

## **Ordinance 1272**

**AN ORDINANCE OF THE CITY OF HILLSBORO, KANSAS AMENDING ARTICLE 2 OF CHAPTER V OF THE CODE OF THE CITY OF HILLSBORO, KANSAS, REGULATING THE ACTIVITIES OF SOLICITORS, PEDDLERS, AND TRANSIENT MERCHANTS WITHIN THE CITY.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HILLSBORO, KANSAS**

**SECTION 1.** Existing Chapter 5, Article 2 of the Code of the City of Hillsboro, Kansas, is hereby repealed in, it being the intent of the Governing Body that this ordinance supersedes it.

**SECTION 2.** Chapter 5, Article 2, of the Code of the City of Hillsboro, Kansas, is hereby enacted and shall read as follows:

### **ARTICLE 2. PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS**

#### **5-201 PURPOSE.**

The Governing Body finds that, in order to advance the health, safety, and welfare of the residents of the City of Hillsboro, Kansas, it is necessary to regulate various activities, including those of Peddlers, Solicitors, and Transient Merchants.

#### **5-202 DEFINITIONS.**

The following words, terms, and phrases, when used in this Article, shall have the following meanings, except where the context clearly indicates otherwise:

- (a) **"Chief of Police,"** for the purposes of this Article, shall mean the Chief of the City of Hillsboro, Kansas, Police Department, any interim Chief of Police, any acting Chief of Police, or any designee of the Chief of Police.
- (b) **"City Clerk,"** for the purposes of this Article, shall mean the City Clerk, the interim City Clerk, any acting City Clerk, anyone fulfilling the duties of the City Clerk on either a temporary or a permanent basis, or any designee of the City Clerk.
- (c) **"Peddler"** shall mean any person, traveling by foot, or by any other means of conveyance, from place to place, from street to street, or from residence to residence, transporting any goods, wares, merchandise, foods, or other items, and exposing and offering the same for sale, or who, without traveling from place to place, shall from a wagon, automotive vehicle, or other form of conveyance expose and offer any goods, wares, merchandise, foods, or other items for sale.
- (d) **"Residence"** shall mean any separate living unit contained within any type of building or structure that is occupied for residential purposes by one or more persons.
- (e) **"Solicitor"** shall mean any person, traveling by foot, or by any other means of

conveyance, from place to place, from street to street, or from residence to residence, taking or attempting to take orders for the sale of goods, wares, merchandise, foods, or other items for future delivery, whether or not that person has, carries, or exposes for sale any samples of the subject offered for sale or whether or not he or she is collecting advanced payment for any such sale. Any person who hires, leases, or occupies any building, structure, or any portion thereof, or any other place within the corporate limits of the City, for the sole purpose of exhibiting samples of goods, wares, merchandise, foods or other items and taking orders for those items for future delivery shall be deemed a Solicitor for the purposes of this Article. Also, any person using either of the two means described above to solicit the sale of services for immediate or future performance shall be deemed a Solicitor for the purposes of this Article.

- (f) **“Street Salesman”** shall mean any person engaged in any manner in selling merchandise of any kind from a vehicle or stand temporarily located on the public streets or sidewalks of this city
- (g) **“Transient Merchant”** shall mean any person who engages in a temporary business selling and delivering goods, wares, merchandise, foods, or other items, and who, in furtherance of such purpose, hires, leases, or occupies any building, structure, motor vehicle, hotel room, public room, apartment, shop, street, or alleyway within the corporate limits of the City, for the exhibition and sale of such goods, wares, merchandise, foods, or other items, whether privately or at public auction. Any person who aligns himself or herself temporarily with a local business, dealer, trader, merchant, or auctioneer for the purpose of selling and delivering such goods, wares, merchandise, foods, or other items shall also be deemed a Transient Merchants for the purposes of this Article.

#### **5-203 SOLICITOR'S LICENSE REQUIRED.**

No person shall act within the corporate limits of the City as a Peddler, Solicitor, or Transient Merchant without first obtaining a valid Solicitor's License.

