



City of Lorain

Application for Home Solicitation Sales - Chapter 743 - Solicitation
Chapter 745 - Home Solicitation Sales, Transaction of \$25.00 or more

PERMIT #: _____

Name of Solicitor: _____

Permanent Address: _____

Phone: _____ Fax: _____

Social Security #: _____ DOB: _____

Name of Organization: _____

Address of Organization: _____

Product Description: _____ Sale Price Per Item: _____

Description of Services Rendered: _____

License Plate # & Description of Vehicle Used: _____

Photograph Attached: _____ (3x3 square, taken less than 1 year prior to date of application, 743.04)

HOLD HARMLESS AGREEMENT: The Permit Applicant agrees to indemnify and hold harmless the City of Lorain and its agents and employees against all claims, damages, losses and expenses, including but not limited to attorney fees, sustained by any person or persons and arising out of or resulting from the performance of this contract, provided that any such claim, damage, loss or expense is not solely attributable to or caused by the negligent act or omission of the City of Lorain, its employees, agents or subcontractors.

743.05 Certificate Fees: For each registration certificate application pursuant to Section 743.04 there shall be a fee of ten dollars (\$10.00), with the exception of those individuals identified in Section 743.04(c)(18 years old and under, enrolled in elementary, junior high or high school), proposed individual solicitors shall undergo a criminal background check to be conducted by the Lorain Police Department, and shall reimburse the Lorain Police Department for the cost of said background check. (Ordinance 193-01; Passed 11-05-01).

743.06 Certificate Issued: Upon completion of the application, the individual engaged in soliciting shall be furnished a registration certificate which shall be valid for one year from the date of issuance. This certificate shall be displayed upon the request of any individual being solicited and, upon request, to any police officer. (Ordinance 193-01; Passed 11-05-01).

743.07 Hours of Solicitation Regulated: No solicitation pursuant to a certificate issued under this chapter shall be conducted before 9:00 am on weekdays, Saturdays, or Sundays. (Ordinance 193-01; Passed 11-05-01).

BY SIGNING BELOW, I FULLY UNDERSTAND THAT IF IN FACT A CERTIFICATE IS GRANTED, IT WILL NOT BE USED OR REPRESENTED IN ANY WAY AS AN ENDORSEMENT BY THE CITY OR BY ANY DEPARTMENT OR OFFICER THEREOF.

Signature of Solicitor

Date

ATTACH THE FOLLOWING FOR HOME SOLICITATION SALES: transaction of \$25 or more paid by the buyer

- 1) Copy of Sales Contract Agreement (745.02, 745.03, 745.04, 745.05, 745.06, 745.07)
- 2) Surety Bond in the amount of \$1,000.00 (745.08)
- 3) Fee of \$10.00
- 4) Copy of Webcheck from an approved site
(<http://www.ohioattorneygeneral.gov/Services/Business/Webcheck>)

Approval of Mayor, City of Lorain

Date

Print

Lorain, OH Code of Ordinances

**CHAPTER 743
Solicitation**

- 743.01 Definitions.**
- 743.02 Prohibition of door-to-door solicitation.**
- 743.03 Registration required.**
- 743.04 Application.**
- 743.05 Certificate fees.**
- 743.06 Certificate issued.**
- 743.07 Hours of solicitation regulated.**
- 743.08 Notice prohibiting solicitation.**
- 743.09 Solicitation in violation of notice.**
- 743.10 Revocation of certificate.**
- 743.11 Appeal.**
- 743.12 Legal action.**
- 743.99 Penalty.**

CROSS REFERENCES

- Power to inspect food products - see Ohio R.C. 715.46
- Power to regulate - see Ohio R.C. 715.61 et seq.
- Charitable solicitations - see Ohio R.C. Ch. 1716
- Frozen desserts - see Ohio R.C. 3717.51 et seq.
- Littering - see GEN. OFF. 521.08
- Trespassing - see GEN. OFF. 541.05

743.01 DEFINITIONS.

As used in this chapter, unless a different meaning clearly appears from the context:

- (a) "Solicitation" and "solicitor" mean any person who calls at residences without the invitation or previous consent of the owner or occupant of such premises for the purpose of any one or more of the following activities:
 - (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs or services of any kind, character or description whatever, for either present or future delivery;
 - (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character;
 - (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication;
 - (4) Taking a poll or census by any person, firm or corporation, other than a governmental body or agency thereof.

