

ORDINANCE NO. 146

AN ORDINANCE TO AMEND THE CODE OF THE COUNTY OF JAMES CITY, BY ADDING A NEW CHAPTER, CHAPTER 16-A, SOLICITATION.

BE IT ORDAINED, by the Board of Supervisors that the Code of the County of James City be and the same is, hereby, amended by adding a new chapter, Solicitation.

ARTICLE I. SOLICITATION FOR NONCHARITABLE PURPOSES

Section 16A-1. Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section.

Canvasser or solicitor. Any individual, whether a resident of the county or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance from house to house, or from street to street, taking or attempting to take orders for sales of goods, wares or merchandise, subscriptions, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future whether such individual has, carries or exposes for sale, a sample of such sale or whether he is collecting advance payments on such sales. This definition shall include any person who, for himself or for any other person, corporation or organization, hires, leases, uses or occupies any building, structure, lodging house, apartment, shop or any other place within the County for the sole purpose of exhibiting samples and taking orders for future delivery.

House. Any single or multi-family private dwelling.

Peddler. Any person, whether a county resident or not, traveling by foot, wagon, automotive vehicle, motor truck, or any other type of conveyance, from house to house, or from street to street, carrying, conveying or transporting goods, wares and merchandise, offering and exposing the same for sale, or making sales or delivering articles to purchasers, or who, by traveling from house to house, shall sell or offer the same for sale from a wagon, automotive vehicle, motor truck, railroad car, or other vehicle or conveyance; provided that one who solicits orders and as a separate transaction, makes deliveries to purchasers as a part of the scheme or design to evade the provisions of this article shall be deemed a peddler subject to the provisions of this article. The word "peddler" shall also include the words "hawker" and "huckster".

Peddler, solicitor or canvasser. The terms "peddler", "solicitor" or "canvasser" shall not be construed to include the following:

(1) Farmers or travel gardeners selling, offering for sale or soliciting orders for any products grown, raised or produced by them.

(2) Vendors of milk, butter, eggs, poultry, fish, oysters, game, meat, ice, wood, charcoal, or other family supplies of a perishable nature.

(3) Persons peddling, soliciting or canvassing where the proceeds derived therefrom are to be used for charitable purposes, provided they have filed a registration statement as required by section 16A-2 of this chapter; or on behalf of a qualified and filed candidate(s) for public office or a political party.

(4) Salesmen or agents for wholesale houses or firms who solicit orders from or sell to retail dealers in the county for resale or other commercial purposes, or to manufacturers for manufacturing or other commercial purposes.

(5) Children of or under sixteen years of age, except when they are acting as agents of adults covered by this article.

(6) Route salesmen for laundry, dry cleaning, rug cleaning, upholstery cleaning, garment storage, linen supply, towel supply, and diaper services operating from clearly identifiable vehicles, and newspaper delivery men on a regular route.

Section 16A-2. Certificate of registration required.

It shall be unlawful for any solicitor, canvasser or peddler as defined in section 16A-1 to engage in such activity within the meaning and application of this article within the county limits without first obtaining and possessing a valid registration certificate therefor in compliance with the provisions of this article.

Section 16A-3. Application generally.

An application for a permit required by this article shall be made to the Administrator. Such application shall be sworn to and filed with the Administrator, or his designee, at least fifteen days prior to the time at which the permit applied for shall become effective. The application shall contain the following information, or in lieu thereof, a detailed statement of the reasons why such information cannot be furnished:

- (1) The name, address or headquarters of the person applying for the permit.

- (2) If the applicant is not an individual, the names and addresses of the applicant's principal officers and managers and a copy of the resolution, if any, authorizing such solicitation, certified to as a true and correct copy of the original by the office having charge of the applicant's records.

- (3) The make, model and license plate of any vehicle used in conducting the solicitation.

- (4) The kinds of goods, wares, merchandise offered for sale and whether such applicant, upon any such order obtained, will demand, accept or receive payment or deposit of money in advance of final delivery.

- (5) The period of time the applicant wishes to solicit to take orders in the county, giving the preferred dates for the beginning and ending of such solicitation.

- (6) The names and addresses of the person who will be in direct charge of conducting the solicitation and the names of all promoters connected or to be connected with the proposed solicitation.

- (7) An outline of the method or methods to be used in conducting the solicitation.

- (8) A statement to the effect that, if a permit is granted, it will not be used or respresented in any way as an endorsement by the county, or by any department or officer thereof.

(9) A statement as to whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude and if so, under what circumstances.

(10) Such other information as may be reasonably required by the Administrator in order to determine the kind and character of the proposed solicitation and whether such solicitation is in the interest of and not inimical to the public welfare.

If, while any application is pending, or during the term of any permit granted thereon, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the Administrator in writing thereof within twenty-four hours after such change.

Section 16A-4. Standards for granting permits.

The Administrator, or his designee, shall issue the permit provided for in Section 16A-23 hereof whenever he shall find, to the best of his abilities, the following facts to exist:

(1) All of the statements made in the application are true:

(2) The applicant has a good character and reputation for honesty and integrity, or if the applicant is not an individual person, that every member, managing officer or agent of the applicant has a good character or reputation for honesty and integrity;

(3) The control and supervision of the solicitation will be under responsible and reliable persons;

(4) The applicant, or if the applicant is not an individual person, the members, managing officer or agents of the applicant have not engaged in any fraudulent transaction or enterprise; and

(5) The solicitation will not be a fraud on the public.

The Administrator shall file in his office for public inspection and shall serve upon the applicant, by registered mail, a written statement of facts and his decision upon each application.

Section 16A-5. Applicant's photograph, references and fingerprints.

