohibited in business district.
- Secs. 13-215—13-225. - Reserved.

Sec. 13-206. - Definition.

The term "residential door-to-door selling or soliciting," for the purposes of this article, shall refer to the activity or practice of going, whether by foot or by any type of conveyance, from place to place, house to house, from street to street or from door to door to residential living units for the purpose of selling or attempting to sell goods or services, whether to be currently delivered or delivered at a subsequent time, or for the purpose of requesting or attempting to request donations or contributions by a person who has not obtained a prior appointment to call at such residential unit. Provided, such term shall not be interpreted so as to include such activities of members of recognized religious organizations when engaged in as a direct incident to the exercise by such members of their freedom of religion rights under the Constitution of the United States nor to such activities by persons while engaged in the sale of newspapers in exercise of their freedom of the press rights under the Constitution of the United States, and neither shall the provisions of this article be applicable to the activities of organizations classified as tax exempt under the provisions of section 501 of the 1954 Internal Revenue Service Code, and amendments and regulations pertaining thereto.

(Code 1976, § 21-1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 13-207. - Penalties.

Any person found guilty of violating the provisions of this article shall be deemed guilty of a misdemeanor and shall be punished as provided in section 1-9 of this Code. The penalty for violating the provisions of section 13-209 shall be that penalty set forth in A.C.A. § 4-89-104.

(Code 1976, § 21-2)

Sec. 13-208. - Compliance.

No firm, company, corporation, association, partnership, sole proprietorship or other legal entity shall engage in the activity of residential door-to-door selling or soliciting within the city without first complying with the provisions of this article.

(Code 1976, § 21-19)

Sec. 13-209. - Adoption of statute.

A.C.A. tit. 4, ch. 89 [§ 4-89-101 et seq.], pertaining to home solicitation sales, is hereby adopted by reference.

(Code 1976, § 21-3)

Sec. 13-210. - Hours of operation.

It shall be unlawful for any person, whether the registration provided for in this article has been accomplished or not, to engage in the activity of residential door-to-door selling or soliciting before 8:00 a.m. or after 9:00 p.m. of each day of the week except Sunday. It shall be unlawful for any person to engage in such activities at any time on Sundays.

(Code 1976, § 21-4)

Sec. 13-211. - False representation.

It shall be unlawful for any person engaged in the activity of residential door-to-door selling or soliciting to make use of any plan, scheme or ruse or make any statement which indicates or implies that the purpose of such person's visit is other than to obtain orders for or make sales of goods or services or obtain commitments for or collect donations or contributions.

(Code 1976, § 21-5)

Sec. 13-212. - Remaining after notice to leave.

It shall be unlawful for any person engaging in the activity of selling or attempting to sell goods or services or requesting or attempting to request donations or contributions at a residential living unit, whether or not such person is engaging in the activity of residential door-to-door selling or soliciting as defined herein, to continue to engage in such activity or remain on such premises after having been asked or instructed by the occupant of such premises to leave such premises.

(Code 1976, § 21-6)

State law reference— Trespass, A.C.A. § 5-39-203.

Sec. 13-213. - Identification.

It shall be unlawful for any person engaging in the activity of residential door-to-door selling or soliciting to fail to identify himself by name, legal entity represented and purpose of call immediately, after normal greeting, upon contact with any residential occupant, and such identification shall be given in all cases prior to entering into such occupant's premises.

(Code 1976, § 21-24)

Sec. 13-214. - Soliciting and peddling prohibited in business district.

Except as provided in chapter 22, article II it shall be unlawful for any person, agent of such person, except agents or representatives of newspapers, educational, religious, charitable or other nonprofit organization, to station himself upon, or to loiter upon, any public street sidewalk, alley or other public way within the areas of the city which are now or may hereafter be used for business purposes, for the purpose of selling, offering for sale, or soliciting orders for the sale of goods, wares, and merchandise, including magazines, and/or peddling or hawking the same, or to sell, to offer for sale, or to solicit orders for the sale of goods, wares and merchandise, including magazines and/or to peddle or to hawk the same in such areas.

(Code 1976, § 21-7)

Secs. 13-215—13-225. - Reserved.

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MAUMELLE

Maumelle, Arkansas, Code of Ordinances >> - CITY CODE >> Chapter 50 - PEDDLERS AND SOLICITORS >> ARTICLE II. - SOLICITORS >>

ARTICLE II. - SOLICITORS [26]

- Sec. 50-31. - Definitions.
- Sec. 50-32. - Penalty.
- Sec. 50-33. - Penalty for violation of bond requirement.
- Sec. 50-34. - Enforcement.
- Sec. 50-35. - Permit required.
- Sec. 50-36. - Bond requirement.
- Sec. 50-37. - Fee.
- Sec. 50-38. - Bond.
- Sec. 50-39. - Exception to fee and bond requirements for nonprofit organizations.
- Sec. 50-40. - Remedy.
- Sec. 50-41. - Carrying permit required; no soliciting after dusk.
- Sec. 50-42. - Appeal.
- Secs. 50-43—50-100. - Reserved.

