

12/20/2013

ORDINANCE NO. 29245

An ordinance amending CHAPTER 42, "SOLICITORS," of the Dallas City Code, as amended; defining terms; establishing requirements, procedures, fees, qualifications, and defenses for the registration of home solicitors; regulating the time and manner in which home solicitations may be conducted on residential premises; providing recordkeeping requirements for home solicitors; providing for signs to prohibit home solicitors on residential premises; deleting certain consumer solicitation provisions now regulated by state law; making certain semantic, grammatical, and structural changes; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city has received numerous and continuous complaints from citizens about persons going onto residential premises (including premises that contain conspicuous signs prohibiting solicitations) to solicit, sell, or take orders for goods and services and to distribute commercial printed matter; and

WHEREAS, those citizens have expressed concerns that such solicitations result in criminal activity (including burglary and fraud) and disturb the privacy of their homes; and

WHEREAS, the city council believes that establishing a registration program for those home solicitors will protect the citizens against criminal activity (including, but not limited to, burglary and fraud), minimize the unwelcome disturbance of citizens and the disruption of their privacy, and otherwise preserve the public health, safety, and welfare; and

WHEREAS, the city council believes it is in the interest of the public health, safety, and welfare to prohibit persons convicted of certain crimes from being home solicitors in the city of Dallas; and

WHEREAS, the city council, in accordance with Chapter 53 of the Texas Occupations Code, has considered the following criteria:

- (1) the nature and seriousness of the crimes;
- (2) the relationship of the crimes to the purposes for requiring a certificate of registration to engage in the occupation;
- (3) the extent to which a certificate of registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and
- (4) the relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the registered occupation; and has determined that the crimes listed in Section 42-9(a)(2) of CHAPTER 42, "SOLICITORS," of the Dallas City Code, as set forth in this ordinance, are serious crimes that are directly related to the duties and responsibilities of a home solicitor, whose job is to solicit, sell, and take orders for goods and services, and to distribute commercial printed matter, on residential premises in the city; and

WHEREAS, the city council has determined that the very nature of the occupation of a home solicitor brings such a person into constant contact with the public, which gives the person repeated opportunities to participate in crimes of violence or dishonesty, or crimes against the public health, safety, or morals, should the person be so inclined, and, thus, it is the opinion of the city council that the crimes listed in Section 42-9(a)(2), as set forth in this ordinance, render a

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person unable, incompetent, and unfit to perform the duties and responsibilities of a home solicitor in a manner that would promote the public safety and trust; and

WHEREAS, the city council has determined that no person who has been convicted of a crime listed in Section 42-9(a)(2), as set forth in this ordinance, is presently fit to engage in home solicitation in the city until the respective time periods designated in that section have expired, and, thus, should be disqualified from being issued a certificate of registration as a home solicitor until the expiration of those time periods; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That CHAPTER 42, "SOLICITORS," of the Dallas City Code, as amended, is amended to read as follows:

"CHAPTER 42

HOME SOLICITATIONS [SOLICITORS]

ARTICLE I.

GENERAL [RESERVED].

SEC. 42-1. PURPOSE [SECS. 42-1 THRU 42-12. RESERVED].

The purpose of this chapter is to protect against criminal activity (including, but not limited to, burglary and fraud), to minimize the unwelcome disturbance of citizens and the disruption of privacy, and to otherwise preserve the public health, safety, and welfare by providing a registration program for home solicitors.

SEC. 42-2. DEFINITIONS.

In this chapter:

(1) AGENT means any person employed by or contracting with a home solicitor.

(2) CERTIFICATE OF REGISTRATION or REGISTRATION means a certificate of registration issued to a home solicitor under this chapter.

(3) CHIEF means the chief of police for the city of Dallas or a designated representative.

(4) COMMERCIAL PRINTED MATTER means any printed or written matter, whether on a sample, device, dodger, circular, leaflet, pamphlet, paper, or booklet, and whether printed, reproduced, or copied that:

(A) advertises for sale any merchandise, product, commodity, or service;

(B) directs attention to a business or commercial establishment or other activity for the purpose of either directly or indirectly promoting sales;

(C) directs attention to or advertises a meeting, performance, exhibition, or event, for which an admission fee is charged for the purpose of private gain or profit, unless an admission fee is charged or a collection is taken up at the meeting, performance, exhibition, or event only for the purpose of defraying the expenses; or

(D) while containing reading matter other than advertising matter, is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as the advertiser or distributor.

