ORDINANCE NO. NS-517.81

AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDITIONAL DIVISION B35 TO THE SANTA CLARA COUNTY ORDINANCE
CODE RELATING TO
COMMERCIAL PEDDLERS, SOLICITORS AND ITINERANT MERCHANTS

Summary

This Ordinance adds a new division, Division B35, to establish
regulations to be imposed on commercial peddlers, solicitors and
itinerant merchants.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:

SECTION 1. Title B of the Santa Clara County Ordinance Code is amended by adding a
new Division, to be numbered and titled and to read as follows:

Division B35

COMMERCIAL PEDDLERS, SOLICITORS AND ITINERANT MERCHANTS

Sec. B35-1. Legislative findings

The Board of Supervisors finds that persons and organizations have been and are
visiting private residential properties in the County for the purposes of peddling goods,
wares, merchandise or services, and that some residents find such visits to be bothersome
and intrusive. The Board of Supervisors further finds that a variety of misrepresentations
and other frauds are at times employed in such activities. The Board of Supervisors
further finds that public safety and convenience necessitates the exercise of the police
power of the County through the enactment and enforcement of this chapter for the
purpose of protecting the privacy of residents, preventing fraudulent practices and
criminal activity, and otherwise preserving the public health, safety and welfare by
regulating and controlling door-to-door commercial activity.
Sec. B35-2. Definitions

The words and terms used in this chapter shall have the following meanings:

(a) "Commercial activity" means and includes any type of product, good, service, performance or activity which is provided or performed, or offered to be provided or performed, in exchange for money, labor, goods or any other form of consideration.

(b) "Sheriff" means the Sheriff of the County, or his/her duly authorized agents and representatives.

(c) "Itinerant merchant" means any person who engages in a temporary business of selling and delivering goods, wares, or merchandise, and who, in furtherance of such purpose, hires, leases, uses, or occupies any structure, motor vehicle, tent, or any street alley, or other place within the County, for the exhibition and sale of such goods, wares, or merchandise, either privately or at public auction.

(d) "Peddler" means any person who goes upon the premises of any private residence in the County, not having been requested or invited by the occupant thereof, selling, or offering to sell goods, wares and merchandise for present delivery, or services to be performed immediately, whether or not such person has, carries or exposes a sample of such goods, wares and merchandise, or not and whether or not the person is collecting advance payments on such sales or services or not.

(e) "Permittee" means the holder of a permit for door-to-door commercial activity.

(f) "Person" means a natural person or any firm, corporation, association, club, society or other organization.

(g) "Solicit" means and includes any request, offer, enticement, or action which announces the availability of a person for employment or availability to provide services for compensation, the sale of goods, or any request, offer, enticement or action which seeks to purchase or secure employment or goods. A solicitation is deemed complete when made, whether or not an employment relationship is created, a transaction is completed, or an exchange of money or other property takes place.

(h) "Solicitor" means any person who goes upon the premises of any private residence in the County, not having been requested or invited by the occupant thereof, taking orders for, or offering to take orders for goods, wares and merchandise for future delivery, or for services to be performed in the future, whether or not such person has,
carries or exposes a sample of such goods, wares and merchandise, or not and whether or not the person is collecting advance payments on such sales or services or not.

Sec. B35-3. Permit required

It is unlawful for any person to engage in the business or activities of peddler, solicitor or itinerant merchant within the unincorporated areas of the County without having first obtained a permit pursuant to this chapter. Each individual must obtain a permit issued by the Sheriff, or designee, and operate in strict compliance with its provisions. It is unlawful for any permittee to allow or tolerate any person who does not also have a peddler, solicitor or itinerant merchant permit to work for or under the direction of, or on behalf of, or as an agent of the permittee. The requirements for a permit under this chapter are in addition to any requirements for a business license.

Sec. B35-4. Exemptions from permit requirement

The following are exempt from the requirement of obtaining a permit under this chapter:

(a) A person who does not offer for sale any goods or services with an asking price or requested donation of less than twenty dollars is exempt from the permit requirements of this chapter, including the payment of fees, but any such person must comply with the hours of operation limitations and signage provisions of this chapter.

(b) Newspaper employees delivering newspapers by subscription, or any other previously arranged delivery of goods or services.

(c) Any person engaged in a County-run or County-sponsored or sanctioned program.

Sec. B35-5. Applications

Persons seeking a permit under this chapter shall file an application in writing on a form to be furnished by the Sheriff’s Office. The application shall be signed under penalty of perjury and contain the following information:

(a) Name and physical description of the applicant.

