

Chapter 5.12

CHARITABLE AND COMMERCIAL SOLICITATION*

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5.12.010 Purpose. The purpose of this chapter is to protect the public health, safety and welfare by regulating charitable and commercial solicitation within the town. (Ord. 525 §1(part), 1994).

5.12.020 Definitions. The following words and phrases shall, for the purposes of this chapter, have the meaning ascribed to them by this section:

"Agent" means a person who has authorization from a holder of a commercial solicitation permit to solicit in the name of the permit holder.

"Charitable" means and includes the words philanthropic, social service, welfare, benevolent, educational, religious, civic, fraternal and patriotic.

"Charitable solicitation" means any request, plea, entreaty, demand or invitation to give money or property, including the offer to sell any advertising space, book, card, magazine subscription, membership, merchandise, ticket of admission or similar item in connection with which:

* For statutory provisions authorizing towns to license for regulation, see Bus. & Prof. C.A. §16000.

- (1) Any appeal is made for charitable purposes; or
- (2) The name of any charity is used or referred to in any such appeal as inducement for making any such gift; or
- (3) Any statement is made to the effect that the solicited money or property or any part thereof will go to or be used for any charity or charitable purpose.

"Charity" means and includes any nonprofit organization, trust or other person which solicits or obtains contributions solicited from the public for charitable purposes or holds any assets for charitable purposes. Charitable purposes include but are not limited to the improvement and advancement of public safety, education, religion, the prevention of cruelty to children and animals, environmental protection and other benevolent purposes. Charity shall include any nonprofit organization or trust exempt from taxation pursuant to California Revenue and Taxation Code Section 23701(d) or Internal Revenue Code Section 501(c)(3).

"Chief of police" means the chief of the town or his/her designee.

"Commercial canvasser" means a person who conducts a poll or survey or who otherwise canvasses from door to door within the town for commercial purposes.

"Commercial peddler" means any person who travels by foot, vehicle or by any other type of conveyance from door to door, house to house, or street to street, carrying, conveying or transporting food, goods, wares, merchandise or other personal property of any nature whatsoever, offering or exposing the same for sale, or making sales and delivering articles to purchasers, or who without traveling from place to place sells or offers the same for sale from any vehicle, conveyance, structure or from any other place other than a permanent store building.

The word "peddler" means and includes the words "hawker," "huckster" or "itinerant vendor." "Commercial solicitation" means the conducting, managing or carrying on of the activities of a commercial peddler, commercial solicitor or commercial canvasser as defined in this section. Commercial solicitation as defined in this section does not include solicitation by telephone or solicitation through the United States mail.

"Commercial solicitor" means any person who travels either by foot, vehicle or any other type of conveyance from door to door, house to house, or street to street, taking or attempting to take subscriptions, contracts of sale, or orders for the sale of foods, goods, wares, merchandise or other personal property of any nature whatever for future delivery, or for services to be furnished or performed in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale, or whether or not he collects advance payments on such sales. The word "solicitor" shall include any person who uses or occupies any vehicle, conveyance, structure or other place other than a permanent store building within the town for the purpose of exhibiting samples and taking orders for future delivery.

"Commercial solicitation permit" means a permit issued to a commercial peddler, commercial solicitor or commercial canvasser by the chief of police under Section 5.12.080.

"Contribution" means and includes the words donations, money, pledges, alms, food, clothing, subscription(s), property, credit, financial assistance or other things of value.

"Member" means a person who belongs to an organization who is entitled to vote, elect officers of the organization or hold office. The term "member" shall not include those persons who are granted a membership solely for making a contribution as a result of the charitable contribution.

"Permittee" means any person who has been issued a commercial or charitable solicitation permit by the chief of police.

"Person" means any individual, firm, partnership, corporation, company, association, joint-stock organization, church, religious sect, religious denomination, society, organization or league and shall include any agent, trustee, receiver, assignee or other similar representative thereof.