#### **5-204 SOLICITOR 'S LICENSE FEE.**

The application fee for a Solicitors and Peddlers License is \$50.00 per year. The application fee is not pro-rated or refundable for any reason, including denial of an application or revocation of a license. The application fee for a Transient Merchants License is \$50.00 for any five-day period

Code Section	Classification	Amount	Period	Expiration
5-201 et seq	Solicitors and Peddlers	\$50.00	1 Year	Dec 31
	Transient Merchants	\$50.00	5 days	

## **5-205 SOLICITOR 'S LICENSE APPLICATION**

Application for a Solicitor's License shall be made to the City Clerk on a form provided by the City Clerk for that purpose. In addition to paying the Solicitor's License Fee, the applicant shall attest to the truthfulness of the application and shall complete the application in full, providing the following information:

- (a) The applicant's full legal name, date of birth, place of birth, and Social Security Number.
- (b) The applicant's permanent address, business mailing address, and telephone number. If the applicant's permanent address is outside the State of Kansas, a local contact address must also be provided.
- (c) A copy of the applicant's government-issued photo identification.
- (d) If the applicant is employed by, is affiliated with, or represents another, then the applicant shall provide a permanent address, business mailing address, and a telephone number for the person, firm, corporation, partnership, or association, by whom he or she is employed, with whom he or she is affiliated, or whom he or she represents.
- (e) The applicant's valid Kansas sales tax number.
- (f) A brief description of the licensed activity, including the nature of the applicant's business and the goods or services being offered for sale.
- (g) The location and zoning of any structure, building, or vehicle to be used in the course of the licensed activity.
- (h) The description of any and all vehicles, including license plate numbers, to be used in the course of the licensed activity.
- (i) A statement indicating whether or not the applicant has had a Solicitor's License, or any similar permit or license related to one or more of the activities licensed by this Article, revoked in this or any other jurisdiction within the preceding two (2) years.
- (j) A statement indicating whether or not the applicant has ever been convicted, under the laws of the State of Kansas or of any other jurisdiction, of a felony or of a crime involving dishonesty.
- (k) A photograph of the applicant taken by City staff.
- (l) The applicant's signature.

## **5-206 SOLICITOR'S LICENSE ISSUANCE; DENIAL.**

- (a) The City Clerk shall review each application and shall forward a copy of each application to the Chief of Police to conduct a background check of the applicant. Within five (5) business days of the application, the City Clerk shall approve the application and shall issue to the applicant a Solicitor's License, unless:
  - (1) The application is incomplete;
  - (2) The application details operations, locations, conditions, or other incompatible with Section 5-213 or any other applicable City Ordinance;
  - (3) The application is determined to be fraudulent, to include a misrepresentation, or to contain a false statement;
  - (4) The applicant has had a Solicitor's License revoked by the City for any reason within the preceding two (2) years;

- (5) The applicant has engaged in any conduct during the preceding ninety (90) days that would have been grounds for license revocation under this Article had the applicant then been in possession of a Solicitors License;
- (6) The applicant has been convicted, under the laws of the State of Kansas or of any other jurisdiction, of a felony or of a crime involving dishonesty within the preceding five (5) years; or
- (7) The applicant has an outstanding arrest warrant in this or any other jurisdiction, or is a fugitive from this or from any other jurisdiction.
- (8)
- (b) If review of the application or the background check of the applicant discloses that any of the criteria of Section 5-205(a)(1) through (a)(6), inclusive, are met, then the City Clerk shall deny the application, by giving Notice of Denial to the applicant. Notice of Denial shall be in writing, shall be mailed to the applicant at his or her given address, shall inform the applicant of the reason for denial, and shall inform the applicant that he or she has fourteen (14) days from the date of the Notice of Denial in which to appeal the denial of his or her application to the Governing Body. The City Clerk shall maintain a copy of the Notice of Denial in his or her files and shall transmit a copy of the Notice of Denial to the Chief of Police.
- (c) Any applicant, whose application is denied for any reason, except for the filing of an incomplete application under Section 6- 805(a)(1), is hereby prohibited from filing with the City Clerk an application for a Solicitor's License for ninety (90) days, commencing the date after Notice of Denial is given. An applicant, whose application is denied because it is incomplete, may file a subsequent application at any time during normal business hours.