Sec. 50-31. - 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:

Solicitor means anyone who offers to sell services or merchandise or who offers to provide promotional or other materials designed to sell services or merchandise at that time or in the future of any kind to another person in the city by direct solicitation by way of person to person contact upon a private residence whether or not the person solicited is actually the occupant of such residence. The following are specific provisions and exceptions to this definition:

- (1) No person who is invited upon residential property by the occupant shall be considered a solicitor so long as any solicitation made is pursuant to such invitation and provided that the occupant of such residence may cancel the invitation at any time.
- (2) The mere delivery of goods or services to a resident shall not be considered solicitation if the delivery was at the prior invitation of the occupant of the residence or if the person making such delivery is not doing so for the purposes of solicitation but merely to make deliveries of services, goods or other things for which delivery has been arranged at a previous time.
- (3) No person who does not personally contact an occupant of a residence shall be considered a solicitor, and specifically, solicitation by handbill, leaflet or otherwise which does not involve personal contact with the occupant shall not be considered soliciting.

(Ord. No. 629, § 1, 12-18-2006)

Sec. 50-32. - Penalty.

- (a) No solicitor shall operate in the city without first obtaining the required permit and paying any required permit fee and posting any required bond, and any person violating the terms and provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall have his permit or privilege revoked for a period of time not greater than one year and in addition may be sentenced to:
 - (1) A term of imprisonment for not more than one year;
 - (2) Pay a fine of not more than \$1,000.00; or
 - (3) Be sentenced to both such imprisonment and fine.
- (b) Each solicitor in violation of this article shall be deemed a separate offense.
- (c) A permit issued to a solicitor charged with a violation of this article may be suspended while charges are pending hereunder.

(Ord. No. 629, § 1, 12-18-2006)

15

Sec. 50-33. - Penalty for violation of bond requirement.

- (a) No solicitor required to post a bond shall operate in the city without first submitting and obtaining approval of such bond, and any person violating this requirement shall be deemed guilty of a misdemeanor and upon conviction in the municipal court may:
 - (1) Have his permit or privilege revoked for a period of time not greater than one year;
 - (2) Be sentenced to pay a fine of not more than \$1,000.00; or
 - (3) Both have his permit revoked for a period of time not greater than one year and be required to pay a fine of not more than \$1,000.00.
 - (b) Each solicitor in violation of this article shall be deemed a separate offense.
 - (c) A permit issued to a solicitor charged with a violation of this article may be suspended while charges are pending hereunder.
- (Ord. No. 629, § 1, 12-18-2006)

Sec. 50-34. - Enforcement.

The police department and the department of code enforcement are charged with enforcement of this article.

(Ord. No. 629, § 1, 12-18-2006)

Sec. 50-35. - Permit required.

- (a) Every solicitor shall be required to obtain a permit from the city clerk during normal business hours, excepting all city holidays, prior to being allowed to solicit business within the city. The city clerk may require a criminal background check for each person operating as a solicitor or pursuant to a solicitor's permit issued to a corporation, partnership, association or entity hereunder. The city clerk shall refuse a permit to anyone presenting a criminal history and particularly a criminal history involving violent offenses, including, but not limited to, homicide, rape, assault, battery, or kidnapping, or property offenses including, but not limited to, theft, fraud, or forgery.
 - (b) Solicitors living within the corporate boundaries of the city shall be exempt from payment of the fee for the permit.
 - (c) No fee or bond shall be required for the issuance of a permit to a nonprofit organization pursuant to the terms of this article.
 - (d) Solicitors under the age of 18 are exempt from the provisions of this article unless the solicitor is acting as an agent or employee of a person or organization which would otherwise be required to obtain a permit and post a bond pursuant to the terms of this article.
- (Ord. No. 629, § 1, 12-18-2006)

Sec. 50-36. - Bond requirement.

Every solicitor who has no regular place of business or property situated within the city shall enter into a bond with good and sufficient surety payable to the city for the use and benefit of any person damaged by breach of the permit, to insure performance of services, delivery of merchandise and proper application of moneys received.

(Ord. No. 629, § 1, 12-18-2006)

Sec. 50-37. - Fee.

The fee for a permit required in this article shall be as provided in appendix C for any corporation, partnership, association or entity which is not a natural person, and any member of such entity may utilize the permit. The permit fee for natural persons shall be as provided in appendix C. Any permit issued shall be good until December 31 of the year of issue or until suspended or revoked as provided in this article.