"Political fundraising and canvassing" means going in and upon private residences within the town for the purposes of discussing and enlisting resident support on political matters such as, but not limited to, the statutory or regulatory authority of local, state or national governments, enactment or repeal of legislation and election of candidates to office. Political fundraising and canvassing activities include but are not limited to: door-to-door soliciting of financial contributions in support of a political candidate's or organization's political activities; circulation of petition(s) for resident signature(s), requesting resident votes in favor or opposition to ballot measures and candidates; enlisting residents to vote, write letters, march or otherwise express their opinions on political matters.

"Public agency" means the United States, state of California, any city, county, city and county, district, municipal or public corporation, or any department, agency or instrumentality thereof.

"Residential dwelling" means a building designed for or occupied by one or more families as a residence including single-family residences, duplexes and apartments. (Ord. 525 §1(part), 1994).

5.12.030 Permit required for charitable and commercial solicitation. It is unlawful for any person to engage in door-to-door charitable or commercial solicitation at or upon residential dwellings or nonresidential buildings within the town, or to engage in charitable or commercial solicitation in town parks or other town property, on public sidewalks and other rights-of-way without first obtaining a charitable or commercial solicitation permit from the chief of police. This requirement shall not apply to activities specifically exempted by Section 5.12.040 of this chapter. (Ord. 525 §1(part), 1994).

5.12.040 Exemptions. (a) The provisions of Section 5.12.030 shall not apply to any of the following:

- (1) Any person organized and operated wholly or partly for nonprofit purposes, if the solicitation by such person is conducted only among the members thereof by other members or officers, voluntarily and without remuneration for making such solicitation, or if the solicitation is in the form of collections or contributions taken or made at the regular assemblies or services of such person;
- (2) Political fundraising and canvassing as defined in Section 5.12.020 of this chapter;
- (3) Solicitations limited to recruiting for volunteer services;
- (4) Persons under the age of eighteen years soliciting for their school or for a nonprofit organization on a voluntary basis;
- (5) Charitable solicitation by public agencies;
- (6) Persons soliciting orders from or selling to retail dealers for use or for resale, or to manufacturers for processing or other manufacturing purposes, or to bidders for public works or supplies;
- (7) Persons delivering or soliciting subscriptions for a newspaper of general circulation.

- (b) In the event that a dispute arises between the chief of police and a person planning

to conduct, or conducting a commercial solicitation as to whether such activity falls within the permit exemption provided in subsection (a) of this section, the person shall have the right of appeal to the town attorney. Said appeal shall be in writing and shall describe the planned commercial activities, and any other evidence tending to establish that the planned activity falls within one of the permit exemptions. The town attorney shall determine whether the proposed solicitation is exempt from permit requirements under subsection (a) of this section within five business days after the filing of a commercial solicitation appeal with the town clerk. (Ord. 525 §1(part), 1994).

5.12.050 Contents of charitable permit application. An application under penalty of perjury for a charitable solicitation permit shall be filed with the chief of police which shall contain the following information:

- (1) The name, address and telephone number of the person completing the application form;
 - (2) The name, address, phone number and purpose of the charitable organization;
 - (3) The name, address and telephone number of a responsible person in the charitable organization to contact;
 - (4) Whether the applicant organization has tax-exempt status under federal and state law. If the applicant claims to be a tax-exempt organization, the applicant shall provide the chief of police with a letter of determination from the Internal Revenue Service and/or a letter of good standing from the State Franchise Tax Board demonstrating the applicant's tax-exempt status;
 - (5) The information required by California Business and Professions Code Section 17510.3 (governing disclosure requirements for solicitation as amended from time to time) with a copy of the card or brochure required thereunder for distribution to the prospective charitable donor or purchaser;
 - (6) Such supplemental information requested by the chief of police as to the planned dates and location(s) within the town for the charitable solicitation and number and identity of agents participating in the charitable solicitation. The chief of police may require that such information be updated during the year the permit is in force if changes occur subsequent to filing of the application in the planned dates and locations for the charitable solicitation;
 - (7) A list of other cities or counties where similar permits have been applied for.
- (Ord. 525 §1(part), 1994).