(5) CONVICTION means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned.

(6) DISTRIBUTION means:

(A) to hand or attempt to hand commercial printed matter to an owner or occupant of a residential premises or to any other person then present on the residential premises; or

(B) to place, deposit, or distribute commercial printed matter on residential premises.

(7) GOODS means property of every kind.

(8) HOME SOLICITATION means the business of soliciting, selling, or taking orders for goods or services or distributing commercial printed matter by going to one or more residential premises in the city in person or by an agent.

(9) HOME SOLICITOR means a person who engages in home solicitations.

(10) IDENTIFICATION BADGE means a badge issued to a registrant under this chapter that contains:

(A) the registrant's photograph;

(B) the number and expiration date of the registrant's certificate of registration; and

(C) the phrase "Home Solicitor Registered under Chapter 42 of the Dallas City Code," or similar language approved by the chief.

(11) PERSON means an individual, corporation, trust, partnership, association, or any other legal entity.

(12) REGISTRANT means a person issued a certificate of registration as a home solicitor under this chapter.

(13) RESIDENTIAL PREMISES means any dwelling, house, building, or other structure designed or used either wholly or in part for private residential purposes (whether inhabited, uninhabited, or vacant), including any yard, grounds, walk, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to the dwelling, house, building, or other structure.

(14) SERVICES means any work done for the benefit of another person.

SEC. 42-3. AUTHORITY OF CHIEF.

The chief shall implement and enforce this chapter and may by written order establish such rules, regulations, or procedures, not inconsistent with this chapter, as the chief determines are necessary to discharge any duty under or to effect the policy of this chapter.

SEC. 42-4. DELIVERY OF NOTICES.

Any written notice that the chief is required to give an applicant or registrant under this chapter is deemed to be delivered:

(1) on the date the notice is hand delivered to the applicant or registrant; or

(2) three days after the date the notice is placed in the United States mail with proper postage and properly addressed to the applicant or registrant at the address provided for the applicant or registrant in the most recent registration application.

SEC. 42-5. VIOLATIONS; PENALTY.

(a) A person who violates a provision of this chapter, or who fails to perform an act required of the person by this chapter, commits an offense. A person commits a separate offense for:

(1) each day or portion of a day during which a violation is committed, permitted, or continued;

(2) each item placed, deposited, or distributed on residential premises in violation of this chapter; and

(3) each residential premises to which a home solicitation is conducted in violation of this chapter.

(b) An offense under this chapter is punishable by a fine of not more than \$500.

(c) The culpable mental state required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code.

(d) The penalties provided for in Subsection (b) are in addition to any other enforcement remedies and penalties that the city may have under city ordinances and state law.

SEC. 42-6. PRESUMPTION OF DISTRIBUTION OF COMMERCIAL PRINTED MATTER.

Whenever commercial printed matter is placed, deposited, or distributed, or caused to be placed, deposited, or distributed, in violation of this chapter, it is presumed that the person named on the commercial printed matter is the person who committed the violation, either personally or through an agent.

ARTICLE II [I-a].

REGISTRATION OF HOME SOLICITORS [RESERVED].

SEC. 42-7. REGISTRATION REQUIRED; DEFENSES [SECS. 42-13 THRU 42-16. RESERVED].

(a) A person commits an offense if, within the city, the person:

(1) personally, by an agent, or as the agent of another, engages in a home solicitation without a valid certificate of registration issued to the person under this chapter;

(2) engages in a home solicitation by using an agent who does not hold a valid certificate of registration issued under this chapter; or

(3) engages in a home solicitation by acting as an agent of another person who does not hold a valid certificate of registration issued under this chapter.

(b) It is a defense to prosecution under Subsection (a) that:

(1) the person was soliciting for a noncommercial purpose, including but not limited to a charitable, educational, civic, patriotic, philanthropic, political, or religious purpose;

(2) the person was on the residential premises by express invitation of the owner, occupant, or other person in control of the premises;

(3) the person was a wholesale agent or factory representative who sells or exhibits for sale goods, wares, or merchandise and was conducting business with a person engaged in the business of buying, selling, and dealing in the same type of goods, wares, or merchandise;

(4) the person was soliciting newspaper sales, or delivering newspapers pursuant to a request by or contract with the owner, occupant, or other person in control of a residential premises;

(5) the solicitation, sale, or taking of orders for goods or services took place upon residential premises owned, leased, or controlled by the person or by the person's employer;

(6) the person was a governmental entity, or an officer, employee, or agent of a governmental entity, placing a notice or other information on the premises in the performance of official duties; or

(7) the person was the United States Postal Service or a private courier service registered with the Federal Motor Carrier Safety Administration, or an employee or agent of those services, delivering an item of mail, a notice, or a package to the premises.