(Ord. 193-01. Passed 11-5-01.)

743.02 PROHIBITION OF DOOR-TO-DOOR SOLICITATION.

The practice of going in and upon private residences in the City, by solicitors, otherwise than as permitted under this chapter, is hereby declared to be a nuisance and punishable as provided in Section 743.99.

(Ord. 193-01. Passed 11-5-01.)

743.03 REGISTRATION REQUIRED.

Registration is required for every person who desires to engage in solicitation by means of calling upon places of residence. A registration certificate shall be obtained by an organization to cover each individual solicitor for the organization. Any solicitation is unlawful unless prior registration has been complied with as required herein.

(Ord. 193-01. Passed 11-5-01.)

743.04 APPLICATION.

(a) Application for a certificate to solicit shall be made to the Chief of Police, or his or her designee, by the prospective solicitor prior to the proposed effective date of the certificate. The application shall contain the following information:

- (1) The name, current address and date of birth of each individual applying for the certificate.
- (2) The name and business address of the individual applicant's employer, and the length of the individual's employment by same.
- (3) The nature and character of the goods to be sold or services to be furnished by the applicant, or the purpose for which funds are being solicited, including the name and addresses of the persons to whom the proceeds will be sent if applicable.
- (4) A statement to the effect that if a certificate is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer thereof.
- (5) A photograph of the individual applying for the certificate, approximately 3" x 3" square, taken less than one year prior to the date of application.

(b) In the case of an organization for which two or more persons will solicit, one application may be made; however, all individualized information must be provided for each proposed solicitor, whether by attachment of such information to the application or otherwise.

(c) Where application is made by an organization, the following shall be applicable to those individuals who are 18 years of age or younger and are currently enrolled in elementary, junior high or high school:

- (1) No criminal background check shall be required;
- (2) Sections 743.04(a)(1), 743.04(a)(5) and 743.06(a) shall not apply;
- (3) The registration certificates to be displayed pursuant to Section 743.06 shall include the information required by Sections 743.06(b), 743.06(c), 743.06(d) and 743.06(e).

(Ord. 193-01. Passed 11-5-01.)

743.05 CERTIFICATE FEES.

For each registration certificate application pursuant to Section 743.04 there shall be a fee of ten dollars (\$10.00). With the exception of those individuals identified in Section 743.04(c), proposed individual solicitors shall undergo a criminal background check to be conducted by the Police Department, and shall reimburse the Police Department for the cost of said background check. (Ord. 193-01. Passed 11-5-01.)

743.06 CERTIFICATE ISSUED.

Upon completion of the application, the individual engaged in soliciting shall be furnished a registration certificate which shall be valid for one year from the date of issuance. The certificate shall contain at least the following:

- (a) The name of the individual solicitor;
- (b) The name of the organization on behalf of which the solicitation is conducted;
- (c) The purpose of the solicitation activity;
- (d) The date of issuance; and
- (e) The date of expiration.

An individual shall not be furnished a registration certificate if the individual has a criminal record evidencing a criminal history of dishonesty, theft, falsification, menacing, coercion, sex offenses, assault or the commission of an act of physical harm, or trespassing.

This certificate shall be displayed upon the request of any individual being solicited and, upon request, to any police officer.

(Ord. 193-01. Passed 11-5-01.)

743.07 HOURS OF SOLICITATION REGULATED.

No solicitation pursuant to a certificate issued under this chapter shall be conducted before 9:00 a.m. or after 9:00 p.m. on weekdays, Saturdays and Sundays.

(Ord. 193-01. Passed 11-5-01.)

743.08 NOTICE PROHIBITING SOLICITATION.

Notice by the owner or occupant of any residence or place of business of the determination to refuse to receive any uninvited solicitors shall be given by displaying a weatherproof card, decal or sign, not less than three inches by four inches in size nor more than one square foot in total surface area, upon or near the main entrance door to the residence or place of business, indicating such determination by the owner or occupant, containing the words "No Solicitors Invited," or words of similar import, with letters at least one-

third of an inch in height. Any such sign which complies with the requirements of this section shall be exempt from any additional or different requirements contained in the provisions of these ordinances, including but not limited to the Planning and Zoning Code.