5.12.060 Contents of commercial permit application. An application under penalty of perjury for a commercial solicitation permit shall be filed with the chief of police which shall contain the following information:

- (1) The name and physical description of the applicant;
- (2) Permanent home address and telephone number of applicant;
- (3) Permanent business address and telephone number of applicant;
- (4) Local residence and business address if different from subsections (2) and (3) of this section;
- (5) A brief description of the business or activity to be conducted;

- (6) If employed, the name, address and telephone number of the employer. If acting as an agent, the name, address and telephone number of the principal who is being represented;
- (7) The length of time for which the right to do business is desired;
- (8) A photograph of the applicant taken within sixty days immediately prior to the date of filing of the application, measuring two inches by two inches, and showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (9) A statement as to whether or not the applicant has been convicted of any criminal offense anywhere, whether felony, misdemeanor or infraction, other than minor traffic violations. As to any such conviction, the date and place of conviction, the nature of the offense, and the punishment or penalty assessed therefor;
- (10) Proof of possession of any license or permit which under federal, state or local laws or regulations the applicant is required to have in order to conduct the proposed business, or which, under any such law or regulation, would exempt the applicant from the licensing requirements of this chapter;
- (11) The year, model and license number of any motor vehicle(s) which will be used during the course of commercial solicitation and the applicant's driver's license number;
- (12) A list of other cities or counties where similar permits have been applied for in the first two years. (Ord. 525 §1(part), 1994).

5.12.070 Amended application. If while the application is pending or during the term of any permit granted, there is a change in fact which would alter the information provided in the application form, the applicant shall notify the chief of police within one business day of such change. (Ord. 525 §1(part), 1994).

5.12.080 Charitable and commercial permits. The chief of police shall issue the commercial or charitable solicitation permit within five business days after receipt of the application. The permit will be good for one year from the date of its issuance. Such permit shall extend to the applicant and all agents thereof. Any person acting or claiming to act or operate under or by virtue of any permit issued pursuant to this chapter shall, upon request of the chief of police, exhibit such permit, or inform the chief of the number and date of issuance thereof, or alternatively if such person is an agent of the permit holder, he or she shall exhibit evidence of such agency in addition to providing the number and date of issuance of any permit under which he or she is soliciting. (Ord. 525 §1(part), 1994).

5.12.090 Form of permit. The permit shall be in form prescribed by the town and shall include the following information:

- (1) The name of the permittee and the permittee's employer (if any);
- (2) The date(s) the permit is valid;
- (3) A statement that the permit does not constitute an endorsement of the charitable or commercial solicitation by the town, or of any of its departments, officers or employees. (Ord. 525 §1(part), 1994).

5.12.100 Fee. The application for a commercial solicitation permit shall be accompanied by a flat fee in an amount established by the town council in an amount sufficient to cover the cost to the town of processing the application. (Ord. 525 §1(part), 1994).

5.12.110 Renewal of permit. Charitable and commercial solicitation permits shall be renewed annually by filing an application under penalty of perjury updating information provided to the chief of police in the original application, including updated letter of determination and/or letter of good standing where the organization claims tax-exempt status. (Ord. 525 §1(part), 1994).

5.12.120 Manner of solicitation. (a) It is unlawful for a person engaging in commercial or charitable solicitation to affix any object to the person of any member of the public without first receiving express permission thereof.

(b) Permittees engaging in door-to-door commercial solicitation shall carry a commercial solicitation permit on their person. Upon request of any person contacted, the commercial solicitor shall provide his or her name and a copy of the permit issued under this chapter.

(c) It is unlawful for a commercial solicitor to misrepresent his or her identity or the identity of the organization or other person conducting the commercial solicitation for which he or she is an agent.