(b) Date of birth, driver’s license or other photographic identification establishing the applicant’s age as eighteen (18) or older.
(c) Applicant’s Social Security number.

(d) Applicant’s permanent home address and telephone number.

(e) Applicant’s local address and telephone number if not the same as permanent one.

(f) The name under which the peddler, solicitor or itinerant merchant business or activity will be conducted, the address and telephone number of such business, and the name of the business owner.

(g) The nature or character of the goods, wares, merchandise or services to be offered.

(h) The method of peddling or solicitation, or order taking.

(i) The method of delivering the goods or service.

(j) The length of time for which the right to peddle or solicit is desired.

(k) A portrait photograph of the applicant, taken within sixty days immediately prior to the date of filing of the application, and showing the facial features, head and shoulders of the applicant in a clear and distinguishing manner.

(l) A description of the logo, color scheme, insignia, and any other distinguishing characteristics of any motor vehicle or mobile unit to be used in the applicant's business or activities, including the license plate state and number for any motor vehicle.

(m) The permit history of the applicant for the three-year period immediately preceding the date of the filing of the application, including whether the applicant has operated under any other business name in the County or has ever had any similar license or permit suspended or revoked or has been convicted of a violation of this chapter and if so, the circumstances of such suspension, revocation or conviction.

(n) A statement as to whether or not the applicant has been convicted of any criminal offense, whether felony or misdemeanor, other than minor traffic violations. For each and every such offense, the date and place of conviction, the nature of the offense, and the punishment or penalty imposed must be provided.
(o) Proof of possession of any license or permit which, under federal, state or local laws or regulations, the applicant is required to have in order to conduct the proposed business, or which, under any such law or regulation, would exempt the applicant from the permit requirements of this chapter.

(p) The applicant’s consent to a fingerprint check by the Sheriff’s Office, if necessary. Appropriate fees for the fingerprinting may be charged by the Sheriff’s Office.

(q) A permit fee in an amount established by the Board of Supervisors. The fee shall be established by resolution and shall apply to each individual. Veterans qualifying for the exemption, as set forth in California Business and Professions Code Sections 16001 and 16001.5 shall be exempt from payment of the permit fee.

Sec. B35-6. Application review and permit issuance

(a) Upon receipt of an application, the Sheriff, or authorized representative, shall cause an investigation to be made of the applicant’s character and business reputation based upon the requirements set forth in Section B35-5, as deemed necessary for the protection of the public health, safety and general welfare. The investigation shall be completed within ten working days, barring unusual circumstances.

(b) If the Sheriff finds that the applicant’s character and business reputation do not pose a threat to the public health, safety and general welfare, the Sheriff shall endorse his or her approval on the application and shall, upon verification of payment of all required fees that may be imposed by the Sheriff, provide a permit and identification badge to the applicant.

Sec. B35-7. Permit term

Any peddler, solicitor or itinerant merchant permit issued pursuant to this chapter shall be valid for a period of one year from the date of issuance, unless an earlier expiration date is noted on the permit.

Sec. B35-8. Denial of permit

(a) The Sheriff shall deny an application for a permit if he or she makes any of the following findings:

(1) The applicant has failed to pay the application fee.
(2) The applicant has made one or more material misstatements in the application.

(3) The applicant has ever been convicted or held liable for a crime of moral turpitude, or any felony or misdemeanor offense that reasonably and directly indicates a potential risk to the public or private property interests; including but not limited to burglary, robbery, theft, larceny, embezzlement, false pretense, fraud or misrepresentation, receiving, possession or sale of stolen goods, a sex offense, kidnapping, or any violent acts against persons, or any felony offense involving the sale of a controlled substance specified in sections 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code in conjunction with, or while conducting, a peddler, solicitor or itinerant merchant business or activity.

(4) The applicant fails to provide proof of possession of any license or permit which, under federal, state or local laws or regulations, the applicant is required to have in order to conduct the proposed business.

(5) The applicant has previously been convicted for violation of any provision of this chapter, or has had any permit issued pursuant to this chapter revoked.

(6) The Sheriff possesses any other credible information concerning the applicant, his or her employer or principal that reasonably and directly indicates the peddler, solicitor or itinerant merchant activities will likely be used as a means of committing crime, fraud or deceit.