#### **5-207 SOLICITOR'S LICENSE APPEARANCE; DURATION.**

- (a) The Solicitor's License shall contain the seal of the City, a photograph of the licensee, the name and employer of the licensee, and the expiration date of the license.
- (b) A Solicitor's License for Peddlers and Solicitors shall be valid for a period not to exceed one year and shall expire on December 31 of the year in which it is issued. A Solicitor's License for Transient Merchants is valid for five (5) days, including the day that it is issued.

#### **5-208 SOLICITOR'S LICENSE NON-TRANSFERABLE.**

No Solicitor's License issued in accordance with the provisions of this Article shall be used by any person other than the person to whom it was issued.

#### **5-209 SOLICITOR'S LICENSE POSSESSION; DISPLAYING LICENSE.**

- (a) Peddlers, Solicitors, and Transient Merchants shall carry their Solicitor's License on their person at all times that they are engaged in any of the activities licensed by this Article.
- (b) Peddlers, Solicitors, and Transient Merchant shall prominently display their Solicitor's

License such that it is visible at all times that they are engaged in any of the activities licensed by this Article.

#### **5-210 SOLICITOR'S LICENSE RESTRICTIONS.**

- (a) No Peddler, Solicitor, or Transient Merchant shall engage in any activity licensed by this Article within any residential zoning district between the hours of 8:00 p.m. and 9:00 a.m.
- (b) No Peddler, Solicitor, or Transient Merchant shall engage or attempt to engage in any activity licensed by this Article at any Residence or business within the corporate limits of the City that prominently displays a "No Solicitors" or "No Trespassers" sign, or any other similar sign that communicates the occupants' desire not to be contacted by Peddlers, Solicitors, or Transient Merchants.

#### **5-211 SOLICITOR'S LICENSE REVOCATION.**

- (a) The Chief of Police or the City Clerk may revoke any Solicitor's License issued under this Article for one or more of the following reasons:
  - (1) Fraud, misrepresentation, or false statement contained in the application for Solicitor's License;
  - (2) Any violation of the provisions of this Article;
  - (3) Conducting a licensed activity in an unlawful manner, in a manner that disturbs the peace, or in a manner that is injurious to the health, safety, or welfare of the residents of the City;
  - (4) Unauthorized use of a public right of way for the sale or display of merchandise or services, or for the display of any advertising sign; or
  - (5) Violation of a site plan requirement for an existing land use or for any other violation of Chapter 16 of the City Code.
- (b) Notice of Revocation shall be in writing, shall be mailed to the applicant at his or her given address, shall inform the licensee of the reason for revocation, and shall inform the licensee that he or she has fourteen (14) days from the date of the Notice of Revocation to appeal the revocation to the Governing Body. The City Clerk shall maintain a copy of the Notice of Revocation in his or her files and shall transmit a copy of the Notice of Revocation to the Chief of Police.

#### **5-212 SOLICITOR'S LICENSE APPEAL.**

Any person aggrieved by the action of the City Clerk or the Chief of Police in denying an application for a Solicitor's License or in revoking a Solicitor's License shall have the right to appeal that action to the Governing Body. Such appeal shall be taken by filing with the City Clerk a Notice of Appeal within fourteen (14) days of the date of the Notice of Denial or the Notice of Revocation. The Notice of Appeal must be in writing and must set forth why the applicant or the licensee believes that the denial or the revocation is erroneous. After the Notice of Appeal is filed, the Governing Body shall set a time and

place for hearing the appeal. Notice of the hearing shall be given to the applicant or licensee in the same manner as the Notice of Denial or the Notice of Revocation. The Governing Body's decision and order on such appeal shall be the final order of the City.