(c) Before taking any enforcement action under this section, the chief, any police officer, or any city code enforcement officer shall ask the apparent offender's reason for being on the residential premises or for depositing any item on the premises. The chief, the police officer, or the city code enforcement officer shall not issue a citation or make an arrest under this section unless he or she reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (b) is present.

SEC. 42-8. APPLICATION FOR REGISTRATION; FEE; EXPIRATION; NONTRANSFERABILITY; MATERIAL CHANGES.

(a) To obtain a certificate of registration to conduct home solicitations, a person must file a written application with the chief on a form provided for that purpose. The application must include the following:

(1) If the applicant is a company:

(A) the company name, address, and telephone number;

(B) the name, address, telephone number, and title of each of its

officers;

(C) the date and place of incorporation or establishment of the business; and

(D) the name, address, and telephone number of each person who will be conducting a home solicitation in the city for the applicant.

(2) If the applicant is an individual:

(A) the applicant's name, address, and telephone number;

(B) the name, address, and telephone number of any individual or company for which the applicant is acting as an agent;

(C) the name, address, and telephone number of each person who will be conducting a home solicitation in the city for the applicant;

(D) a photograph of the applicant, taken within the preceding 12 months, that clearly depicts the applicant's facial features; and

(E) the applicant's date of birth and driver's license number (with the state of issuance) or, if the applicant does not have a driver's license, the number from another government-issued personal identification card containing the applicant's photograph and date of birth.

(3) The names of other communities in which the applicant has worked as a home solicitor in the past 12 months and, if the applicant was an agent of different companies in the other communities, the names of those companies.

(4) The nature, character, and quality of the goods or services to be advertised, offered for sale, or delivered as part of the home solicitation.

(5) Whether the applicant, upon obtaining an order for goods or services, will demand, accept, or receive payment or a deposit of money in advance of final delivery of the goods or services.

(6) The dates, times, and locations for which the applicant proposes to conduct home solicitations in the city.

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

(8) Whether the applicant has been convicted of any crime listed in Section 42-9(a)(2)(A) within the time period listed in Section 42-9(a)(2)(B), and the applicant's signed consent authorizing the city to obtain a criminal history report on the applicant.

(9) Proof that the applicant possesses all licenses or permits required by this code or by state or federal law for the operation of the proposed business.

(10) If the applicant is an agent of an individual or company, written proof of the applicant's authority to represent the individual or company.

(11) Any other information the chief determines necessary to the enforcement and administration of this chapter.

(b) An application filed under this section must be accompanied by a nonrefundable registration fee of \$50.

(c) A certificate of registration expires one year after the date of issuance. Upon expiration, the registrant may apply for a registration renewal in the same manner prescribed by this section for a new registration.

(d) Neither a certificate of registration nor an identification badge is transferable from one person to another, but both may be used by the registrant to act as an agent for different individuals or companies during the registration term if the chief is notified in accordance with Subsection (e).

(e) A registrant shall notify the chief within 10 days after any material change in the information on the application during the registration term. A material change includes, but is not limited to:

(1) when a registrant becomes an agent for another individual or company;

(2) when a registrant terminates an individual's authority to serve as the registrant's agent;

(3) a change in the nature, character, and quality of the goods or services; or

(4) a change in the dates, times, and locations proposed for conducting home solicitations in the city.

**SEC. 42-9. ISSUANCE, DENIAL, AND DISPLAY OF REGISTRATION;
IDENTIFICATION BADGE.**

(a) The chief shall issue a certificate of registration to the applicant within 30 days after receipt of the application unless any of the following applies:

(1) The applicant has failed to provide material information requested or made a false statement of a material fact on the application form or in a hearing concerning the application or registration.