(b) If the permit is denied, the Sheriff’s denial and the reasons for denial shall be noted on the application, and the applicant shall be notified that his or her application is denied and that no permit will be issued. Notice shall be by personal delivery or first class and certified or registered mail, return receipt requested, addressed to the applicant at the mailing address set forth on the application form, or at the applicant’s last-known address. Notice of denial of the application shall be deemed to have been served on the date it is personally served on the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant, regardless of whether the certified mail receipt is returned signed or unsigned.

(c) The notice shall provide the applicant with information on the appeal process.
Sec. B35-9. Appeal from denial of permit

(a) The decision of the Sheriff to deny a permit may be appealed to the County Executive, or designee. The applicant must submit a request for an appeal hearing to the County Executive, or designee, within ten calendar days’ receipt of the written notice of denial.

(b) Upon receipt of a request for an appeal hearing, the County Executive, or designee, shall conduct a hearing within forty-five days of the request. The County Executive, or designee, shall notify the applicant in writing of the date, time, and place of the hearing. The hearing shall not be less than ten calendar days after the service of the notice of hearing by personal service or by certified or registered mail, return receipt requested.

(c) At the hearing, the applicant and the Sheriff shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the written grounds for the appeal hearing. Unless otherwise specifically prohibited by law, the burden of proof is on the applicant.

(d) Within ten working days of the conclusion of the hearing, the County Executive, or designee, shall issue a written decision which states whether the decision of the Sheriff is upheld or reversed. The decision of the County Executive, or designee, shall be served on the applicant by personal service or by certified or registered mail, return receipt requested.

(e) The decision of the County Executive, or designee, shall be final.

(f) No person whose permit application is denied shall be eligible to reapply for a permit for a period of one year following denial.

Sec. B35-10. Identification badge required

Upon approval of permit application, the peddler, solicitor or itinerant merchant will be issued an identification card with photograph in a badge format. Each person who is engaged in door-to-door commercial activity shall, at all times while so engaged, wear in plain sight on his or her person with the photograph facing outward, the identification (ID) badge. It is unlawful for any person other than the permittee to use or wear any identification badge issued under the provisions of this chapter. It is unlawful for any person issued an identification badge to alter, remove or obliterate any entry made upon such badge, or deface the badge in any way.
Sec. B35-11. Conditions

Each permit shall be subject to the terms and conditions set forth in this section, as well as any other conditions specifically set forth in the permit. The conditions shall constitute operating regulations. It is unlawful for any person with a permit issued pursuant to this chapter, or any person required to obtain a permit under this chapter, whether such person actually has a permit, to engage in door-to-door commercial activity in violation of these provisions.

(a) No peddler, solicitor or itinerant merchant shall enter upon any residential premises for the purpose of door-to-door commercial activity between the hours of 7:00 p.m. or one half hour after sunset, whichever comes first, and 10:00 a.m. of the following day.

(b) No peddler, solicitor or itinerant merchant shall ring the doorbell or knock at the door or otherwise call attention to his or her presence at any residence where a sign bearing the words “No Peddlers,” “No Solicitors” or words of similar import is painted or affixed or otherwise displayed so as to be exposed to public view, unless a peddler, solicitor or itinerant merchant has previously established an appointment with the occupants.

(c) Every peddler, solicitor or itinerant merchant issued an identification badge must be in possession of it at all times when engaged in door-to-door commercial activity within the unincorporated areas of the County. The peddler, solicitor or itinerant merchant must produce and show the identification badge on the demand of any person solicited or of any sheriff or official of the County.

(d) Every peddler, solicitor or itinerant merchant upon the request of any sheriff or official of the County, shall sign his or her name for comparison with the signature upon the identification badge or the signature upon the permit application.

(e) Every peddler, solicitor or itinerant merchant who solicits orders for future delivery shall, if requested by the customer, provide a receipt plainly stating the quantity of each article or commodity ordered, the unit price to be paid therefor, the total amount of goods ordered and the total amount to be paid on or after delivery.

(f) No peddler, solicitor or itinerant merchant shall operate or conduct his or her business or activity in a place or manner which would unreasonably interfere with or
obstruct the flow of pedestrian or motor vehicle traffic in or on any street, alley or sidewalk, or which would unreasonably obstruct vehicular sight distances.

(g) No peddler, solicitor or itinerant merchant shall operate a business from a fixed location in or on any public street, sidewalk, parking lot, right-of-way, plaza, or other public property, unless in possession of a separate permit authorizing such activity.

(h) No solicitor or peddler shall use, play or cause to be used or played an amplifier, loudspeaker, or any other instrument or device for the production of sound in such a manner as to create a disturbance of the peace, or between the hours of 7:00 p.m. or one-half hour after sunset, whichever comes first, and 10:00 a.m. of the following day.

