

ORDINANCE NO. 1650

AN ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 7 OF THE ALAMOGORDO CODE OF ORDINANCES CONCERNING PEDDLERS AND SOLICITORS

WHEREAS, it has been many years since the ordinance has been updated; and,

WHEREAS, the City cannot perform a full background check of commercial solicitors and an FBI background check is time intensive.

THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 7, Article 17-08 of the Code of Ordinances be amended to read as follows:

Article 17-08. - Peddlers and Solicitors

17-8-010. Definitions.

For the purposes of this article, the terms used herein are defined as follows:

Aggressive manner means and includes:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
- (2) Following the person being solicited, if that conduct is:
 - a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (3) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:
 - a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

It is prima facie evidence of an intention to cause a reasonable person fear of imminent bodily harm, if the person continues to solicit from a person who has asked him/her to stop.

- (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's

constitutional right to picket or legally protest, and acts authorized by a business registration issued pursuant to chapter 17 of this Code, shall not constitute obstruction of pedestrian or vehicular traffic;

- (5) Intentionally using obscene or abusive language or gestures:
 - a. Intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - b. Words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or
- (6) Approaching the person being solicited in a manner that:
 - a. Is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - b. Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

Automated teller machine facility means the area comprising one (1) or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours

Bank means any banking corporation as defined under the laws of the state.

Check cashing business means any business which represents itself to the public as engaged in the business of cashing checks, drafts, or money orders for consideration.

~~*Commercial solicitors* shall mean those persons engaged in the practices enumerated in (1) under the definition of "solicitor" as well as those acting as peddlers, and shall include all persons engaged in solicitation activities within the city who are required to obtain business licenses or registrations under other provisions of this chapter.~~

Peddler means any person who goes from house to house, place to place, or from street to street carrying, conveying, or transporting foods, wares, or merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions, offering or exposing such for sale or making sales and delivering articles to purchasers. The term "peddler" shall include the terms "hawker, huckster, transient merchant and itinerant vendor." Peddler shall not include any persons exempt from licensing under Section 7-23-1, NMSA 1978.

Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

Solicit means to request an immediate payment, donation of money or other thing of value, including an order or promise of future payment, from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.

Solicitation activities shall mean the practices of solicitors as listed in (1) and (2) under the definition of "solicitor" as well as the practice of peddling.

Solicitor shall mean any person, including an employee or agent of another, traveling either by foot, automobile, truck, or other type of conveyance, who engages in the practice of going door-to-door, house-to-house or along any streets within the city:

- (1) Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares, or other items of value for future delivery or for services to be performed in the future for commercial purposes; or
- (2) Requesting contribution of funds, property, or anything of value or of the pledge of any type of future donation or selling or offering for sale any type of property, including but not limited to goods, tickets, books, and pamphlets, for political, charitable, religious, or other noncommercial purposes.

~~17-08-020. License required for commercial solicitors or peddlers.~~

~~It shall be unlawful for any commercial solicitor or peddler to engage in solicitation or sales activities in the city without first obtaining a commercial solicitation license from the city.~~

~~17-08-030. Exemptions.~~

- ~~(a) Minors under the age of eighteen (18) who participate in solicitation activities are exempt from the licensing requirements of this article except when they are acting as agents of adults covered by this article.~~
- ~~(b) Those persons representing charitable associations, organizations existing under the provisions of NMSA 1978, § 53-8-1 et seq., or NMSA 1978 § 53-10-1 et seq., pertaining to nonprofit corporations and unincorporated associations, or which are exempt from taxation under 26 USC § 501.~~
- ~~(c) All persons exempt from the peddler's license under Section 7-23-1 NMSA 1978.~~

~~17-08-040. Application.~~

~~The application for a commercial solicitor's license shall contain all information relevant and necessary to determine whether a particular license may be issued, including but not limited to:~~

- ~~(1) Proof of the identity and residence address of the applicant;~~
- ~~(2) A brief description of the nature, character and quality of the goods, merchandise or services to be sold if any;~~
- ~~(3) If a solicitor or a peddler is employed or acting on behalf of another, the name, business address and telephone number of such person, firm, association, organization, company or corporation; and~~
- ~~(4) Tax identification number.~~

~~17-08-050. Fees and duration.~~

- ~~(a) — Each applicant for a commercial solicitation license under this article, who has a permanent business location in the city, shall pay an annual license fee of thirty five dollars (\$35.00) per solicitor or peddler. A commercial solicitation license shall be valid from the date of issuance until the next December 31. No credit or refunds shall be given for partial years.~~
- ~~(b) — Each applicant for a commercial solicitation license under this article, who does not have a permanent business location in the city, shall pay an initial license fee of fifty dollars (\$50.00) per solicitor or peddler. A commercial solicitation license shall be valid from the date of issuance for a period of thirty (30) days. The applicant shall pay a renewal fee of twenty five dollars (\$25.00) per month for any additional thirty day period in the same calendar year. No credit or refunds shall be given for partial months.~~

~~17-08-060. — Licenses and identification.~~

- ~~(a) — The license issued to a commercial solicitor shall be carried with the solicitor or peddler while he or she is engaged in the business of soliciting or peddling.~~
- ~~(b) — While performing solicitations or peddling, each solicitor or peddler, whether or not commercial and whether or not exempt from the licensing requirements of this article, shall wear an identification badge which shall be worn in such a way that the badge may be easily read and which shall indicate the name and organization of the solicitor or peddler.~~
- ~~(c) — Commercial licenses and identification badges shall be used only by the person to whom they were issued and may not be transferred to any other person.~~