(Ord. 193-01. Passed 11-5-01.)

743.09 SOLICITATION IN VIOLATION OF NOTICE.

It is hereby declared to be unlawful and shall constitute a trespass for any person to go upon any premises and ring the doorbell upon or near any door, rap or knock upon any door or create any sound in any other manner calculated to attract the attention of any occupant of such residence for the purpose of solicitation in defiance of the notice exhibited at the residence in accordance with the provisions of Section 743.08, unless the solicitor has been previously invited upon the premises by the owner, lessee, or an adult occupant thereof.

(Ord. 193-01. Passed 11-5-01.)

743.10 REVOCATION OF CERTIFICATE.

Any certificate issued hereunder shall be revoked by the Chief of Police, or his or her designee, if the holder of the certificate violates any provision of this chapter, or has made a false statement in the application, or is guilty of any fraud, misrepresentation or unlawful act in connection with his business or otherwise, or in any other way becomes disqualified for the issuance of a certificate under the terms of this chapter. Immediately upon revocation, written notice thereof shall be given by the Chief of Police or his or her designee to the holder of the certificate in person or by U.S. mail addressed to his or her residence as set forth in the application, evidenced by certificate of mailing or by certified U.S. mail return receipt. Immediately upon the giving of such notice, the certificate shall become null and void.

(Ord. 193-01. Passed 11-5-01.)

743.11 APPEAL.

(a) Any person who has applied for and been granted a certificate in accordance with this chapter may, should said certificate be revoked as provided in Section 743.10, appeal such revocation to the Safety/Service Director. Notice of such appeal must be received in the office of the Safety/Service Director within five days after revocation of the certificate. The Safety/Service Director shall, upon appeal, uphold or reverse the revocation within twenty-one days of the receipt of the notice of appeal.

(b) Subject to the provisions of 743.12, in the case of an appeal of the revocation of a certificate issued pursuant to this chapter, the holder of the certificate may continue to solicit in accord with the provisions of this chapter during the pendency of the appeal.

(Ord. 193-01. Passed 11-5-01.)

743.12 LEGAL ACTION.

Notwithstanding any penalty provided for under the terms of this chapter, the Director of Law or any resident of the City, or any other person, firm or corporation, partnership or other entity may commence a civil action in any court of competent jurisdiction against any person, firm, corporation, partnership or other entity who violates the provisions of this chapter. Such relief shall include any preliminary or permanent injunction to abate such nuisance and such other relief as the court may deem appropriate, including, but not limited to reasonable attorney's fees, expenses and court costs.

(Ord. 193-01. Passed 11-5-01.)

743.99 PENALTY.

Any person, firm, partnership, association or corporation violating any provision of this chapter shall be guilty of a misdemeanor of the third degree for a first offense and a misdemeanor of the first degree for a subsequent offense.

(Ord. 193-01. Passed 11-5-01.)

**CHAPTER 745
Home Solicitation Sales**

- 745.01 Definitions.**
- 745.02 Buyer's right to cancel sale; requirements.**
- 745.03 Writing required; contents, warning.**
- 745.04 Seller to retain notice of cancellation and envelope.**
- 745.05 Presumption of home solicitation sale.**
- 745.06 Buyer's rights after cancellation.**
- 745.07 Seller's rights after cancellation.**
- 745.08 Bond.**
- 745.99 Penalty.**

745.01 DEFINITIONS.

As used in this chapter:

(a) "Home solicitation sale" means a sale of consumer goods or services in which the seller or a person acting for the seller engages in a personal solicitation of the sale at a residence of the buyer, including solicitations in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller, or in which the buyer's agreement or offer to purchase is made at a place other than the seller's place of business. It does not include a transaction or transactions in which:

(1) The total purchase to be paid by the buyer, whether under single or multiple contracts, is less than twenty-five dollars;

(2) The transaction was conducted and consummated entirely by mail or by telephone if initiated by the buyer, and without any other contact between the seller or the seller's representative prior to the delivery of goods or performance of the service;

(3) The final agreement is made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

(4) The buyer initiates the contact between the parties for the purpose of negotiating a purchase and the seller has a business establishment at a fixed location in this state where the goods or services involved in the transaction are regularly offered or exhibited for sale.