Sec. B35-12. Permit revocation

(a) A permit issued under this chapter may be suspended or revoked by the Sheriff for any of the following causes:

(1) Fraud, misrepresentation or false statement contained in the application for permit;

(2) Fraud, misrepresentation or false statement made in the course of carrying on the door-to-door commercial activity;

(3) Any violation of the provisions of this chapter;

(4) Conviction of any crime or misdemeanor involving moral turpitude, violence to persons or sale of controlled substances;

(5) Conducting the door-to-door commercial activity in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(b) Notwithstanding anything in this chapter to the contrary, the Sheriff shall have the authority to require immediate cessation of door-to-door commercial activities upon revocation of a permit under this section if he or she deems it reasonably necessary for the preservation of the public health, safety or welfare. Prior to an action to require the immediate cessation of any such business, or within twenty-four hours following such action, the Sheriff shall issue a written notice to the permittee setting forth in detail the basis for such action.
(c) Written notification of revocation of the permit, setting forth the grounds for the revocation, shall be served on the permittee by personal delivery or by first class and certified or registered mail, return receipt requested, addressed to the permittee at his or her mailing address as set forth in the permit application. Notice of revocation of the permit shall be deemed to have been served on the date it is personally served on the permittee or when deposited in the United States mail with postage prepaid and addressed to the permittee at his or her mailing address as set forth in the permit application, regardless whether the certified mail receipt is returned signed or unsigned.

Sec. B35-13. Appeal from revocation of permit

(a) If any permittee desires to appeal from any revocation or other order of the Sheriff, made under the provisions of this chapter, the permittee shall have the right to appeal such action to the County Executive, or designee, within fifteen calendar days after the notice of the action has been mailed to the person’s address as shown on the application form, or to his or her last known address. An appeal shall be taken by filing with the Sheriff a written statement setting forth the grounds for the appeal. The Sheriff shall transmit the written statement to the County Executive, or designee, within ten calendar days of its receipt. If a timely appeal is filed, any revocation shall be stayed pending the decision on the appeal.

(b) The County Executive, or designee, shall set a time and place for a hearing on the appeal. A hearing shall be set not later than twenty calendar days from the date of receipt of the permittee’s written statement. Notice of the time and place of the hearing shall be given to the permittee in the same manner as provided for the mailing of notice of action.

(c) At the hearing, the applicant and the Sheriff shall have the right to appear and be represented by counsel and to present evidence and arguments which are relevant to the grounds for the appeal, as stated in the written grounds for the appeal hearing. The burden of proof is on the Sheriff to justify the action taken by a preponderance of the evidence.

(d) The County Executive, or designee, shall consider all relevant evidence at the hearing, and may continue the hearing for good cause, and require such legal briefing as may be necessary to address any issues raised by the appeal. Within a reasonable time, but not more than thirty days following the conclusion of the hearing, the County Executive, or designee, shall issue a written decision affirming, denying or modifying the action from which the appeal was taken, supported by factual findings and determinations referenced by supporting evidence.
(e) The decision of the County Executive, or designee, on the appeal shall be served on the permittee as provided in Code of Civil Procedure Section 1094.6(b). The written decision shall include a notice that the decision is subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

(f) No person whose permit is revoked shall be eligible to apply for a new permit for a period of one year following revocation.

Sec. B35-14. Interstate commerce

No fee provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a fee is believed by a peddler, solicitor or itinerant merchant to place an undue burden on interstate commerce, he or she may apply to the County Executive, or designee, before or up to six months following payment of the fee, for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. The applicant shall, by affidavit and supporting evidence, show his or her method of business and the gross volume or estimated gross volume of business, and other information as required by the County Executive, or designee, to determine the extent of the burden on interstate commerce. The decision of the County Executive, or designee, may be appealed to the Board of Supervisors.

Sec. B35-15. Violations

(a) Violations of any of the provisions of this chapter shall be punishable as a misdemeanor.

(b) In addition to any criminal enforcement, the County or any individual may pursue any available civil remedies deemed necessary. In a civil action, the prevailing party shall be able to recover reasonable attorneys’ fees.
SECTION 2. Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be held invalid.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _________________ by the following vote:

AYES: 

NOES: 

ABSENT: 

______________________________
GEORGE SHIRAKAWA, President
Board of Supervisors

ATTEST:

______________________________
LYNN REGANDANZ
Interim Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

______________________________
MIGUEL MARQUEZ
County Counsel

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