Postponed on 2/23/12 till 3/8/12
Postponed on 3/08/12 till 3/22/12
Adopted 3/22/12

SUBSTITUTE A

ORDINANCE NO: 12- 60

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama as follows:

SECTION 1. Chapter 18 of the Code of Ordinances of the City of Huntsville, Alabama is hereby amended as follows:

ARTICLE I. RESIDENTIAL SOLICITATION

DIVISION 1. RESIDENTIAL SOLICITATION IN GENERAL

Sec. 18-1. Purpose; scope; handbilling.

(a) *Purpose.* The city council finds that its citizens have the right to be secure from unwanted intrusion into their privacy and from criminal or fraudulent conduct or activity. The city council further finds that solicitation at a residence directly implicates the security of citizens of this city and city officials have received and are aware of citizen complaints about certain practices or conduct associated with solicitation in this city including fraud. The city council is also aware of criminal activity occurring in this city as well as other cities as a result of solicitors gaining access to residences under the guise of soliciting. The city council recognizes that there are constitutional guarantees associated with the practice of soliciting which are to be respected and safeguarded. Therefore, the purpose of this article is to adopt police power regulations which are designed to protect the security of citizens in their lives, their homes, and their property, and which do not offend constitutional guarantees.

(b) *Scope.* This article shall have full force and effect throughout the corporate limits of the city and is intended to regulate all forms of solicitation that physically occur at a residence, whether commonly known as soliciting, peddling, hawking, canvassing, or other similar terms.

(c) *Placing of handbills.* Section 22-39 of this Code applies to commercial and noncommercial handbilling and solicitors employing the practice of handbilling while soliciting shall abide by section 22-39. Notwithstanding any contrary provisions of section 22-39, where the occupant of a residence has posted a notice in accordance with section 18-3 of this article prohibiting solicitation, then no solicitor shall leave any literature concerning the solicitation at the residence.

Sec. 18-2. Definitions.

(a) 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.

Commercial solicitor means (1) a person who engages or attempts to engage in residential selling, or (2) a person who engages or attempts to engage in solicitation on behalf of another person in exchange for taxable compensation whether as an employee, agent, independent contractor, or otherwise, except that a bona fide officer or employee of an organization for which residential

advocacy or residential fundraising is being conducted shall not be included in the definition of a commercial solicitor.

Competent individual means a person claiming or reasonably appearing to be at least nineteen years of age, or who claims to be an emancipated minor, and who reasonably appears to be of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct, or to otherwise have the capacity to contract.

Disqualifying factors mean:

(1) A person has been criminally convicted of (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the person has been formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) or has criminal charges currently pending against them for:

a. Homicide or manslaughter of any type, class, or degree;

b. Physically abusing, sexually abusing, or exploiting a minor;

c. The sale or distribution of controlled substances;

d. Sexual assault of any type, class, or degree; or

e. Theft, robbery, burglary, or assault, of any type class, or degree.

(2) A person has been criminally convicted (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the person has been formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) for a felony in the last ten (10) years.

(3) A person has been confined or imprisoned in a federal or state prison within the last ten (10) years.

(4) A person has been criminally convicted (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the person has been formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) of a misdemeanor within the past five (5) years involving a crime of moral turpitude according to the laws of this state, or violent or aggravated conduct involving persons or property.

(5) A person has a final, non-appealable civil judgment entered against them within the last five (5) years involving fraud or intentional misrepresentation;

(6) A person is currently on parole or probation to any court, penal institution, or governmental entity, which include being under house arrest or subject to a tracking device;

(7) A person has an outstanding warrant from any jurisdiction; or

(8) A person is currently subject to a protective order, based on physical or sexual abuse, issued by a court of competent jurisdiction.

Goods mean tangible items of any kind, which include merchandise, wares, foodstuffs, perishables, publications, subscriptions, supplies, materials, and manufactured or compounded products.

Manager means a person that manages, supervises, or oversees a commercial solicitor, whether or not the manager actually solicits.

