

ORDINANCE NO. 516

An ordinance of the City of Lovington, New Mexico, omitting Title 5, Chapter 5.40 – Peddlers, Solicitors, and Canvassers and amending Title 5, Chapter 5.56 Transient and Itinerant Merchants and Vendors, of the Lovington Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON THAT TITLE 5, CHAPTER 5.40 BE AND HEREBY IS OMITTED FROM THE LOVINGTON MUNICIPAL CODE.

FURTHERMORE, TITLE 5, CHAPTER 5.56 BE AND HEREBY IS AMENDED AS FOLLOWS:

Title of Chapter 5.56 is amended to Solicitors, Transient, and Itinerant Merchants and Vendors.

5.56.010 Definitions.

For the purpose of this chapter, the following words and terms are defined:

“Group exhibit” means an association of five or more itinerant vendors under the auspices of a promoter, which association is formed for the purpose of simultaneously conducting the business of the itinerant vendors upon a common site or premises.

“Promoter” means the person responsible for conducting a group exhibit.

“Solicitor” means a person who goes from door to door visiting single-family or multifamily dwellings and businesses, or who is on the streets and parking lots of the city for the purpose of taking or attempting to take orders for the sale of goods, wares, merchandise, services, subscriptions, or personal property of any nature. A solicitor may travel by foot, automobile, or any other type of conveyance. Solicitors may not travel door-to-door by commercial vehicle or semi-truck in any residential zone within the City.

“Temporary” means any such business transacted or conducted in the city for which definite arrangements have not been made for the hire, rental or lease of premises for at least thirty days in or upon which such business is to be operated or conducted.

“Transient” means such business of any itinerant vendor as may be operated or conducted by persons or by their agents or employees who have their headquarters in places other than the city, or who move stocks of goods or merchandise or sample thereof into the city with the purpose or intention of removing them or the unsold portion thereof away from the city before the expiration of thirty days.

“Transient merchant,” “itinerant merchant,” or “itinerant vendor” means any person, whether as owner, agent, consignee or employee and whether a resident of the city or

not, who engages in a temporary or transient business of selling, offering for sale, delivering or offering to deliver goods, wares and merchandise, or exhibiting the same for sale, or exhibiting the same for the purpose of taking orders for the sale thereof within the city, and who, for the purpose of taking orders for the sale thereof and who for the purpose of carrying on such business or conducting such exhibits either hires, rents, leases or occupies any building, structure, motor vehicle, tent, railroad box car, or enclosure in the city, or any room or space therein, or any other place whether enclosed or not including space upon any street, alley or other place within the city for the exhibition and sale of such goods, wares, merchandise, either privately or at public auction.

5.56.025 Solicitor License Required.

All persons, before entering into or upon a residential or business premises or the streets and parking lots within the City for the purpose of soliciting, shall make application with the City Clerk and furnish the following information:

- A. The name, local and permanent addresses, social security number, driver's license number, age, race, weight, height, color of hair and eyes and any other distinguishing physical characteristics of the applicant;
- B. The names, addresses and telephone numbers of persons or the officers, directors or registered agents for service of the organization, group, association, partnership or corporation who is the employer of or entity represented by the applicant.
- C. The nature of the goods, wares, merchandise, services, subscriptions, or personal property for which solicitations will be made;
- D. Two (2) one-inch by two-inch photographs of the applicant, taken within sixty (60) days immediately prior to the date of the filing of the application, showing the head and shoulders of the applicant in a clear and distinguishing manner;
- E. The fingerprints of the applicant which will be taken and kept on file at the Lovington Police Department;
- F. Completion of a statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance in the preceding five (5) years, the nature of the offense and the punishment or penalty assessed therefor.

5.56.030 Transient and Itinerant Merchants and Vendors Application – Contents.

Applicants for a license under this chapter shall file a written sworn application, no less than five nor more than thirty days prior to the time desired, signed by the applicant if an individual, by all partners if a partnership and by the president if a corporation, with the City Clerk showing:

- A. The name of the person having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the city, the local address of the person while engaged in such business, the permanent address of such person, the capacity in which such person will act, that is whether as proprietor, agent or otherwise, the name and address of the person for whose account the business will be carried on, if any, and if a corporation, under the laws of what state the corporation incorporated;
- B. The fingerprints of the person having the management or supervision of the applicant's business or, in lieu thereof, at least three letters of recommendation from reliable property owners in the county certifying as to the applicants good character and business responsibility or other evidence which establishes to the satisfaction of the City Clerk the good character and business responsibility of such person;
- C. The place in the city where it is proposed that the applicant's business be carried on and the length of time during which it is proposed that such business shall be conducted as well as proof of ownership of the premises for this purpose and if all is satisfactory to the City Clerk;
- D. The place, other than the permanent place of business of the applicant, where the applicant within the six months next preceding the date of the application conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted;
- E. A statement of the nature, character, and quality of the goods, wares or merchandise to be sold or offered for sale by the applicant in the city, the invoice value and quality of such goods, wares and merchandise, whether they are proposed to be sold from stock in possession or by sample, at auction, or by direct sale ~~or by indirect sale or by taking orders for future delivery~~, where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time such application is filed;
- F. A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers and, if required by the City Clerk, copies of all such advertising, whether handbills, circulars, newspaper advertising or otherwise, shall be attached to the application as exhibits thereto;
- G. Whether or not the person having the management or supervision of the applicant's business has been convicted of a crime, misdemeanor or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefor;
- H. Credentials from the person for whom the applicant proposes to do business authorizing the applicant to act as such representative;
- I. Such other reasonable information as to the identify or character of the person having the management or supervision of the applicant's business or the method or plan of doing such business as the City Clerk may deem proper to fulfill the purpose of this chapter in the protection of the public good.

5.56.040 Investigation – Issuance.

Upon receipt of the application, the City Clerk shall cause an investigation of the person's business responsibility or moral character to be made as he or she deems necessary for the protection of the public good. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the City Clerk shall so certify in writing and a license shall be issued by the City Clerk.

5.56.080 Recordkeeping.

- A. The City Clerk shall keep a full record in his or her office of all licenses issued. Such record shall contain the number of the license, the date the license is issued, the nature of the business authorized to be carried on, the amount of the license fee paid, the expiration date of such license, the place where such business may be carried on under such license and the name of the person authorized to carry on such business.
- B. The City Clerk shall deposit the record of fingerprints of the licensee, together with the license number, with the Chief of Police. The Chief of Police shall report to the City Clerk any complaints against any person licensed under the provisions of this chapter and any convictions for a violation of this chapter. The City Clerk shall keep a record of all such licenses and of such complaints and violations.

5.56.120 Licenses – Posting required.

- A. Transient or itinerant merchants and vendors issued a license under this chapter shall have their license prominently displayed in a conspicuous place on the premises where all sales exhibits are being conducted and shall remain so displayed so long as all merchandise is being sold in exhibit. Separate licenses but be obtained for each place of business and shall be prominently displayed in each business location.
- B. Solicitors issued a license under this chapter shall carry his or her license with him or her at all times while engaged in soliciting and shall display the same to any person who demands to see such license while he or she is so engaged.

5.56.125 Prohibited Acts

It is unlawful for any person to:

- A. Enter into or upon a residential or business premises or the streets and parking lots within the City under false pretense to sell any goods, wares, merchandise or services, or to solicit for any purpose;
- B. Remain in or on any residential or business premises after having been requested to leave by the owner or occupant thereof;

- C. Enter upon an residential or business premises to solicit, when the owner or occupant has displayed a "No Soliciting" or "No Solicitors" sign on such premises;
- D. Engage in the practice of soliciting in the City without a license or operating as a transient or itinerant merchant or vendor without a license required by this chapter;
- E. Use or possess an altered, forged or fictitious solicitor or transient or itinerant merchant or vendor license.

5.56.140 License – Revocation.

The licenses issued pursuant to this chapter may be revoked by the City Clerk after notice and hearing for any of the following:

- A. Any fraud, misrepresentation or false statement contained in the application for the license;
- B. Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, or merchandise;
- C. Any violation of this chapter;
- D. Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude;
- E. Conducting the business licensed under this chapter in any unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety and general welfare of the public.

5.56.160 Appeals

Any person aggrieved by the decision of the City Clerk in regard to the denial of the application for a license as provided in Section 5.56.040 or in connection with the revocation of a license as provided for in Section 5.56.140, shall have the right to appeal to the city commission. Such appeal shall be taken by filing with the commission within fourteen days after notice of the decision by the City Clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The city commission shall set the time and place for a hearing on such appeal and notice of such hearing shall be given to such person in the same manner as provided in Section 5.56.150 for notice of hearing on revocation. The order of the city commission on such appeal shall be final.

5.56.175 Exceptions – Solicitors

The provisions of this chapter shall not apply to solicitors:

- A. Who visit any residence or business at the request or invitation of the owner or occupant thereof;

- B. Who are unpaid members of any civic or charitable organization who have an approved means of identification provided by such organization or who upon request can provide identification of the relationship with the civic or charitable organization;
- C. Who are route delivery persons who make deliveries at least once per week to regular customers and whose solicitation is incidental only to their regular deliveries and permanent local business entities whose periodic solicitations are incidental to their regular business activities.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON ON THE 25th DAY of November, 2013.



Dixie Drummond
DIXIE DRUMMOND, Mayor

ATTEST:

Carol Ann Hogue
CAROL ANN HOGUE, City Clerk