(2) The applicant has been convicted of a crime:

(A) involving:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code, as amended;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code, as amended;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code, as amended;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code, as amended;

(v) robbery as described in Chapter 29 of the Texas Penal Code, as amended;

(vi) burglary as described in Chapter 30 of the Texas Penal Code, as amended;

(vii) theft as described in Chapter 31 of the Texas Penal Code, as amended, but only if the offense was committed against a person with whom the applicant came in contact while engaged in a home solicitation business;

(viii) fraud as described in Chapter 32 of the Texas Penal Code, as amended, but only if the offense was committed against a person with whom the applicant came in contact while engaged in a home solicitation business;

(ix) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, as amended, or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law; or

(x) criminal attempt to commit any of offenses listed in Paragraph (2) (A) (i) through (ix) of this subsection;

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses.

(3) The applicant has failed to provide proof of a license or permit required by this code or another city ordinance or by state law for the operation of the proposed business.

(4) The applicant or an agent, individually or cumulatively, has been convicted of two violations of this chapter, other than the offense of conducting a home solicitation without a certificate of registration, within the 24 months immediately preceding the application.

(5) The required registration fee has not been paid.

(6) The applicant has failed to comply with or the proposed business will violate any applicable ordinance or regulation of the city or applicable state or federal law.

(b) If the chief determines that a certificate of registration should be denied the applicant, the chief shall notify the applicant in writing that the application is denied and include in the notice the reason for denial and a statement informing the applicant of the right of appeal.

(c) Upon issuing a certificate of registration, the chief shall also issue the registrant an identification badge. At all times the registrant is conducting home solicitations in the city, the registrant shall prominently display the identification badge on the registrant's clothing and maintain the certificate of registration on the registrant's person. The registrant shall allow the certificate of registration and the identification badge to be examined upon request by the chief, any police officer, any city code enforcement officer, or the owner or occupant of the residential premises on which a home solicitation is being conducted.

(d) If a registrant's identification badge is lost, mutilated, or destroyed, the chief shall issue the registrant a duplicate identification badge upon payment of a \$10 duplicate badge fee.

SEC. 42-10. SUSPENSION.

(a) The chief may suspend a certificate of registration for a definite period of time not to exceed 30 days if the chief determines that:

(1) a violation of this code or any other law concerning the sale or distribution of goods or services, or the distribution of commercial printed matter, by the registrant or the registrant's agent has occurred; or

(2) the registrant or a representative authorized to supervise the registrant's agents has failed to establish policy and take action to discourage, prevent, or correct violations of this chapter by agents.

(b) The chief shall send to the registrant by certified mail, return receipt requested, a written statement setting forth the reasons for the suspension and notifying the registrant of the right to appeal. A timely request for appeal by the registrant stays the effect of the suspension unless the chief determines that an emergency exists.

(c) For purposes of this section, an emergency exists if the chief determines that a violation has occurred and constitutes an imminent and serious threat to the public health or safety. In case of an emergency, the chief may order the registrant or the registrant's representative to correct the violation immediately or cease home solicitations to the extent the chief determines is necessary to abate the threat until the violation is corrected.

SEC. 42-11. REVOCATION.

(a) The chief shall revoke a certificate of registration if the chief determines that:

(1) the registrant or an agent of the registrant, individually or cumulatively, has been convicted in any court of two violations of this code or any other law concerning the sale or distribution of goods or services, or the distribution of commercial printed matter, within a 12-month period (the fact that a conviction is being appealed has no effect);

(2) the registrant has given false or misleading information of a material nature or has withheld material information on the application or in any hearing concerning the application or registration;

(3) the registrant or an agent of the registrant has intentionally or knowingly impeded a lawful inspection by the chief, the chief's authorized representative, or any representative of another department who has the authority to inspect the registrant and the registrant's business procedure; or

(4) a cause for suspension under Section 42-10 occurs and the certificate of registration has been suspended within the preceding 12 months.

(b) The chief shall send to the registrant by certified mail, return receipt requested, a written statement setting forth the reasons for the revocation and notifying the registrant of the right to appeal.

(c) If the chief revokes a certificate of registration, the fee already paid for the registration will be forfeited. A person whose certificate of registration has been revoked under this section may not apply for or be issued a new registration for a period of one year after the date the revocation took effect, except that, if the chief determines that the basis for the revocation has been corrected, the person may apply for and be issued a new certificate of registration if at least 90 days have elapsed since the date the revocation took effect.

SEC. 42-12. APPEALS.