Master solicitor means a person that employs, hires, engages, or otherwise uses a commercial solicitor for soliciting. A master solicitor who is an individual must be at least nineteen (19) years of age.

Master permit means the master permit issued in accordance with division 2 of this article.

Non-commercial solicitor means a person that engages in residential advocacy or residential fundraising who is not a commercial solicitor.

Residence means and includes every separate living unit occupied for residential purposes by one or more persons, which includes those contained within any type of building or structure.

Residential advocacy means, while upon residential premises, engaging or attempting to engage an occupant of the residence in conversation, without that person's prior invitation or consent, for the purpose of promoting or facilitating the receipt of information regarding a cause, practice, or belief, which includes charitable, political, religious, eleemosynary, social, philanthropic, benevolent, humanitarian, environmental, health-related, patriotic, civic, or educational causes, practices, or beliefs.

Residential fundraising means, while upon residential premises, obtaining or attempting to obtain from an occupant of the residence, without that persons prior invitation or consent, any form of gift, donation, or contribution of money, clothing, or any other thing of value, for the sole benefit of an educational, charitable, civic, religious, or other nonprofit organization, purpose, or project. The providing of something of value, whether tangible or intangible, in exchange for the gift, donation, or contribution shall not constitute residential selling unless a business license is required under chapter 15 of this Code in connection with the exchange.

Residential premises mean the residence, its accessory structures, and the lot on which the residence is located and which lot is under the control of the owner, tenant, or occupant of the residence. The term does not include common areas or public areas adjacent to the residential premises.

Residential selling means, while upon residential premises, obtaining or attempting to obtain from an occupant of the residence, without that person's prior invitation or consent, a prospective customer or a sale of or order for goods or services, regardless of the timing or method of payment, remuneration, or consideration, and regardless of the time of delivery of the goods or performance of the service.

Services mean intangible items or benefits of any kind, which include construction, maintenance,

repairs, improvements, professional services, insurance coverage, housekeeping, landscaping or yard care, real estate products or services, investment opportunities, technical services, computer services, and communications services.

Soliciting or *solicit* or *solicitation* means residential advocacy, residential fundraising, or residential selling.

Solicitor means any person engaged in soliciting.

Solicitor's permit means the solicitor's permit and accompanying photo identification tag issued in accordance with division 2 of this article.

(b) Where not otherwise defined in subsection (a) of this section, the words, terms, and phrases, when used in this article, shall have the meanings and rules of construction ascribed to them in section 1- 2 of this Code, except where the context clearly indicates a different meaning.

Sec. 18-3. Notice regulating residential soliciting.

(a) *Form of notice.* Any occupant of a residence may give notice of a desire to refuse soliciting by posting a reasonably visible and legible sign upon or near the main entrance door or main entrance gate to the residence, or on or near the property line adjacent to the sidewalk leading to the residence. Where the notice states "*No Solicitation*" or "*No Trespassing*", or words of similar import, then all forms of solicitation are prohibited at such residence.

(b) *Effect of notice.* Any such sign so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence regarding soliciting at such residence.

(c) *Duty to abide by notice.* It shall be the duty of every solicitor upon going onto any residential premises in the city to first examine for the notice provided for in this section and, if one is found to exist, it shall be a violation of this article to fail to abide by the notice by immediately and peacefully departing from the premises without making any effort to conduct or engage in solicitation, which includes, in any manner, attempting to attract the attention of or secure an audience with the occupant of the residence in an effort to solicit.

Sec. 18-4. Duty of solicitors.

(a) In no event will any solicitor enter inside or follow a person into a residence without the express invitation or permission of the occupant who must be a competent individual. Any solicitor who has gained entrance into any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

(b) It is a violation for any solicitor through ruse, deception, or fraudulent concealment of a purpose, to solicit or to take action calculated to secure an audience with an occupant of a residence.

(c) A solicitor while soliciting shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent.

(d) A solicitor shall not continue repeated soliciting and shall immediately and peacefully leave

the premises after the occupant of the residence has expressly declined the solicitation.

(e) A solicitor shall not engage in abusive, threatening, harassing, intimidating, or coercive conduct toward the occupant of a residence.