(Ord. No. 629, § 1, 12-18-2006)

Sec. 50-38. - Bond.

Good and sufficient surety for a bond shall be made in the amount of \$1,000.00 for each solicitor required to submit such bonds pursuant to the requirements of section 50-36. In the case of a corporation, partnership, association or entity, good and sufficient surety for a bond shall be made in the amount of \$1,000.00 per person acting as a solicitor on behalf of the corporation, partnership, association or entity, and may be submitted in an aggregate amount. Such bond(s) shall be submitted to the city clerk who shall

16

approve the bond(s) if it is good and sufficient to secure the payment of \$1,000.00 upon breach of performance of services, delivery of merchandise or proper application of moneys received.

(Ord. No. 629, § 1, 12-18-2006)

Sec. 50-39. - Exception to fee and bond requirements for nonprofit organizations.

Although required to obtain a permit unless otherwise exempted, excluded or excepted in this article, no member or representative of a nonprofit organization shall be required to pay any fee for the permit or post any bond if such person solicits pursuant to their association with such nonprofit organization and if such nonprofit organization would qualify as a charitable organization for contribution purposes as defined in 26 USC 170(c). The city clerk shall have the discretion to require proof of qualification of such entity as a charitable nonprofit organization or proof of an individual's affiliation with the organization prior to issuing a free permit.

(Ord. No. 629, § 1, 12-18-2006)

Sec. 50-40. - Remedy.

A person damaged by a breach of the bond provided for in this article is entitled, pursuant to a court order, to recover on the bond the amount of his damages proved, plus costs in a civil action in any court having jurisdiction, but this section in no way limits any other remedies which such person may have.

(Ord. No. 629, § 1, 12-18-2006)

Sec. 50-41. - Carrying permit required; no soliciting after dusk.

- (a) Each solicitor must carry his permit on his person while soliciting, or in the case of a corporation, partnership, association or other entity, the representative of that entity must carry a copy of the permit of the entity on his person, and failure of a solicitor or his representative to comply with this requirement may result in suspension or revocation of the permit or the right of a particular representative to use his entity's permit. All permits issued must state on the permit that the permit is required to be carried while solicitation is conducted.
- (b) No solicitor may engage in any solicitation after dusk. Because of the inherent risks to the solicitor of operating in the dark and because of the likely alarmed reaction of a resident to a stranger at their door after such time, solicitors must cease approaching any residence or making any direct contact with potential residential customers at the time of the sun's setting.
- (c) A violation of this section shall be deemed a violation of the chapter and is subject to penalties expressed herein.

(Ord. No. 629, § 1, 12-18-2006; Ord. No. 751, § 1, 7-19-2010)

Sec. 50-42. - Appeal.

- (a) Any decision of the city clerk to deny the issuance of a permit pursuant to this article may be appealed in writing to the city council, which shall hear and decide the appeal within 30 days of the filing of the appeal with the clerk.
- (b) Any citation issued pursuant to this article shall be filed in district court or in a court of competent jurisdiction. Any appeal of the decision thereof shall be according to Arkansas law.

(Ord. No. 629, § 1, 12-18-2006)

Secs. 50-43—50-100. - Reserved.

FOOTNOTE(S):

⁽²⁶⁾ *Editor's note*— Ord. No. 629, § 1, adopted Dec. 18, 2006, amended art. II in its entirety to read as herein set out. Former art. II, §§ 50-31—50-42, pertained to similar subject matter, and derived from Ord. No. 68, §§ 1—12, adopted March 21, 1988. (Back)

CHAPTER 116: DOOR TO DOOR SOLICITATION

116.01 Going Upon Private Residential Property

- (A) No solicitor or vendor shall enter in or upon any house, building, or other structure upon any land or property without the prior consent of the owner or occupant thereof where there is placed or posted on the premises in a conspicuous position, at or near the usual means of ingress, a sign or other form of notice stating or indicating that the owner or occupant forbids or otherwise does not desire persons engaged in soliciting or any similar activity to enter upon the premises.
- (B) The provisions of this section shall not apply to the sale or soliciting of orders for the sale of fruits, vegetables, or other products of the farm, including meat from domestic animals or livestock, so far as the sale of such commodities is authorized by law.

(Code 1965, §13-10; Ord. No. 1390, 4-13-64; Ord. No. 1987, 2-15-74; Code 1991, §116.01)

Cross reference(s)—Vending and peddling in parks, §97.086; Soliciting from public roadways or sidewalks prohibited, §74.05; Advertising, Ch. 110; Penalty, §10.99; State law ref.: Transient Vendors §14-54-1407.

116.02–116.99 Reserved