Amendment No. 1

To

Substitute Ordinance No. BL2012-283

Madam President:

I move to amend Substitute Ordinance No. BL2012-283 by amending Section 1 as follows:

1. By deleting the first sentence in subsection A. of the new Code section 6.64.040 and substituting with the following new sentence:

"Any owner or lawful occupant of any residence within the area of the metropolitan government who wishes to prohibit door-to-door commercial solicitation, other than the sale of books and other expressive works, at his or her residence may register the address of such residence by completing a form prepared by the clerk and submitted through the clerk's website."

2. By deleting the provisions of subsection D. of the new Code section 6.64.040 and substituting with the following new subsection D.:

"D. Each residential address appearing on the metropolitan government's no-solicitation list will remain on the list for three hundred sixty-five (365) days from the date it was electronically submitted to the clerk unless removed by the owner or lawful occupant of the residence in accordance with subsection E. of this section. It shall be the duty of the owner or lawful occupant of a residence appearing on the no-solicitation list to ensure that the information included on the no-solicitation list is up-to-date. Such owner or lawful occupant shall provide the clerk with updated information as necessary. It shall be the responsibility of the owner or lawful occupant of the residence to resubmit the address for placement on the no-solicitation list after the 365 day period has expired."

INTRODUCED BY:

Phil Claiborne

Darren Jernigan
Members of Council

ADOPTED: January 15, 2013

p:BL2012-283amd1

SUBSTITUTE ORDINANCE NO. BL2012-283

An ordinance amending Title 6 of the Metropolitan Code pertaining to the permitting of commercial solicitors and the establishment of a no solicitation list.

BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 6 of the Metropolitan Code of Laws shall be and the same is hereby amended by adding the provisions of Chapter 6.64 in their entirety and substituting in lieu thereof the following new Chapter 6.64 entitled "COMMERCIAL SOLICITORS".

6.64.010 Purpose.

The purpose of this chapter is as follows:

A. To balance the First Amendment rights of residential commercial solicitors with the privacy, safety, health and welfare of the residents within the area of the metropolitan government;
B. To require all commercial solicitors to conduct any door-to-door residential solicitation within the area of the metropolitan government pursuant to a permit and identification badge issued by the metropolitan clerk;
C. To prohibit commercial solicitations at residences where the owner or occupant has prohibited solicitation in a manner consistent with the provisions of this chapter.
D. The provisions of this chapter shall not and are not intended to apply to religious organizations nor to charitable organizations as defined in section 6.64.020. Charitable organizations are expressly exempt from regulation under this chapter.

6.64.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this Section:

"Applicant" means any person or entity who has submitted an application for a permit.

"Area of metropolitan government" means and includes the total area of Davidson County, as defined in Section 1.02 of the Metropolitan Charter.

"Board" means the board of alarm appeals as created in Section 10.60.080 of the Metropolitan Code.

"Charitable organization" means a group which is or holds itself out to be a benevolent, patriotic, philanthropic, political, social service, welfare, eleemosynary, civic, or fraternal organization who sells goods, wares, merchandise, or services, or solicits or obtains contributions soliciting from the public, for charitable purposes.

"Charitable purpose" means any purpose which is benevolent, patriotic, political, philanthropic, social service, welfare, eleemosynary, civic, environmental, or fraternal.

"Clerk" means the metropolitan clerk of the metropolitan government, or the clerk's designee.

"Commercial solicitor" means any person, whether as volunteer, owner, agent, consignee or employee, who engages in door-to-door commercial solicitation.

"Door-to-door commercial solicitation" means attempting to make personal contact with a resident at his or her residence, without prior specific invitation by or appointment with the resident, for the primary purpose of:
(1) Attempting to sell, for present or future delivery, any goods, wares or merchandise, other than newspaper or magazine subscriptions, or any services to be performed immediately or in the future, whether or not the person has, carries or exposes a sample of such goods, wares or merchandise, and whether or not he or she is collecting advance payments for such sales; or
(2) Personally delivering to the resident a handbill or flyer advertising a commercial event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a future time.

"Employer" means any person, company, corporation, business, partnership, organization or any other entity on behalf of whom a person is acting.

"Metropolitan government" means the Metropolitan Government of Nashville and Davidson County.

"No-solicitation" list means a list of the addresses of residents within the area of the metropolitan government who have requested that their residences be placed on a list maintained and published by the clerk for the purpose of informing the general public and prospective solicitors that all door-to-door commercial solicitation at such addresses is prohibited.

"Permit" means a document issued by the clerk authorizing a commercial solicitor to engage in door-to-door commercial solicitation.

"Permit holder" means any person to whom a permit has been issued under the provisions of this chapter.

"Person" means a natural person or business entity, such as, without limitation, a corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership or any group or combination thereof.