~~17-08-070. — Regulations.~~

~~The following regulations apply to solicitors engaged in solicitation activities and peddlers engaged in peddling, in the city:~~

- ~~(1) — Solicitors and peddlers shall be allowed to conduct their activities only during daylight hours.~~
- ~~(2) — No solicitor or peddler shall engage in solicitation or peddling activities regulated under this article on city owned or controlled property without first procuring special authorization from the city manager.~~
- ~~(3) — No person shall engage in solicitation or peddling activities in defiance of any notice exhibited by a resident or business indicating that solicitors and/or peddlers are not welcome or not invited.~~
- ~~(4) — No person shall engage in solicitation or peddling activities in defiance of a clear indication by occupants of a residence or operators or owners of a business that solicitors are not welcome or are not invited. As used in this section, clear indication shall include but not be limited to posting of a notice on the property, verbal notice or, in the case of commercial solicitation activities, registration with the city on a roster kept by the city for the purpose of indicating those places where commercial solicitors are neither invited~~

~~nor welcome. It shall be the duty of each commercial solicitor to be currently informed of all persons and/or addresses on the no solicitors/no peddlers roster.~~

- ~~(5) Every solicitor and peddler, whether required to be licensed or not, shall immediately furnish his name, organization and address to any person who requests or demands that information while the solicitor or peddler is conducting his/her activities.~~

17-08-071. - Prohibited solicitations.

It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services in the manner described in subparagraphs (1)a. through d. of this section.

- (1) Solicitation is prohibited as follows:

- a. In an aggressive manner in a public area;
- b. Within fifteen (15) feet of any entrance or exit of any bank or check cashing businesses or within fifteen (15) feet of any automated teller machine during the hours of operation of such bank, automated teller machine or check cashing business without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
- c. On private property if the owner tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property; or
- d. From any occupant of a motor vehicle that is in traffic on a public street, whether in exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space, or directing the occupant to a public parking space; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the occupants or passengers of such vehicle

- (2) It shall be unlawful for any driver or occupant of a vehicle upon a roadway, while not parked, to invite, request, offer or encourage a person, not in the vehicle to solicit money or other things of value, or to solicit the sale of goods or services in the manner described in subparagraphs (1)a. through d. above.

17-08-072. - Solicitation on or near street or highway.

- (a) The purpose of this section is to prevent dangers to persons and property, to prevent traffic delays, and to avoid interference with traffic flow. Roadways that have center medians often are designed to handle specific traffic flow problems. Any delay or distraction may interfere with traffic planning. Sometimes persons stand near intersections and near traffic lights to contact drivers or passengers in cars that are passing or that are stopped temporarily due to traffic lights.

- (b) It shall be unlawful for any person to solicit employment, business, contributions, or sales of any kind, or collect monies for the same, from the occupant of any vehicle traveling upon any street or highway when the solicitation or collection:
- (1) Causes the person performing the activity to enter onto the traveled portion of a street or highway.
 - (2) Involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions.
 - (3) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction.
- (c) For purposes of this section, the traveled portion of the street or highway shall mean that portion of the road normally used by moving motor vehicle traffic.

~~17-08-080. Suspension or revocation of license.~~

- ~~(a) Any license issued under this article may be suspended or revoked for any of the following reasons:~~
- ~~(1) Fraud or misrepresentation in the application for license;~~
 - ~~(2) Fraud or misrepresentation in the course of conducting solicitation activities;~~
 - ~~(3) Conducting solicitation or peddling activities contrary to the conditions of the license;~~
~~and~~
 - ~~(4) Conducting solicitation or peddling activities in such a manner as to create a public nuisance or constitute a danger to the public health, safety or welfare.~~
- ~~(b) Upon suspension or revocation, the city shall deliver written notice to the licenseholder stating the action taken and the reasons supporting such action. The written notice shall be delivered to the licenseholder's place of business or mailed to the licenseholder's last known address.~~
- ~~(c) No person who is required to be licensed by this article and whose license has been suspended or revoked shall engage in commercial solicitation activities until the required license has been reinstated or reissued.~~

~~17-08-090. Appeals.~~

~~Persons who are denied licenses or whose licenses have been suspended or revoked may appeal by filing a written notice of appeal with the city within ten (10) days after receipt of the notice of denial, suspension or revocation. The city commission shall hear and determine the appeal, and its decision shall be final.~~

~~17-08-100. Renewals.~~

~~Licenses may be renewed provided that an application for renewal and the appropriate license fees are received by the city no later than the expiration date of the current license. Applications received after the date shall be processed as new applications. The city shall review each renewal application to determine that the applicant is in full compliance with the provisions of this article. If the city finds that the application meets such requirements, the city shall issue a new license.~~

17-08-110. - Penalties.

Any person who violates any provision of this article shall be subject to the penalty provisions contained in section 1-01-100 through 1-01-120, inclusive, of this code.

PASSED, APPROVED AND ADOPTED this 14th day of June, 2022.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: Susan L. Payne
Susan L. Payne, Mayor



ATTEST:

Rachel Hughes
Rachel Hughes, City Clerk

APPROVED AS TO FORM:

[Signature]
Petria Bengoechea, City Attorney

First publication approval: 5/10/2022
First publication: 5/15/2022
Final publication approval: 6/14/2022
Final publication: 6/19/2022
Effective date: 6/24/2022