Advertisements by such a seller in newspapers, magazines, catalogues, radio, or television do not constitute the seller initiation of the contact;

(5) The buyer initiates the contact between the parties, the goods or services are needed to meet a bona fide immediate personal emergency of the buyer which will jeopardize the welfare, health, or safety of natural persons, or endanger property which the buyer owns or for which the buyer is responsible, and the buyer furnishes the seller with a separate, dated, and signed statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

(6) The buyer has initiated the contact between the parties and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services does not fall within this exclusion;

(7) The buyer is accorded the right of rescission by the "Consumer Credit Protection Act, (1968) 82 Stat. 152, 15 U.S.C. 1635, or regulations adopted pursuant to it.

(b) "Sale" includes a lease or rental.

(c) "Seller" includes a lessor or anyone offering goods for rent.

(d) "Buyer" includes a lessee or anyone who gives a consideration for the privilege of using goods.

(e) "Consumer goods or services" means goods or services purchased, leased, or rented primarily

for personal, family, or household purposes, including courses or instruction or training regardless of the purpose for which they are taken.

(f) "Consumer goods or services" does not include goods or services pertaining to any of the following:

(1) Sales of rentals of real property by a real estate broker or salesperson, or by a foreign real estate dealer or salesperson, who is licensed by the Ohio Real Estate Commission under Chapter 4735 of the Revised Code;

(2) The sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission;

(3) The sale of securities or commodities by a securities dealer or salesperson licensed by the Division of Securities under Chapter 1707 of the Revised Code;

(4) The sale of insurance by a person licensed by the Superintendent of Insurance;

(5) Goods sold or services provided by automobile dealers and salespersons licensed by the Registrar of Motor Vehicles under Chapter 4517 of the Revised Code;

(6) The sale of property at an auction by an auctioneer licensed by the Department of Commerce under Chapter 4707 of the Revised Code.

(g) "Purchase price" means the total cumulative price of the consumer goods or services, including all interest and service charges.

(h) "Place of business" means the main office, or a permanent branch office or permanent local address of a seller.

(i) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's day, Presidents' day, Memorial day, Independence day, Labor day, Columbus day, Veterans day, Thanksgiving day, and Christmas day.

(Ord. 180-01. Passed 10-15-01.)

745.02 BUYER'S RIGHT TO CANCEL SALE; REQUIREMENTS.

In addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. Cancellation is evidenced by the buyer giving written notice of cancellation to the seller at the address stated in the agreement or offer to purchase. The buyer may deliver the notice by mail, telegram, manual delivery, or other personal delivery. Written notice of cancellation shall be effective upon the date of postmarking. Telegram delivery is effective when the telegram is ordered manual delivery or other personal delivery is effective when delivered to the seller or to the seller's address, whichever comes first. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the buyer not to be bound by the home solicitation sale. Notice of buyer's right to cancel must appear on all notes or other evidence of indebtedness given pursuant to any home solicitation sale.

Where a home solicitation sale requires a seller to provide services, he shall not commence performance of such services during the time in which the buyer may cancel.

(Ord. 180-01. Passed 10-15-01.)

745.03 WRITING REQUIRED; CONTENTS, WARNING.

(a) Every home solicitation sale shall be evidenced by a written agreement or offer to purchase in the same language as that principally used in the oral sales presentation and shall contain the name and address of the seller. The seller shall present the writing to the buyer and obtain the buyer's signature to it. The writing shall state the date on which the buyer actually signs. The seller shall leave with the buyer a copy of the writing which has been signed by the seller and complies with subsection (b) hereof.

(b) In connection with every home solicitation sale:

(1) The following statement shall appear clearly and conspicuously on the copy of the contract left with the buyer in bold-face type of the minimum size of ten points, in substantially the following form and in immediate proximity to the space reserved in the contract for the signature of the buyer:

"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 for an explanation of this right."