If the chief denies issuance or renewal of a certificate of registration or suspends or revokes a certificate of registration, this action is final unless the applicant or registrant files an appeal with the permit and license appeal board in accordance with Section 2-96 of this code.

ARTICLE III.**MISCELLANEOUS REQUIREMENTS FOR HOME SOLICITATIONS.****[SEC. 42-17. DEFINITIONS.**

~~For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:~~

~~(a) — BUSINESS DAY means any calendar day except Saturday, Sunday or any state or national holiday.~~

~~(b) — CONSUMER means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.~~

~~(c) — CONSUMER TRANSACTION means a sales transaction in which one or more of the parties is a consumer.~~

~~(d) — HOME SOLICITATION TRANSACTION means a consumer transaction for the purchase of goods, services, or realty, payable in installments or in cash, in which the merchant engages in a personal solicitation of the sale to the consumer at a residence, in person or by telephone, and the consumer's agreement or offer to purchase is given at the residence to the merchant either in person or by telephone. A home solicitation transaction shall not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.~~

~~(e) — MERCHANT means a party to a consumer transaction other than a consumer.~~

~~(f) — PERSON means an individual, corporation, trust, partnership, association, or any other legal entity.~~

~~(g) — RESIDENCE means any separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.]~~

SEC. 42-13 [18]. **TIME AND MANNER FOR CONDUCTING HOME SOLICITATIONS [PERMITTED ONLY DURING CERTAIN HOURS].**

(a) A person commits an offense if the person conducts or attempts to conduct (either personally or through an agent) [shall not go upon any residential premises and ring the doorbell, or rap or knock upon the door or create any sound in a manner calculated to attract the attention of the occupant of the residence for the purpose of engaging in or attempting to engage in] a home solicitation at a residential premises [transaction]:

(1) before 9:00 a.m. or after [30 minutes following] sunset of any day, Monday through Saturday; [or]

(2) at any time on a Sunday; or

(3) at any time on [5] New Year's Day, Martin Luther King, Jr. Day, Presidents' Day (Washington's Birthday), Memorial Day, Independence Day (July 4th), Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, or Christmas Day.

(b) It is a defense to prosecution under Subsection (a) that the [shall not apply to a] visit to the residential premises was the [as a] result of a request or an appointment made by the owner or occupant.

(c) [A person shall not contact by telephone the occupant of a residence for the purpose of engaging in or attempting to engage in a home solicitation transaction before 9:00 a.m. or after 9:00 p.m. of any day, Monday through Saturday, or at any time on a Sunday, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day.

(d) In this section "sunset" means the time of day published on the weather page of the *Dallas Morning News* [official newspaper of the city] as the time for sunset on that day in the city.

(e) A person shall conduct a home solicitation only at the front or main entrance to the residential premises, and shall only gain access to the front or main entrance by using public sidewalks and paved approaches to the entrance. It is a defense to prosecution under this subsection that the owner or occupant of the residential premises consented to another location or manner of access for the home solicitation.

(f) A home solicitor commits an offense if he uses any adhesive material, or other material that may cause damage to a door or property, when placing, depositing, or distributing commercial printed matter on residential premises.

~~[SEC. 42-19. CONSUMER'S RIGHT TO CANCEL IF SOLICITATION IS IN PERSON.~~

~~(a) In addition to other consumer rights to revoke an offer or to rescind a transaction, or to any other remedy for a merchant's breach, the merchant shall provide to the consumer the right to cancel a home solicitation transaction made in person in which the consideration exceeds \$5, until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase in a home solicitation transaction.~~

~~(b) Every merchant in a home solicitation transaction made in person in which the consideration exceeds \$5, shall furnish the consumer with a fully completed receipt or copy of any contract pertaining to the home solicitation transaction at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name, address and telephone number of the merchant, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt, if a contract is not used, and in bold face type of a minimum size of 10 points, a statement in substantially the following form:~~

~~"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."~~

~~(c) A merchant in a home solicitation transaction made in person in which the consideration exceeds \$5, shall furnish each consumer, at the time he signs the home solicitation transaction contract or otherwise agrees to buy realty, consumer goods, or services from the merchant, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in bold face type of a minimum size of 10 points the following information and statements in the same language, e.g., Spanish, as that used in the contract:~~

~~"NOTICE OF CANCELLATION~~

~~(enter date of transaction)~~

~~YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.~~

~~IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.~~

~~IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.~~

~~IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT AND IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.~~

