

**ARTICLE 2. SOLICITORS, CANVASSERS,
PEDDLERS, TRANSIENT MERCHANTS**

5-201. STATEMENT OF PURPOSE. It is the purpose of this article to protect the general public against:

- (a) Crimes, frauds and misrepresentation committed by persons posing as solicitors;
- (b) The continuing danger of fraud, robbery, and other crimes to the residents of the city; and
- (c) Undue annoyances caused by solicitors.

(Code 1993)

5-202. DEFINITIONS. For the purpose of this article, the following words shall be considered to have the following meanings:

(a) Soliciting - shall mean and include any one or more of the following activities:

(1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or

(2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or

(3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

(b) Residence - shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

(c) Solicitor - shall mean any individual, whether resident of the city or not, whose business is mainly or principally carried on by traveling either by foot, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not. Such definition shall include any person, who, for himself, herself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. Solicitor includes charitable solicitors.

(d) Peddler - shall mean any person, whether a resident of the city or not, traveling by foot, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad boxcar or other vehicle or conveyance, and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler.

(e) Transient merchant, itinerant merchant or itinerant vendor - are defined as any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

(f) Street salesman - shall mean any person engaged in any manner in selling merchandise of any kind from a vehicle or stand temporarily located on the public streets or sidewalks of this city.

(g) Charitable - means any activity represented as carried on for unselfish, civic, or humanitarian motives, or for the benefit of others, and not for private gain.

(h) City - means the City of Westwood, Kansas.

(i) Commercial Handbill - is any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper booklet, or any other printed or otherwise reproduced original or copies of any matter of literature:

(1) Which advertises for sale any merchandise, product, commodity or thing;

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales;

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged. for the purpose of private gain or profit.

(4) Exemption for mail and newspapers. For purposes of this ordinance the term commercial handbill shall not be construed to include mail delivered by the United States Postal Service or newspapers duly entered with the Post Office Department of the United States and newspapers filed and recorded with any recording officer as provided by general law or any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

(Code 2008)

5-203.

SOLICITATION PERMITS REQUIRED. Every solicitor, peddler, transient merchant, itinerant merchant, itinerant vendor, or street salesman must obtain a permit from the city before soliciting within the city. In order to obtain a permit to solicit, the applicant must furnish the information required under this article to the city clerk. (Code 1993; Code 2008)

5-204. INFORMATION REQUIRED ON APPLICATION FOR SOLICITATION PERMIT.

An applicant for a solicitation permit shall furnish to the city clerk an application containing the following information:

- (a) The name and address of the principal office of the person applying for the permit (including both local and non-local principal offices where such exist);
 - (b) If the applicant is not an individual, the names and addresses of the applicants principal officers and executives;
 - (c) The purpose for which the solicitation is to be made;
 - (d) The name and address of the person or persons who will be making the solicitations;
 - (e) The time when the solicitations will be made, giving the expected dates for the commencement and termination of the solicitations, subject to the limitations on time for solicitations contained in this article;
 - (f) A statement to the effect that if a permit is granted:
 - (1) It will not be used or represented in any way as an endorsement by the city by any department or officer thereof;
 - (2) That during the period specified in the permit, if there is any change in fact, policy or method that would alter the information given in the application, the applicant will notify the city clerk in writing thereof within 48 hours after such change;
 - (3) At no time during the period of solicitation will the applicant or his or her agents solicit at any residence within the city where there is clearly and visibly posted any sign requesting No Solicitation, or No Trespassing or words of similar import;
 - (4) The applicant and all persons for whom application is made will carry on their person a copy of the solicitation permit issued by the city.
 - (g) A sample of the identification badge or card that each person participating in the solicitation shall wear or carry, indicating that person's name and the name of the organization for which he or she is soliciting. Such badge or card shall be furnished by the organization and be approved by the city clerk.
- (Code 1993)

5-205. STANDARDS FOR ISSUANCE. (a) The city clerk shall except as provided by this article, issue a solicitation permit provided for by this article upon receiving a completed application form from the applicant or their representative.

- (b) The city clerk, or a person designated by the city clerk to review applications for solicitation permits, may defer issuance of any solicitation permit for such period of time as is reasonably necessary to verify the accuracy of information required to be provided in the application for solicitation permit.
- (c) The city clerk shall not issue a solicitation permit to any person who within the five years preceding the date of filing of an application for solicitation permit has been convicted of a felony, or other violation of the laws of the United States or of any state or city of the United States where such conviction was for an offense involving force or threat of force, violence, theft, dishonesty, fraud, sexual misconduct or moral turpitude or where such conviction was for violation of this ordinance or the solicitation ordinance of any other city.
- (d) Any person who is aggrieved by the refusal of the city clerk to issue a solicitation permit may appeal the refusal to the governing body. On refusal, the city clerk shall notify the applicant by registered mail of the refusal to issue a

solicitation permit and that the applicant may appeal the refusal to the governing body by requesting a hearing before the governing body not later than 30 days following receipt of the notice of refusal. The notice of refusal shall contain a statement of the facts upon which the city clerk acted in refusing to issue a permit. On receipt of a request for hearing before the governing body, the city clerk shall schedule the matter to be heard before the next regularly scheduled meeting of the governing body unless the applicant shall request that the hearing be scheduled at a later date. In no event shall such hearing be held more than 30 days following receipt of the applicant's request for hearing. At the hearing the applicant may offer evidence to supply any contention that a permit should be issued. (Code 1993)