Sec. 18-5. Time limit on soliciting.

It is unlawful for any person, whether or not issued a solicitor's permit, to go upon any residential premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in, or attempt to engage in, soliciting on any day prior to 8:00 a.m. or after 8:00 p.m., unless the solicitor has the express invitation or permission of the occupant who is a competent individual.

Sec. 18-6. Age limitations for commercial solicitors.

Any person under the age of sixteen (16) who is engaged as a commercial solicitor shall be under the direct supervision of a person at least nineteen (19) years of age. Direct supervision means the supervising person shall at all time have the minor in sight and shall in no event be more than 100 feet away from the minor.

Sec.18-7. Restrictions on methods of solicitation.

(a) A solicitor shall not falsely represent, directly or by implication, that the solicitor is acting on behalf of a governmental organization, a charitable organization, or any person other than the person for whom the solicitor is actually acting.

(b) A solicitor shall not intentionally make any materially false or fraudulent statement in the course of soliciting.

(c) A solicitor shall use their real name and shall not use a fictitious name, an alias, or any name other than their correct name.

DIVISION 2 SOLICITATION PERMITTING

Sec.18-8. Permit required; exemption.

(a) *Solicitor's permit.* A commercial solicitor shall be required to obtain a solicitor's permit prior to soliciting and failure to do so shall constitute a violation of this article. At all times while soliciting, the solicitor shall be required to carry and present the permit, which shall include a copy of the city business license, upon the request of the person being solicited or a law enforcement officer or license official of the city, and to conspicuously display the photo identification tag hereinafter provided for.

(b) *Master permit.* A master solicitor may make application for a solicitor's permit for each of the commercial solicitors that will be soliciting on the master solicitor's behalf by applying for a master permit as hereinafter provided.

(c) *Exemption.* A solicitor's permit shall not be required for a non-commercial solicitor.

Sec.18-9. Permit application; notice.

(a) *Form, etc.* Applications for permitting under this division shall be made on forms provided by the city clerk-treasurer for such purpose and shall be signed and verified by oath or affirmation by the applicant if a natural person or, in the case of an association, partnership, or limited liability company, by a member or partner, or in the case of a corporation by an executive officer, or any person specifically authorized by the corporation to sign the application to which shall be attached written evidence of his authority. Prior to or after the issuance of a permit, applications shall be immediately updated should there be a change in any of the information provided, or additional information to be added. It shall be the duty of the master solicitor to update its application for a master permit, which includes adding or removing its commercial solicitors, as appropriate.

(b) *Master permit application.* A master solicitor may make application for a master permit to include solicitor's permits for each of the commercial solicitors who will be conducting soliciting on the master solicitor's behalf. Each solicitor's permit issued under a master permit shall be conditioned upon the continued validity of the master permit and subject to all actions taken against the master permit. In addition to the information required under subsection (c) of this section, the master solicitor shall furnish each of the following:

(1) The master solicitor's true and correct name (which includes any former names or aliases used during the last ten years) and complete then-current contact information which includes a telephone number and permanent and, if applicable, local business address (not a post office box);

(2) Proof of the master solicitor's tax exemption status, if applicable;

(3) The master solicitor's social security number or federal identification number;

(4) Proof of possession of any license or permit which is required by the city in order to conduct the proposed solicitation;

(5) The nature of the business relationship of the solicitor to the master solicitor, which includes as an employee, agent, or independent contractor; and

(6) The certification required in subsection (e) of this section.