~~TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (Name of merchant) AT (Address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (Date).~~

~~I HEREBY CANCEL THIS TRANSACTION.~~

~~(Date)~~

~~(Buyer's Signature)"~~

~~(d) — Notification by mail shall be considered given at the time mailed as evidenced by the postmark; notification by telegram shall be considered given at the time filed for transmission; and notification by any other writing shall be considered given at the time delivered to the merchant's designated place of business.~~

~~(e) — Before furnishing copies of the "Notice of Cancellation" to the consumer, a merchant shall complete both copies by entering the name of the merchant, the address of the merchant's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation.~~

~~(f) — A merchant shall not include in any home solicitation transaction contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under this including specifically his right to cancel the transaction in accordance with the provisions of this article.~~

~~(g) — A merchant in a home solicitation transaction in which the consideration exceeds \$5, shall inform each consumer orally, at the time the consumer signs the contract or purchases the realty, goods, or services, of the consumer's right to cancel.~~

~~(h) — A merchant shall not misrepresent in any manner the consumer's right to cancel.~~

~~(i) — A merchant shall honor any valid notice of cancellation by a consumer and, within 10 business days after the receipt of the notice, a merchant shall:~~

~~(1) — refund all payments made under the contract or sale;~~

~~(2) — return any goods or property traded in, in substantially as good condition as when received by the merchant;~~

~~(3) — cancel and return any negotiable instrument executed by the consumer in connection with the contract of sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction; and~~

~~(4) — restore improvements on real property to the condition in which he found them unless requested otherwise by the consumer.~~

~~(j) — No merchant shall negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.~~

~~(k) — No merchant shall fail, within 10 business days of receipt of the consumer's notice of cancellation, to notify the consumer whether the licensee intends to repossess or to abandon any shipped or delivered goods.~~

~~(l) — This section shall not apply to a home solicitation transaction in which the consideration does not exceed \$25 if:~~

~~(1) — the consumer may within a reasonable time:~~

~~(A) — cancel the order;~~

~~(B) — refuse to accept the goods when delivered without obligation to pay for them; or~~

~~(C) — return the goods to the seller and receive a full refund for any amount the consumer has paid; and~~

~~(2) — the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge is clearly and legibly printed on the face or reverse side of the sales ticket or clearly and legibly printed in or on the package.~~

~~SEC. 42-20. — CONSUMER'S RIGHT TO CANCEL IF SOLICITATION IS BY TELEPHONE.~~

~~If a merchant engages in a home solicitation transaction by telephone in which the consideration exceeds \$5, the provisions of Section 42-19 apply, except as follows:~~

~~(a) — The merchant shall provide to the consumer the right to cancel a home solicitation transaction made by telephone until midnight of the third business day after the day on which the consumer receives the goods, services, or realty purchased in a home solicitation transaction.~~

~~(b) — Every merchant in a home solicitation transaction made by telephone shall furnish the consumer with a fully completed receipt or copy of any transaction pertaining to the home solicitation transaction at the time of the receipt by the consumer of the goods, services, or realty purchased in a home solicitation transaction.~~

~~(c) — A merchant in a home solicitation transaction made by telephone shall furnish each consumer, at the time the consumer receives the goods, services or realty purchased in the home solicitation transaction, the form required pursuant to Section 42-19(c). For purposes of a telephone solicitation, date of transaction means the day that the consumer receives the goods, services, or realty purchased in a home solicitation transaction.~~

~~(d) — No merchant shall negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the consumer receives the goods, services or realty purchased in a home solicitation transaction made by telephone.~~

~~(e) — This section shall not apply to a home solicitation transaction if:~~

~~(1) — the consumer may within a reasonable time:~~

~~(A) — cancel the order;~~

~~(B) — refuse to accept the goods when delivered without obligation to pay for them; or~~

~~(C) — return the goods to the seller and receive a full refund for any amount the consumer has paid; and~~

~~(2) — the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge is clearly and legibly printed on the face or reverse side of the sales ticket or clearly and legibly printed in or on the package.]~~

SEC. 42-14 [21]. EXHIBITING SIGNS [~~CARD~~] PROHIBITING HOME SOLICITORS.