(a) All applications for a permit under this article shall be accompanied by a photograph of the applicant, and two written references as to his, or their, good character; the photograph shall be attached to the application.

(b) All applicants for a permit under this article shall be fingerprinted by the James City County police department which department shall send the prints to the Federal Bureau of Investigation for checking.

Section 16A-6. Applicant's bond.

If the application filed pursuant to this article shows that the applicant filing the same will receive, demand or accept the payment or deposit of money in advance of final delivery of goods, wares, merchandise, magazines, photographs or other articles, such application shall be accompanied by a bond in the penal sum of five hundred dollars or by a certified check in the same amount. Such bond shall be executed by the

applicant as principal, and a surety company licensed to do business as such in the state, and shall be approved as to form by the County Attorney. Such bond shall be conditioned upon making final delivery of such goods, wares, merchandise, magazines, photographs or other articles in accordance with the terms of any order(s) obtained. Such bonds shall be for the use and benefit of all persons who pay in advance or make an advance deposit on the purchase price of such order(s), and the terms of such bond shall so stipulate; any such bond or check shall be held to a period not to exceed 60 days after final delivery of all such goods, wares, merchandise, photographs or other articles.

Section 16A-7. Misrepresentation in application.

No person shall make any false or misleading statement or misrepresentation in any application filed under this article. Violations of this provision shall be a misdemeanor punishable in accordance with section 16A-14 of this chapter.

Section 16A-8. Permit fee.

The fee for a permit required by this article shall be ten dollars, which shall be paid at the time the permit application is filed. Such fee is non-refundable.

Section 16A-9. Permit term.

No permit granted under this article shall be issued for a longer period than twelve months.

Section 16A-10. Permit as solicitation identification card.

In the event a permit is obtained under this article, such permit shall constitute an identification card and shall be carried by the person obtaining such permit at all times while engaged in soliciting or taking orders pursuant thereto. It shall be the duty of the permittee to have sufficient copies of the permit made in order to provide one to each employee soliciting under the permit and each employee shall carry such copy while soliciting. It shall be the duty of each person soliciting pursuant to such permit to exhibit the same when requested by any county resident, law enforcement officer or prospective customer.

Section 16A-11. Exhibition or use of another person's permit or altered permit.

No person shall exhibit or use any permit that has been issued to another person under this article. This prohibition does not apply to an employee using or exhibiting a copy of such a permit pursuant to section 16A-12. Nor shall any person exhibit or use a permit issued under this article that has been altered.

Section 16A-12. Denial. Application for relief.

(a) Upon denying a permit applied for under this article, the County Administrator shall promptly notify the permit applicant.

(b) Within five days after receiving notification that the application for a permit to solicit under this article has been denied, the applicant may file a written request for a hearing on the application before the Board of Supervisors, together with written exceptions to the findings of fact upon which the County Administrator based

the denial. Upon the filing of such a request, the Board of Supervisors shall fix a time and place for the hearing and shall notify the applicant thereof. The hearing shall be held within thirty days after the request is filed. At the hearing, the applicant may present evidence in support of the application. Any interested person may, in the discretion of the Board of Supervisors, be allowed to participate in the hearing and present evidence in opposition to or support of the application.

(c) Within twenty one days after the conclusion of the hearing provided for in subsection (b), the Board of Supervisors shall either grant or deny the application for a permit.

Section 16A-13. Supervision and revocation.

Whenever it shall be shown, or whenever the Administrator has knowledge, that any person to whom a permit has been issued under this article has engaged in any fraudulent practice or misrepresentation, has violated any of the provisions of this chapter, or that any person, employee or solicitor of a permit holder has misrepresented the purpose of the solicitation, the Administrator shall immediately suspend the permit and give the permit holder written notice, by registered or certified mail of a hearing to be held within five working days of such suspension to determine whether the permit should be revoked. The notice shall contain a statement of the facts upon which the Administrator based the suspension of the permit, and any other facts which may aid the Administrator in determining whether this article has been violated and whether the purpose of the solicitation has been misrepresented. If, after such hearing, the Administrator finds that this article has been violated or the purpose of the solicitation misrepresented, he shall, within five days after the hearing, file in his office for public inspection and serve upon the permit holder and all interested persons

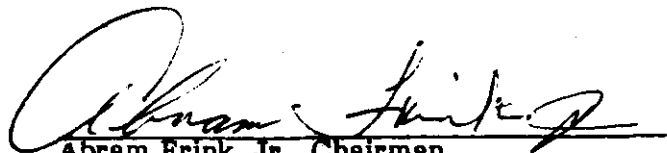
participating in the hearing, a full written statement of the facts upon which he based such finding and shall immediately revoke the permit. If, after such hearing, the Administrator finds the article has not been violated the Administrator shall, within two days after the hearing, give to the permit holder a written statement cancelling the permit suspension and stating that no violation or misrepresentation was found.

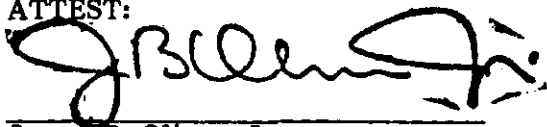
Section 16A-14. Penalty.

Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine up to one thousand dollars or undergo imprisonment for not more than one year, or both.

Section 16A-15. Severability.

If any provision of this chapter, or the application of such provision to any person or under any circumstances shall be invalid, the remainder of this chapter, or the application of such provisions to persons or under circumstances, other than those to which it shall have been held invalid shall not be affected thereby.


Abram Frink, Jr., Chairman
Board of Supervisors

ATTEST:

James B. Oliver, Jr.
Clerk to the Board

Adopted by the Board of Supervisors, James City County Virginia, this 16th day of July, 1982.