(c) *Solicitor's permit application.* The application for a solicitor's permit shall contain the following information for each person who will be conducting solicitation activities as a commercial solicitor:

(1) The proposed solicitor's true and correct name (which includes any former names or aliases used during the last ten years), date of birth, social security number, and then-current contact information which includes a telephone number and permanent home and, if applicable, local address (not a post office box);

(2) The proposed solicitor's valid state driver's license, a state-approved identification card with a photograph, or other form of government issued photo identification acceptable to the city clerk-treasurer (The city clerk-treasurer will make a photocopy and attach to the application);

(3) If a vehicle is used, a description of the same, together with the state where licensed, license number, and the vehicle identification number;

(4) Two photographs suitable for reproduction, measuring at least 1.5 inch x 1.5 inch and showing the head and shoulders of the proposed solicitor in a clear and distinguishing manner, which shall have been taken within the preceding 60 days before filing the application;

(5) Proof of possession of any license or permit which is required by the city in order to conduct the proposed solicitation;

(6) If the proposed solicitor is soliciting on behalf of a master solicitor, the solicitor shall furnish the information concerning its master solicitor that is required in subsection (b) of this section together with appropriate written credentials that authorize the solicitor to solicit on the master solicitor's behalf;

(7) The nature of solicitation activity;

(8) The approximate time period when the soliciting will be conducted, this includes the projected start date and completion date, and the proposed days of the week and times of day of solicitation;

(9) In the case of residential selling, the method of payment for the goods or services;

(10) The certification required in subsection (e) of this section; and

(11) If the proposed solicitor has a manager that is or will be present in the city during all or any portion of the solicitation, the applicant shall provide the name, permanent and, if applicable, local business address (not a post office box), and complete contact information of the manager.

(d) *Notice.* Each applicant shall provide an address where all notices required to be issued under this article are to be sent and if there is a local address, then such address shall be that address. Where the city clerk-treasurer is required to provide written notice under this division to an applicant or permit holder or appellant such notice shall be accomplished by personal delivery or by first class or certified mail to the address on the application. Notice shall be deemed to have been received upon delivery or, if mailed, then 3 days after mailing.

(e) *Certification; investigation.*

(1) *Certification.* Each master solicitor shall be required to provide a written certification, on forms provided by the city clerk-treasurer, that no disqualifying factors exist for each solicitor soliciting on its behalf or for the master solicitor itself which, in the case of an entity, includes its controlling officers, directors, partners, or members, as the case may be. Such certification shall be signed and verified by oath or affirmation in the same manner as the application. Where the solicitation will not be conducted on behalf of a master solicitor, then the applicant for a solicitor's permit shall be required to provide written certification that he has no disqualifying factor.

(2) *Investigation.* The chief of police and city clerk-treasurer, or their respective designees, are hereby authorized to conduct an investigation they deem appropriate into the matters contained in the application. The applicant's submission of the application authorizes the city to verify

information submitted with the application.

(f) *Solicitation by minors.* A minor who conducts commercial solicitation shall operate under the authority of a master solicitor who will be responsible for controlling the conduct of the minor.

(g) *Application fee.* At the time of submission of an application, each applicant shall pay a non-refundable fee, in an amount to be determined by the city clerk-treasurer, which is sufficient to defray the costs incurred by the city for processing the application and issuing the photo identification tag.

Sec. 18-10. Permit issuance.

(a) Upon receipt of a completed application and completion of any investigation, then the city clerk-treasurer shall issue a solicitor's permit or master permit, as appropriate, unless he finds any one of the following reasons for denial exists:

(1) The application for permitting is not complete;

(2) False or misleading statements are found to be included in the application for a permit;

(3) The applicant or the applicant's master solicitor has a disqualifying factor or does not otherwise meet the requirements of this article;

(4) Within the twelve (12) months preceding the date of the application, the applicant or the applicant's master solicitor has had a prior permit issued pursuant to this article revoked or denied;

(5) Within the twelve (12) months preceding the date of the application, the applicant or applicant's master solicitor has been convicted of or has charges pending for a violation of this article;

(6) The applicant has failed to pay the application fee; or

(7) The applicant or applicant's master solicitor has not obtained proper business licensing or the business license has been denied, revoked, suspended, or not renewed.

(b) If an application is denied, the city clerk-treasurer shall provide the applicant with written notice of the denial along with the reason for the denial.