"Residence" means a private residence within the area of the metropolitan government, including but not limited to, single and two-family dwellings, condominium units, and apartments, including the yards, grounds or hallways thereof.

6.64.030 Prohibiting solicitation by posting signs.
A. No commercial solicitor shall enter or remain upon any private property within the area of the metropolitan government if a "No Solicitation" or "No Trespassing" sign is posted by the property owner or lawful occupant at or near the entrance(s) to such property. No commercial solicitor shall engage in the act of commercial solicitation within the common areas of

apartment and condominium complexes if a "No Solicitation" or "No Trespassing" sign is conspicuously posted at or near the entrance to the complex.
B. This section does not prohibit commercial solicitors from engaging in door-to-door solicitation within an apartment or condominium complex, with the exception that commercial solicitation shall be prohibited at any unit that has been added to the no-solicitation list pursuant to section 6.64.040 of this chapter.

6.64.040 No-solicitation list for commercial solicitations.
A. Any owner or lawful occupant of any residence within the area of the metropolitan government who wishes to prohibit door-to-door commercial solicitation at his or her residence may register the address of such residence by completing a form prepared by the clerk and submitted through the clerk's website. Such registration shall take effect thirty (30) calendar days after the date of the clerk's receipt of the registration form.
B. The clerk shall maintain and publish on the nashville.gov website a no-solicitation list consisting of all residential addresses that have been registered under subsection A. above and that have not been deleted by the clerk under subsection D. below or by the owner or lawful occupant of the registered property. Each permit holder shall be responsible for obtaining and reviewing a copy of such list immediately upon issuance of a permit under this chapter and at such intervals thereafter as may be reasonably necessary to ensure compliance with the requirements of subsection C. below.
C. As of the effective date of the registration of a residential address under subsection A. above, all door-to-door commercial solicitation at such address shall be prohibited until such time, if at all, that the address has been deleted from the no-solicitation list.
D. Each residential address appearing on the metropolitan government's no-solicitation list will remain on the list from the date it was electronically submitted to the clerk, and shall remain on the list until removed by the owner or lawful occupant of the residence in accordance with subsection E. of this section. It shall be the duty of the owner or lawful occupant of a residence appearing on the no-solicitation list to ensure that the information included on the no-solicitation list is up-to-date. Such owner or lawful occupant shall provide the clerk with updated information as necessary.
E. The owner or lawful occupant of any residence placing his/her address on the no-solicitation list may cause such residence to be removed from the list by submitting a written request for removal of the same to the clerk, and shall cause such residence to be removed if the ownership or lawful occupancy of the residence changes. All new owners or lawful occupants must register as provided in subsection A. above in order to be placed on the no-solicitation list.
F. Neither the metropolitan government nor any of its officers, employees, agents or authorized volunteers shall be liable to any person for any injuries, damages or liabilities of any kind arising from or relating to any errors or omissions that may occur in compiling or maintaining the no-solicitation list.

6.64.050 Permit and identification badge required for all commercial solicitors.
A. Any person seeking to engage in commercial door-to-door solicitation must obtain a permit and ID badge from the clerk and shall pay the permit fee as provided in this chapter before commencing any such solicitation.
B. All permits shall be issued in the name of the applicant. A permit may be issued to an individual or an employer. Upon issuance of each permit, the clerk shall create and maintain a list of all persons authorized to engage in door-to-door commercial solicitation under the permit. It shall be the sole responsibility of the permit holder to:

1. Provide a copy of the permit to each person authorized to engage in solicitation under the permit;
2. Ensure that each person authorized to solicit under the permit complies with the terms and conditions of the permit and with the provisions of this chapter;
3. Notify the clerk in writing of any persons to be added to or deleted from the list of authorized solicitors or any changes in employment; and
4. Submit to the clerk, for each person to be added to such list, the information required under section 6.64.060, subsection A.4., together with payment of the identification badge fee required under section 6.64.060.C.
C. The clerk shall, within ten (10) business days of the receipt, via mail or in person, of a complete application for a permit under this chapter, issue such permit, together with identification badges for all persons authorized to engage in door-to-door commercial solicitation under the permit, unless the clerk determines that the permit application is denied under the criteria stated in section 6.64.090 of this chapter.
D. Subsequent to the issuance of any permit, and upon receipt of the information and fee required under section 6.64.090 below, the clerk shall, within five (5) business days, issue an identification badge to any new or additional person to be authorized to solicit under the permit as long as such person is not prohibited under 6.64.080. The clerk shall also, within five (5) business days, issue a replacement identification badge to any solicitor who, by affidavit, notifies the clerk that his or her identification badge has been lost or stolen, and who pays an additional identification badge fee as established under section 6.64.060.
E. If an employer applies for and is granted a permit under this chapter, the employer shall be entitled to obtain identification badges from the clerk for each employee or agent authorized to solicit under the permit.
F. The identification badges shall contain a photograph of the solicitor, bear the words "Permitted Solicitor," include the names of the employer and solicitor, and the expiration date of the permit.
G. Identification badges issued under this chapter shall, upon expiration, be returned to the clerk.