(d) It is unlawful to misrepresent that the commercial solicitation permit issued under this chapter is an endorsement by the town, or any department or employee thereof of the commercial solicitation.

(e) It is unlawful to refuse to leave a residential dwelling after being requested to do so by its occupant(s). (Ord. 525 §1(part), 1994).

5.12.130 Time of solicitation. It is unlawful to solicit at a private residence between the hours of nine p.m. and eight a.m. (Ord. 525 §1(part), 1994).

5.12.140 Prohibition by sign or registry with town. (a) No solicitor shall contact or attempt to contact in person the occupant(s) of any residential dwelling within the town where there is posted at the front of the dwelling, in letters not less than one inch in height and clearly visible from the normal entryway to such dwelling, a sign prohibiting soliciting or peddling.

(b) No solicitor shall attempt to contact in person the occupant(s) of any commercial premises within the town where there is posted at all entrances thereto, in letters not less than one inch in height and clearly visible to persons, a sign or placard prohibiting soliciting or peddling and soliciting.

(c) The director of public safety or the town clerk or his or her representative shall provide every solicitor or his, her or its agent or representative with a copy of the town register containing the addresses of those persons who do not wish to be solicited at their residence or place of business. A separate register containing both the names and the addresses of those persons who do not wish to be solicited at their residence or place of business shall be maintained by the director of public safety. This register, containing both names and addresses, will not be available to the public because the public interest served by not making the register public clearly outweighs the public interest served by disclosure of the register.

No solicitor shall contact or attempt to contact in person the occupant(s) at any residential dwelling or commercial premises with the town who, or whose agent or representative, has received a copy of the town register containing the addresses of those persons who do not wish to be solicited at their residence or place of business. (Ord. 527, 1994; Ord. 525 §1(part), 1994).

5.12.150 Enforcement. It shall be the duty of the police department to investigate any complaints of violations of this chapter and to enforce the provisions of this chapter. (Ord. 525 §1(part), 1994).

5.12.160 Permit revocation or suspension. (a) A commercial solicitation permit may be revoked or suspended by the chief of police for any of the following reasons:

- (1) Information contained in the application, or supplemental information requested from the applicant, is false in any material detail.
- (2) The applicant has failed to notify the chief of police of a change in facts subsequent to filing of the application as required in Section 5.12.070 of this chapter.
- (3) The permittee is engaging in commercial solicitation at residential dwellings and has been convicted of a felony or any misdemeanor or infraction directly related to charitable, political or commercial solicitation.
- (4) The permittee is a minor under eighteen years of age and is not in possession of a valid work permit as specified in Section 5.12.060(10) of this chapter.

(b) Notice of the permit revocation or suspension stating the grounds therefor shall be personally served or served by mail on the permittee. Service by mail shall be deemed complete upon posting in the United States mail. The applicant may appeal a permit suspension or revocation by filing a notice of appeal with the town clerk within five days of service by the chief of police of the permit revocation or suspension. If an appeal is timely filed, the town council shall hold a hearing at its next regular meeting. The appeal must be filed no later than noon, the week preceding the next regular meeting to be placed on that meeting's agenda. The town council may affirm, modify or overrule the decision of the chief of police. (Ord. 525 §1(part), 1994).

5.12.170 Permit nontransferable. Commercial solicitation permits are nontransferable. It is unlawful for the permittee to transfer the permit to any other person. (Ord. 525 §1(part), 1994).

5.12.180 Fundraising as a business. An organization in the business of fundraising (seeking a profit and paying its solicitors), even if engaged by a nonprofit organization, shall be considered a "business" and must comply with Chapter 5.04 of this code. If such an organization is soliciting on behalf of a nonprofit organization, the nonprofit organization shall obtain a permit pursuant to Section 5.12.030. (Ord. 525 §1(part), 1994).

5.12.190 Violations. A violation of any provision of this chapter shall constitute either an infraction or a misdemeanor. (Ord. 525 §1(part), 1994).