5-206. APPLICATION AND PERMIT AVAILABLE FOR PUBLIC INSPECTION. All applications, permits and supporting documentation filed with the city clerk shall be a matter of public record, and shall be available for examination and inspection by any member of the public during regular business hours. (Code 1993)

5-207. FEES. There shall be no fees or charges paid to the city for a permit pursuant to this article. (Code 1993)

5-208. CONTENTS OF PERMIT. Permits issued under the provisions of this article should bear the name and address of the person to whom the permit is issued, the number of the permit, the dates within which the permit holder may solicit, the statement that the permit does not constitute an endorsement by the city or by any of its departments, officers or employees, of the purpose or the person conducting the solicitation, and the signature of the city clerk or his or her designee. (Code 1993)

5-209. TERM OF PERMIT. Permits issued pursuant to this article shall authorize the holder thereof to solicit for the number of days requested in the application, not to exceed 90 consecutive days. Applications for renewal of permits may be made and shall be granted if the requirements of this article are still being met and no violations of the permit or this article have been found to exist. (Code 1993)

5-210. PERMITS NONTRANSFERABLE. No permit issued under the provisions of this article shall be transferable or assignable. (Code 1993)

5-211. SUSPENSION OR REVOCATION OF PERMITS. Any determination by the city clerk that the holder of a city permit has violated any provisions of this article or if the permit issued pursuant thereof, or that the holder of the permit has made representations which are contrary to the facts stated in the application for the permit, shall cause the city clerk to give notice to the permit holder that the permit is immediately suspended. The notice of immediate suspension is to be mailed to the permit holder by registered or certified mail, and shall notify the holder that a hearing will be had before the governing body at its next regular or special meeting for the purposes of determining whether or not the permit should be revoked. The notice shall contain a statement of the facts upon which the city clerk acted in suspending the permit and at that hearing the permit holder may offer evidence to support any contention its permit should not be revoked. No solicitation shall be made during the period of suspension or revocation of a permit. (Code 1993)

5-212. UNIFORMITY OF ADMINISTRATION OF ARTICLE. The city clerk is directed to administer this article uniformly, and is to require all applicants to submit the application and supporting data required by this article before issuing a permit. All applicants are to be treated alike. (Code 1993)

5-213. PROHIBITED ACTS. (a) It shall be unlawful for any solicitor to ring the bell, or knock on the door or otherwise attempt to gain admittance for the purpose of soliciting at a residence, dwelling or apartment at which a sign bearing the words No Solicitors, No Trespassers, or words of similar import indicating that such persons are not wanted on the premise, is painted, affixed or otherwise exposed to public view; provided that this paragraph shall not apply to any solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof.

(b) It shall be unlawful for any solicitor to solicit prior to 10:00 a.m. or after 9:00 p.m. local times, of any day.

(c) It shall be unlawful for any solicitor to engage in soliciting upon any premise or in any dwelling house, apartment or other residence after having been asked by the owner or occupant thereof to leave the premises or residence.

(d) It shall be unlawful for any solicitor to make more than one solicitation call at the same residential premises for identical goods, services, or contributions within any consecutive 60 days period, without receiving a prior invitation thereof from the occupants of the premises. This provision shall be construed to include solicitation upon the same premises by employees, agents, or other persons acting on behalf of the same person more than once during the aforesaid period without a prior invitation as herein provided.

(e) It shall be unlawful for any solicitor to fail to provide, at the request of the purchaser, a written receipt, for purchases exceeding \$5.00 in cash or tangible property which receipt shall be signed by the person making the sale and shall set forth a brief description of the goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment; or for any charitable solicitor or organization accepting any contribution exceeding \$5.00 in cash or tangible property to fail to provide at the request of the donor a written receipt acknowledging such contribution and personally signed by the person accepting such contribution.

(f) It shall be unlawful for any solicitor to fail at the outset to disclose to the prospective buyer, prospective donor, or canvasee his or her name and the name of the company, product or organization he or she represents.

(g) It shall be unlawful for any solicitor to make any assertion, representation or statement which misrepresents the purpose of his or her call, or use any plan, scheme, or use which misrepresents such purpose.

(h) It shall be unlawful for any solicitor to conduct his or her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.

(i) It shall be unlawful for any person to solicit who has been convicted of a felony or the violation of any law involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of soliciting as defined in this article within the past five years in this state or any other state or subdivision thereof or of the United States.

(j) It shall be unlawful for any person to solicit or attempt to solicit at a place of residence at any entrance other than the main entrance of the residence.

(k) It shall be unlawful for any person to solicit or attempt to solicit without carrying upon their person a copy of the permit issued by the city authorizing solicitation and an identification badge or card as described in section 5-204(g) of this article.

(Code 1993)

5-214.

PENALTIES. Any person who violates or causes to be violated any provision of this article, or who gives false and incorrect information to the city clerk in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a municipal offense and upon conviction thereof, shall be subject for the first offense to a fine of not less than \$100.00 or more than \$500.00 and for the second or any subsequent offense to a fine of not less than \$500.00 or more than \$1,000.00. Jail time not to exceed six months may be added as additional punishment or in lieu of a fine, at the discretion of the judge.

(Code 1993; Code 2008)