6.64.060 Application contents; fees.
A. Each person applying for a door-to-door commercial solicitation permit shall file with the clerk an affidavit on a form supplied by the clerk stating:
1. The full name, business address and business telephone number of the applicant;
2. Information regarding the business as required by the clerk, including, without limitation, its name, address of its principal place of business, federal tax identification number, phone number, and proof of a valid business tax license issued by the Davidson county clerk;
3. A complete list of all persons to be authorized to solicit under the permit;
4. For each person authorized to solicit under a permit, the following information:
a. Names, address, telephone number, date of birth, and social security number;
b. A statement certifying that the person is not prohibited from commercial solicitation under section 6.64.080 of this chapter as determined by a criminal background check;
c. A description of the individual including height, weight, color of eyes and color of hair;
d. The number and state of issuance of the individual's motor vehicle operator's license or chauffeur's license, if any, or other state-issued photo identification; and
e. Any other identifying information as may be required by the clerk to ensure or verify compliance with this chapter; and

5. A brief explanation of the nature of the solicitation activity that requires a permit under this chapter, including the type of the goods, wares, merchandise, and/or services to be offered to the consumer;
6. If the applicant is a foreign corporation or an employee of such corporation, the name, address and telephone number of an agent for process residing in the state;
7. Proof that the applicant has obtained a valid business tax license;
8. Any other information determined to be relevant by the clerk.
B. At the time of application, the applicant shall also provide a photograph of each person to be authorized to solicit under the permit. The clerk may require this photograph to be taken in person at a place designated by the clerk or by submission of a photograph, taken no more than six (6) months prior to the date of application, which photograph fairly depicts the appearance of the proposed solicitor as of the date of application and which, in the judgment of the clerk, is suitable for reproduction on the identification badge to be issued by the metropolitan government.
C. At the time of application, each applicant shall pay a fee in an amount determined by the clerk to be sufficient to defray the costs incurred by the metropolitan government in processing the application, plus an additional fee to defray the costs of preparing and issuing an identification badge for each person to be authorized to solicit under the permit, including the applicant. Said fees shall be nonrefundable. Such fees shall be ratified by resolution of the metropolitan council prior to becoming effective.
D. Background check. All commercial solicitation permit applicants shall undergo a criminal background check as part of the determination of permit eligibility. The clerk shall utilize the metropolitan government's competitively-bid contractor retained to provide employee investigations and background checks for the purpose of obtaining a criminal background check for commercial solicitation permit applicants. All costs of the criminal background check shall be borne by the applicant.

6.64.070 Duration of permit; renewal.
(a) Each permit shall be valid for two (2) years, effective from the date of issuance.
(b) Any permittee wishing to renew a permit issued under this chapter must apply for the renewal of the permit no less than thirty (30) days prior to the expiration of its term. Said application shall be accompanied by a criminal background check as required under section 6.64.060 for each person who is to be authorized to solicit under the permit during the renewal term of the permit. If a permittee fails to apply for such renewal within said thirty day period of time, the permit will expire. The nonrefundable renewal fee for each permittee shall be determined by the clerk in an amount sufficient to defray the costs incurred by the clerk in processing the renewal application. Said fee shall be ratified by resolution of the metropolitan council prior to becoming effective.

6.64.080 Persons prohibited.
A person shall not be eligible for issuance of a permit or identification badge under this chapter if:
A. Such person has been convicted, pled guilty, placed on probation or parole, pleaded nolo contendere, or been released from incarceration within a period of five years prior to the date of application of a crime of moral turpitude. For purposes of this section, "moral turpitude" means premeditated murder, all sex related crimes, the illegal sale of Schedule I and II controlled substances, and crimes of fraud or embezzlement.; or

B. A permit or an identification badge previously issued to such person under this chapter has been revoked by the clerk under sections 6.64.130 or 6.64.140 of this chapter.

6.64.090 Denial of permit.
The clerk shall deny an application for a permit or any renewal of a permit under this chapter if the clerk determines that the applicant has:
A. Made any material misrepresentation or false statement in the application for the permit; or
B. Failed to obtain a business tax license as required by law; or
C. Been convicted of any of the enumerated crimes and offenses set forth in section 6.64.080 of this chapter.

6.64.100 False or deceptive representation prohibited.
No person shall attempt to obtain, by telephone or otherwise, an invitation to visit any private residence for the purpose of soliciting the purchase or sale of goods, services or any other thing of value, by knowingly making a false or deceptive representation or statement.