#### **5-213 SOLICITOR'S LICENSE UNLAWFUL ACTIONS.**

- (a) It shall be unlawful for any person to act within the corporate limits of the City as a Peddler, Solicitor, or Transient Merchant without first obtaining and possessing a valid Solicitor's License.
- (b) It shall be unlawful for any person to violate any of the provisions of Sections 5-207, 5-208, 5-209, and 5-210 of this Article.
- (c) It shall be unlawful for any Peddler, Solicitor, or Transient Merchant, or any person acting in his or her behalf, to shout, to make an outcry, to blow a horn, to ring a bell, or to use any sound device, including any loud-speaking radio or sound amplifying system upon any of the streets, alleys, parks, or other public places of the City or upon any private premises in the City where said sound is capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares, merchandise, foods, or other items, or any services, which are to be sold.
- (d) It shall be unlawful for any Peddler, Solicitor, or Transient Merchant to conduct his or her activities on any unimproved surface or from any unoccupied or vacant lot within the corporate limits of the City.
- (e) It shall be unlawful for any Peddler, Solicitor, or Transient Merchant to conduct his or her activities in violation of any setback requirements in the zoning district in which the activity is being conducted.
- (f) It shall be unlawful for any Peddler, Solicitor, or Transient Merchant to have more than one sign at any one location and any sign shall not exceed nine (9) square feet in total area, including lettering or designs painted or attached to any vehicle. No signage shall be placed in a public right-of-way.
- (g) It shall be unlawful for any Peddler, Solicitor, or Transient Merchant to sell any goods or services directly from any vehicle exceeding three-fourths (3/4) ton in rated load capacity.
- (h) It shall be unlawful for any Peddler, Solicitor, or Transient Merchant to claim exclusive right to any location in a public right of way, to have a stationary location in a public right of way, or to conduct his or her activities in a congested area where his or her operations may impede or inconvenience the travelling public.

#### **5-214 SOLICITOR'S LICENSE MUNICIPAL OFFENSE.**

Engaging in any of the unlawful acts set forth in Section 5-213 of this Article shall be a municipal offense. Any person violating a provision of Section 5-213 of this Article shall, upon an adjudication of guilt or the entry of a plea of no contest, be subject to a fine of a minimum of \$250.00 and a maximum of \$1,000.00. The municipal court judge shall have no authority to suspend all or any portion of the minimum fine.

## **5-215 SOLICITOR'S LICENSE EXEMPTIONS.**

The provisions of this Article shall not apply to the following activities:

- (a) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of their business.
- (b) Wholesale trade shows or conventions.
- (c) Fairs and convention center activities conducted primarily for amusement or entertainment.
- (d) Any fairs, auctions, bazaar or sales sponsored by any church, religious, or not-for-profit organization.
- (e) Garage sales held on premises devoted to residential use.
- (f) Sales of agricultural goods raised or produced by the seller and sold at an approved Farmer's Market.
- (g) Any fairs, auctions, bazaars, or sales sponsored by any school, including the sale of concessions at any school event.
- (h) Promotional trade or hobby shows conducted within structures that are zoned and site-planned for commercial use in accordance with Chapter 16 of the City Code.
- (i) Sidewalk sales conducted by an adjoining retail business or a not- for-profit organization on not more than three (3) consecutive days and not less than forty-five (45) days since a prior sidewalk sale at the same location. (See Chapter 13, Article 1 of the City Code, for regulation of use of sidewalks).
- (j) Any fairs, auctions, bazaars, sales, or other events for which valid Temporary Special Event Permits have been issued by the City;
- (k) Any fairs, auctions, bazaars, sales, or other events held at the Marion County Fairgrounds.
- (l) Any fairs, auctions, bazaars, sales, or other events held on college campuses.
- (m) Food service establishments, except as noted herein, that are otherwise regulated and inspected by the Kansas Department of Health and Environment. Notwithstanding the foregoing, this exemption specifically excludes mobile restaurants, mobile food service units, street food vendors, or push food carts as included in the definition of food service establishments in K.S.A. 36-501.
- (n) Temporary stores located in properly site-planned and zoned locations.

[END OF ORDINANCE]

**SECTION 3.** If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

**SECTION 4.** This ordinance shall take effect and be in full force and effect immediately following its

adoption and publication as provided by law.

**PASSED** THIS 2<sup>nd</sup> DAY OF August, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
DELORES DALKE, MAYOR

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
JANICE K. MEISINGER, CITY CLERK

On August 2, 2016, the City of Hillsboro, Kansas adopted Ordinance 1272, repealing Chapter V, Article 2 Solicitors, Canvassers, Peddlers of the Hillsboro Municipal Code and replacing it with a New Chapter V, Article 2 Peddlers, Solicitors and Transient Merchants. A complete copy of this ordinance is available at [www.cityofhillsboro.net](http://www.cityofhillsboro.net) or at City Hall, 118 E. Grand. This summary is certified by Josh Boehm, City Attorney.

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Josh Boehm, Hillsboro City Attorney