(2) A completed form, in duplicate, captioned "notice of cancellation", shall be attached to the contract signed by the buyer and be easily detachable, and shall contain in ten-point, bold-face type, the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION	
Date: (enter day 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 ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.	
If you cancel, you must make available to the seller 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 seller regarding the return shipment of the goods at the seller's expense and risk.	
If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so then you remain liable for performance of all obligations under the contract. 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 seller), at (address of seller's place of business) not later than midnight of (date).	
I hereby cancel this transaction.	
_____	_____
(Date)	(Buyer's signature)

(3) Before furnishing copies of the notice of cancellation to the buyer, the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction which is the date the buyer signed the contract and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(4) A home solicitation sales contract which contains the notice of buyer's right to cancel and notice of cancellation in the form and language provided in the Federal Trade Commission's trade regulation rule providing a cooling-off period for door-to-door sales shall be deemed to comply with the requirements of subsections (b)(1), (2), and (3) hereof with respect to the form and language of such notices so long as the Federal Trade Commission language provides at least equal information to the consumer concerning his right to cancel as is required by subsections (b)(1), (2), and (3) hereof.

(c) Until the seller has complied with subsections (a) and (b) hereof the buyer may cancel the home solicitation sale by notifying the seller by mailing, delivering, or telegraphing written notice to the seller of his intention to cancel. The three day period prescribed by Section 745.02 begins to run from the time the seller complies with subsections (a) and (b) hereof.

(d) In connection with any home solicitation sale, no seller shall:

(1) Include in any home solicitation sales contract, any confession of judgment or any waiver of any rights to which the buyer is entitled under this section, including specifically his right to cancel the sale in accordance with this section.

(2) Fail to inform each buyer orally, at the time he signs the contract for the goods or services, of his right to cancel.

(3) Misrepresent in any manner the buyer's right to cancel.

(4) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after receipt of such notice to:

- A. Refund all payments made under the contract or sale;
- B. Return any goods or property traded in, in substantially as good condition as when received by the seller;
- C. Cancel and return any note, negotiable instrument, or other evidence of indebtedness executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to reflect the termination of any security interest or lien created under the sale or offer to purchase.

(5) 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 for the goods or services was signed.

(6) Fail to notify the buyer, within ten business days of receipt of the buyer's notice of cancellation, whether the seller intends to repossess or abandon any shipped or delivered goods.

(Ord. 180-01. Passed 10-15-01.)

745.04 SELLER TO RETAIN NOTICE OF CANCELLATION AND ENVELOPE.

In a home solicitation sale, the seller shall retain, for the period in which an action to enforce the sale could be commenced, any notice of cancellation made pursuant to Section 745.02. The seller shall also retain the envelope in which any notice of cancellation is sent or delivered. If the date of delivery is not indicated or recorded on the notice of cancellation or on the envelope, the seller shall record the date of delivery on the notice of cancellation.

(Ord. 180-01. Passed 10-15-01.)

745.05 PRESUMPTION OF HOME SOLICITATION SALE.

Where a sale is made pursuant to negotiations that occur at a place other than the seller's fixed location business establishment where goods or services are offered or exhibited for sale, but the agreement or offer to purchase is signed at a seller's fixed location business establishment, a presumption arises that the sale was a home solicitation sale.

(Ord. 180-01. Passed 10-15-01.)

745.06 BUYER'S RIGHTS AFTER CANCELLATION.

If, following the cancellation of a home solicitation sale by the buyer, the seller fails to return any goods traded in by the buyer, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement. Until subsection (d)(4) of section 745.03 has been complied with by the seller, the buyer may retain possession of the goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled. (Ord. 180-01. Passed 10-15-01.)

745.07 SELLER'S RIGHTS AFTER CANCELLATION.

Except as provided in Section 745.06, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase has been revoked, the buyer upon demand must make available to the seller any goods delivered by the seller pursuant to the sale. The goods made available shall not have been diminished in quantity nor subjected to unreasonable wear or use. The buyer is not obligated to make the goods available at any place other than his residence. If the buyer does make the goods available to the seller and the seller fails to pick them up within twenty days of the buyer's notice of cancellation the goods become the property of the buyer without obligation to pay for them. The buyer has the duty to take reasonable care of the goods in his possession before cancellation and twenty days thereafter, during which time the goods are otherwise at the seller's risk.

(Ord. 180-01. Passed 10-15-01.)

745.08 BOND.

The seller, when doing business in the City of Lorain, shall post a one thousand dollar (\$1,000) surety bond with the office of the Mayor.

(Ord. 180-01. Passed 10-15-01.)

745.99 PENALTY.

Whoever violates any provision of this chapter shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ninety (90) days, or both.

(Ord. 180-01. Passed 10-15-01.)