(a) Any person[;] desiring to prohibit [that no merchant or other person engage in a] home solicitations on the person's residential premises [at his residence,] shall exhibit in a conspicuous place upon or near the front or main entrance to the residential premises [residence,] a weatherproof sign [~~card, not less than three inches by four inches in size,~~] containing the words, "NO SOLICITORS OR HANDBILLS," or any similar notice indicating that the occupants of the premises do not desire to be bothered, have their right of privacy disturbed, or have commercial printed matter left upon the premises. ["The letters shall be not less than two-thirds of an inch in height.]"

(b) Every home solicitor, before [~~merchant upon~~] going onto any residential premises, or placing, depositing, or distributing commercial printed matter upon any residential premises, [upon which a residence is located] shall first examine the premises [residence] to determine if any sign [notice] prohibiting home solicitations [~~soliciting~~] is exhibited upon or near the front or main entrance to the premises [residence]. If such a sign [notice prohibiting ~~soliciting~~] is exhibited, the home solicitor [~~merchant~~] shall immediately depart from the premises without disturbing the owner or occupant or leaving any commercial printed matter. It is a

defense to prosecution under this subsection that [~~unless~~] the visit was [is] the result of a request or an appointment made by the owner or occupant or that the particular commercial printed matter was left on the premises with the express consent of the owner or occupant.

(c) A [~~No~~] person commits an offense if the person, either personally or through an agent, engages [~~shall go upon any residential premises and ring the doorbell, or rap or knock upon the door or create any sound in a manner calculated to attract the attention of the occupant of the residence, for the purpose of securing an audience with the occupant and engaging] in or attempts [attempting] to engage in a home solicitation at a residential premises [transaction,] if a sign [card as described in Subsection (a) above] is exhibited on the premises in accordance with Subsection (a). It is a defense to prosecution under this subsection that [~~a conspicuous place upon or near the main entrance to the residence, unless~~] the visit was [is] the result of a request or an appointment made by the owner or occupant of the residential premises or that the particular commercial printed matter was left on the premises with the express consent of the owner or occupant.~~

(d) A [~~No~~] person commits an offense if the person [~~other than the occupant of the residence, shall~~] removes, defaces, or renders illegible[;] a sign [card] placed by the owner or occupant on residential premises in accordance with [~~pursuant to~~] Subsection (a) of this section [~~above~~]. It is a defense to prosecution under this subsection that the person was the owner or occupant of the premises or an agent of the owner or occupant.

(e) Any home solicitor [~~merchant~~] who has gained entrance to a residential premises [~~residence~~], or an audience with the owner or occupant, whether invited or not, shall immediately depart from the premises without disturbing the owner or occupant further when requested to leave by the owner or occupant.

SEC. 42-15. RECORDS.

(a) Any registrant who uses an agent to conduct home solicitations in the city shall maintain records containing:

(1) the names, addresses, and telephone numbers of all persons the registrant contracts with or employs to engage in home solicitations in the city;

(2) each agent's date of birth and driver's license number (with the state of issuance) or, if the agent does not have a driver's license, the number from another government-issued personal identification card containing the agent's photograph and date of birth; and

(3) the dates, times, and locations of each home solicitation conducted by the registrant or the registrant's agent in the city.

(b) Records required by Subsection (a) must be maintained by the registrant for at least one year and must be made available for examination by the chief, any police officer, or any city code enforcement officer at reasonable times upon request.

~~[SEC. 42-22. EXEMPTION.~~

~~A person holding a charitable solicitation permit pursuant to the provisions of Article I of this chapter, while engaging in the charitable solicitation authorized, shall be exempted from the provisions of this article.]”~~

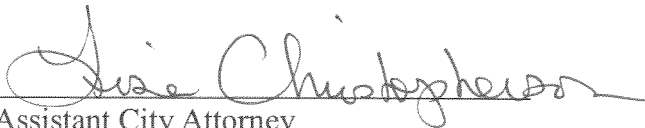
SECTION 2. That CHAPTER 42 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance. Any proceeding, civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 4. That this ordinance will take effect on April 22, 2014, and it is accordingly so ordained.

APPROVED AS TO FORM:

WARREN M. S. ERNST, City Attorney

By  Assistant City Attorney

Passed JAN 22 2014

LC/DCC/00510A



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL JAN 22 2014

ORDINANCE NUMBER 29245

DATE PUBLISHED JAN 25 2014

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Rose C. Liss".