(c) Each solicitor's permit shall be issued accompanied by the photo identification tag which shall be worn constantly by the permittee in a conspicuous place on his or her person while conducting solicitation activities in the city. A person commits an offense if the person wears or displays a photo identification tag issued to another person or alters a photo identification issued hereunder. Any solicitor who by affidavit notifies the city clerk-treasurer that his or her tag has been lost or stolen shall be issued a replacement tag upon payment of the fee for the tag.

(d) Permits are hereby expressly issued upon the condition that the holder thereof shall abide by the provisions of this article, and operate in conformance with the statements or representations contained in the permit application, which includes the nature of the solicitation activity and the timing of solicitation. All permits issued pursuant to this article are not transferrable.

(e) In no event shall the holder of a permit issued under this article represent or imply that the issuance of the permit or display of the photo identification tag means that the city in any way endorses the purpose or method of the solicitation.

(f) Unless revoked sooner, permits issued pursuant to this division shall be valid for the dates and times specified on the application, provided, however, no permit issued hereunder shall be valid for more than a consecutive twelve-month period of time. Upon expiration of a permit or where not renewed, it shall be unlawful to continue to solicit or to display the expired permit or photo identification tag for the purpose of soliciting.

(g) Permits may be renewed in the same manner as the original issuance.

Sec. 18-11. Revocation or suspension of permit.

(a) A master permit or solicitor's permit may be revoked or suspended by the city clerk-treasurer for any of the following reasons:

(1) The city clerk-treasurer finds that any fact or event which would constitute a basis for denial of the permit is true or has become true since the application was completed; or

(2) The solicitor conducts solicitation activities in violation of any provision of this article.

(b) *Action against master.*

(1) Should more than one complaint be received that solicitors for any one master solicitor have violated any of the provisions of this article, the city clerk-treasurer may suspend or revoke all solicitor permits for such master solicitor and notify the permit holders of such action.

(2) Should more than one complaint be received that solicitors who are soliciting under a master permit have violated any of the provisions of this article, the city clerk-treasurer may suspend or revoke the master permit and notify the master solicitor, which shall have the effect of revoking all the solicitor's permits issued under the master permit without the need of further action by the city or notification of each solicitor.

(3) Upon any action being taken to suspend or revoke a master permit, all solicitor's permits issued under the master permit shall be included in such action and the right to appeal the action shall be solely that of the master solicitor.

(c) Upon revocation or suspension, the city clerk-treasurer shall immediately provide written notice to the permit holder stating the action and the reasons supporting such action. Where permits are issued under a master permit, the notice to the holder of the master permit shall constitute sufficient notice to all solicitors working under the master permit.

(d) The city clerk-treasurer shall have the authority to seize any and all permits and photo identification tags possessed by persons conducting business as a solicitor while the official notification process and any appeals process is underway if the basis for the action is the existence or occurrence of a disqualifying factor or if the chief of police finds that there is an immediate threat to the public health or safety if the soliciting is allowed to continue. Upon seizure of the permit and tag all solicitation

activities conducted under the authority of that permit shall cease.

Sec. 18-12. Appeals.

(a) A person who is denied a solicitor's permit or master permit, or whose permit is revoked or suspended by the city clerk-treasurer, may appeal the decision to the appeals officer designated by the mayor by filing a written notice of appeal with the city clerk-treasurer, stating the action appealed from and grounds for the appeal, within fifteen (15) days after receiving notice of the action appealed from.

(b) Within ten (10) days of the receipt of the notice of appeal, the appeals officer shall set a time and place for a hearing on the appeal which shall be not later than thirty (30) days from the date of receipt of the notice of appeal.

(c) At least ten (10) days advance written notice of the time and place of the hearing shall be provided to the appellant.

(d) The decision of the appeals officer on the appeal is final. No other administrative procedures are provided by the city.

SECTION 2. The severability provisions of section 1-8 of the Code of Ordinances of the City of Huntsville, Alabama are specifically included herein by reference as if fully set forth.

SECTION 3. This Ordinance shall become effective upon its adoption and approval.

ADOPTED this the 22nd day of March, 2012.

President of the City Council
Of the City of Huntsville, Alabama

APPROVED this the 22nd day of March, 2012.

Mayor of the City of
Huntsville, Alabama