6.64.110 Duty to display identification badge and to exhibit permit.
A. Any commercial solicitor engaging in door-to-door commercial solicitation under a permit issued pursuant to this chapter shall conspicuously display his or her identification badge on the front of his/her person at all times while engaged in the act of commercial soliciting.
B. Whenever requested by any police officer or by any customer or prospective customer, any commercial solicitor engaged in door-to-door commercial solicitation under a permit issued pursuant to this Chapter shall exhibit his or her identification badge and permit.
C. A permit holder shall, without undue delay, report any lost or stolen identification badge to the clerk.

6.64.120 Transfer of permits prohibited.
No permit issued pursuant to this chapter shall be transferred to any person.

6.64.130 Revocation of identification badge.
The clerk may suspend or revoke the identification badge of any solicitor that has engaged in any unlawful solicitation or any solicitation conducted in such a manner as to constitute a menace to the health, safety or general welfare of the public. The permit holder shall cause the suspended or revoked identification badge to be delivered to the clerk within five business days from notification.

6.64.140 Nonrenewal or revocation of permit.
The clerk shall revoke and shall not renew any permit issued pursuant to this chapter if the clerk determines that any of the following have occurred:
A. Fraud, misrepresentation or false statement in the application for the permit or any renewal application, including, without limitation, representations made as to the criminal history of any person to be authorized to solicit under the permit;
B. Failure to obtain a business tax license as required by law;
C. Failure to supervise solicitation conducted under the permit so as to reasonably ensure that such solicitation is in compliance with the terms of the permit and with the provisions of this chapter; or

D. Authorizing, condoning or knowingly tolerating any unlawful solicitation or any solicitation conducted in such a manner as to constitute a menace to the health, safety or general welfare of the public.

6.64.150 Records.
The clerk shall maintain records showing each permit issued and the alleged violations of this Chapter.

6.64.160 Appeals for denial or revocation of permit—Hearings.
Upon the denial, suspension, or revocation of a commercial solicitation permit by the clerk, the applicant or permit holder shall be entitled to a hearing before the board in accordance with the provisions of this section:
A. A request for a hearing shall be in writing and filed with the clerk within five days of the clerk's decision to deny an initial application or renewal, or to suspend or revoke a permit.
B. The clerk shall notify the applicant or permit holder by United States mail of the hearing date.
C. The hearing date shall fall within twenty-five days from the date the clerk receives the request, unless the applicant requests a later date and the clerk grants the request.
D. The applicant or permit holder shall have a minimum of five days of notice before a hearing may be held. An applicant or permit holder is considered notified upon their receipt of notification from the clerk.
E. At the hearing, the applicant or permit holder may present evidence as to why his/her initial application or renewal should not be denied, or why his/her permit should not be suspended or revoked.
F. The clerk has the authority to subpoena witnesses to testify before hearings.
G. Within five days of the hearing, the board shall state in writing the reason for the board's decision that will either affirm or reject the denial of an initial application, renewal, suspension, or the revocation of a permit and mail it by United States mail to the address of the applicant as listed on the application.
H. Any denial after a hearing of an initial application for a permit may be appealed by writ of certiorari to the Circuit or Chancery courts of Davidson County within sixty days from the date of the hearing.

6.64.170 Administrative Regulations.
The clerk is authorized to promulgate rules and regulations as are necessary to effectuate the implementation, administration and enforcement of this chapter.

6.64.180 Violations and penalties.
In addition to the revocation, suspension or denial of a permit or identification badge issued under this chapter, any applicant, permittee or solicitor who violates any of the provisions of this chapter shall be subject to a penalty of fifty dollars ($50.00) per day per violation.

6.64.190 Severability.
If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be unenforceable by a court of competent jurisdiction, such clause or provision and the remainder of this chapter shall remain effective and enforceable to the fullest extent allowed by law, and all clauses and provisions of this chapter are hereby declared to be severable.

Section 2. The provisions of the Ordinance shall be implemented not later than April 1, 2013.

Section 3. This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY OF FUNDS:

Richard M. Riebeling
Director of Finance

INTRODUCED BY:

Phil Claiborne

Darren Jernigan

Members of Council

p:12128jbc

ORIGINAL

METROPOLITAN COUNTY COUNCIL

SUBSTITUTE **Bill No.** BL2012-283

AN ORDINANCE AMENDING TITLE 6 OF THE METROPOLITAN CODE PERTAINING TO THE PERMITTING OF COMMERCIAL SOLICITORS AND THE ESTABLISHMENT OF A NO SOLICITATION LIST.

Introduced _____

Passed First Reading _____

Amended _____

SUBSTITUTED & *Passed Second Reading* DEC 18 2012 ACTION RESCINDED JAN - 8 2013

DEFERRED to 3/5/13 2/5/13

AMENDED & Passed Second Reading JAN 15 2013

Passed Third Reading MAR 05 2013

Approved MAR - 8 2013

By _____

Metropolitan Mayor

Advertised _____

Effective Date _____