

## Model Ordinance for Localities

Be it enacted by the [*City Council or Board of Supervisors*] of [*Name of Locality*]

That pursuant to § 57- 63, Code of Virginia (1950), as amended, the following ordinance is hereby adopted:

### CHAPTER 1

#### **§ 1-1. Definitions.**

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

(a) "Charitable organization" means any person that is or holds itself out to be organized or operated for any charitable purpose, or any person which solicits contributions from the public. This definition shall not be deemed to include any church or convention or association of churches primarily operated for non-secular purposes and no part of the net income of which inures to the direct benefit of any individual; nor shall it include any political party as defined in § 24.2-101, Code of Virginia (1950), as amended, or any political campaign committee or political action committee or other political committee required by local, state or federal law to file a report or statement of contributions and expenditures; nor shall it include any authorized individual who solicits, by authority of such organization, solely on behalf of a licensed or exempt charitable organization licensed or exempt under this Chapter or a charitable organization registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services as required by § 57-49, Code of Virginia (1950), as amended, or on behalf of any organization excluded from the definition of charitable organization.

(b) "Charitable purpose" means any charitable, benevolent, humane, philanthropic, patriotic, or eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any public official or instigating, prosecuting, or intervening in litigation.

(c) "Charitable sales promotion" means advertised sales that feature the names of both the commercial co-venturer and the charitable or civic organization and which state that the purchase or use of the goods, services, entertainment, or any other thing of value that the commercial co-venturer normally sells, will benefit the charitable or civic organization or its purposes. To qualify as a charitable sales promotion, the consumer must pay the same price for the thing of value as the commercial co-venturer usually charges without the charitable sales promotion and the consumer retains the thing of value.

(d) "Civic organization" means any local service club, veterans' post, fraternal society or association, volunteer fire or rescue groups, or local civic league or association of ten or more persons not organized for profit but operated exclusively for educational or charitable purposes as defined herein, including the promotion of community welfare, and the net earnings of which are devoted exclusively to charitable, educational, recreational or social welfare purposes.

(e) "Commercial co-venturer" means any person who (i) is organized for profit, (ii) is regularly and primarily engaged in trade or commerce, other than in connection with soliciting for charitable or civic organizations or charitable purposes, and (iii) conducts an advertised charitable sales promotion for a specified limited period of time.

(f) "Contribution" means any gift, bequest, devise or other grant of any money, credit, financial assistance or property of any kind or value, including the promise to contribute, except payments by the membership of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, and except money, credit, financial assistance or property received from any governmental authority. The term "contribution" shall not include any donation of blood or any gift made pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1, Code of Virginia (1950), as amended.

(g) "Director" means the Director of the [*name of the office within the locality*], or a member of his staff to whom he may delegate his duties under this Chapter.

(h) "Federated fund-raising organization" means any federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(i) "Fund-raising expenses" means the expenses of all activities that constitute or are an integral and inseparable part of a solicitation.

(j) "Membership" means those persons to whom, for payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers, or hold offices. The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(k) "Parent organization" means that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches or affiliates.

(l) "Person" means any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit.

(m) "Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable or civic organization, but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a licensed or exempt charitable organization licensed or exempt under this Chapter or a charitable organization registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services as required by § 57-49, Code of Virginia (1950), as amended, or the bona fide salaried officer or employee

of a licensed or exempt parent organization licensed or exempt under this Chapter or a charitable organization registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services as required by § 57-49, Code of Virginia (1950), as amended, shall not be deemed to be a professional fund-raising counsel.

(n) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable or civic organization, whether such solicitation is performed personally or through his agents, servants, or employees or through agents, servants, or employees specially employed by, or for a charitable or civic organization, who are engaged in the solicitation of contributions under the direction of such person, or any person who, for a financial or other consideration, plans, conducts, manages, carries on, advises or acts as a consultant to a charitable or civic organization in connection with the solicitation of contributions but does not qualify as a professional fund-raising counsel. A bona fide salaried officer or employee of a licensed or exempt charitable organization licensed or exempt under this Chapter or a charitable organization registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services as required by § 57-49, Code of Virginia (1950), as amended, or a bona fide salaried officer or employee of a licensed or exempt parent organization licensed or exempt under this Chapter or a charitable organization registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services as required by § 57-49, Code of Virginia (1950), as amended, shall not be deemed to be a professional solicitor.

(o) "Sale," "sell" and "sold" means the transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

(p) "Solicit" and "solicitation" means the request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting such contribution:

- (1) Any oral or written request;
- (2) Any announcement to the press, over the radio or television, or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;
- (3) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or
- (4) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable or civic organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such

sale will be donated to any charitable purpose.

Solicitation as defined herein, shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the same actually receives any contribution.

(q) "Terrorists and terrorist organizations" means any person, organization, group or conspiracy who assists or has assisted terrorist organizations, as provided in 18 U.S.C. § 2339 B or who commits or attempts to commit acts of terrorism, as defined in § 18.2-46.4, Code of Virginia (1950), as amended.

**§ 1-2. Licensing of charitable or civic organizations; prohibition against support of terrorists.**

(a) Every charitable or civic organization, except as otherwise provided herein, which intends to solicit contributions within [*name of locality*], or have funds solicited on its behalf, shall, prior to any solicitation, file an initial license application with the Director upon forms acceptable to him. Each license application shall thereafter be refiled on or before the fifteenth day of the fifth calendar month of the next and each following fiscal year in which such charitable or civic organization is engaged in solicitation activities within this locality. It shall be the duty of the president, chairman or principal officer of such charitable or civic organization to file the license application required herein. Such license application shall contain the following information:

- (1) The name of the organization and the purpose for which it was organized.
- (2) The principal address of the organization, the address of any offices in [*name of locality*] and its designated agent for process with the Commonwealth. If no such agent is designated, the organization shall be deemed to have designated the Secretary of the Commonwealth. If the organization does not maintain an office, the name and address of the person having custody of its financial records.
- (3) The names and addresses of any chapters, branches or affiliates in [*name of locality*].
- (4) The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.
- (5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer.
- (6) A copy of a balance sheet and income and expense statement, with the opinion of any independent public accountant, for the organization's immediately preceding fiscal year; a copy of a financial statement certified by an independent public accountant covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable or civic organization,

showing kind and amount of funds raised, fund-raising expenses and allocation of disbursement of funds raised; or a copy of Internal Revenue Service Form 990. Any organization whose annual gross revenue qualifies such organization to file Form 990-N (also referred to as the e-Postcard) with the Internal Revenue Service may submit a balance sheet and income and expense statement verified under oath or affirmation by the treasurer of the organization. The report required by this subparagraph shall comply with the accounting standards prescribed pursuant to § 1-6 of this Chapter.

- (7) A statement showing the computation of the percentages provided for in § 1-10 of this Chapter.
- (8) A statement indicating whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.
- (9) A statement indicating whether the organization is authorized by any other governmental authority to solicit contributions and whether it, or any officer, professional fund-raiser or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction.
- (10) The general purpose or purposes for which the contributions to be solicited shall be used.
- (11) The name or names under which it intends to solicit contributions.
- (12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions.
- (13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions.
- (14) A statement indicating whether the organization, or any officer, professional fund-raiser or professional solicitor thereof, has ever been convicted of a felony and, if so, a description of the pertinent facts.
- (15) A copy of the current articles of incorporation, bylaws, or other governing documents. If current copies are already on file with the Commissioner, only amendments, if any, shall be filed in years after the initial registration.
- (16) A description of the types of solicitation to be undertaken.

(a1) Every license application shall include the following language: "No funds have been or will knowingly be used, directly or indirectly, to benefit or provide support, in cash or in kind, to terrorists, terrorist organizations, terrorist activities, or the family members of any terrorist."

(a2) No person shall be licensed by the Director to solicit funds that are intended to benefit or support terrorists, terrorist organizations or terrorist activities. No person shall be licensed by the Director to solicit funds that are intended to benefit or support a family member of any terrorist, unless a court of competent jurisdiction within the Commonwealth, upon petition of an interested person, finds by clear and convincing evidence that, for a period of at least three years next preceding any act of terrorism committed by such terrorist or terrorist organization, the family members to whom the benefit of the contributions shall inure have been living separate and apart from the terrorist or terrorist organization, and the family members have not provided any financial support, in cash or in kind, to the terrorist or terrorist organization for the same period of time.

(b) Each chapter, branch or affiliate located within this locality, except an independent member agency of a federated fund-raising organization, shall separately report the information required by this section or report the information to its parent organization which shall then furnish such information as to itself and all local affiliates, chapters and branches in a consolidated form. All affiliated organizations included in a consolidated license application shall be considered as one charitable or civic organization for all purposes of this Chapter. If a consolidated license application is filed, all applications thereafter filed shall be upon the same basis unless permission to change is granted by the Director.

(c) Each federated fund-raising organization located within this locality shall report the information required by this section in a consolidated form. Any federated fund-raising organization may elect to exclude from its consolidated report information relating to the separate fund-raising activities of all of its independent member agencies. No member agency of a federated fund-raising organization shall be required to report separately any information contained in such a consolidated report; provided, however, that any separate solicitation campaign conducted by, or on behalf of, any such member agency in this locality shall nevertheless be subject to all other provisions of this Chapter.

(d) The application forms shall be signed by an authorized officer of the charitable or civic organization.

(e) Every charitable or civic organization which submits an independent application to the Director shall pay an annual license fee of ten dollars (\$10). A parent organization filing on behalf of one or more chapters, branches or affiliates or a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual license fee. All fees paid hereunder shall be credited to the [*name of the office within the locality*], for reimbursement of administrative expenses.

### **§ 1-3. Reciprocal agreements.**

The Director may enter into a reciprocal agreement with the appropriate authority of any other

locality within the Commonwealth for the purpose of exchanging information with respect to charitable or civic organizations. Pursuant to such agreements, the Director may accept information filed by charitable or civic organizations with the appropriate authority of another locality within this Commonwealth in lieu of the information required to be filed pursuant to § 1-2 of this Chapter.

**§ 1-4. Publication of warning concerning certain charitable and civic organizations.**

If the Director determines that any charitable or civic organization not licensed with this office and not exempt from licensure, irrespective of whether such organization is subject to the jurisdiction of this locality, is soliciting in this locality, directly or indirectly, by any means including without limitation, by telephone or telegraph, by direct mail or by advertising in national media, he may, after ten days' written notice mailed to the charitable or civic organization, cause to be printed in one or more newspapers published and/or distributed in this locality a notice in substantially the following form:

WARNING--UNLICENSED CHARITABLE SOLICITATION

The organization named below has solicited contributions from area residents for allegedly charitable purposes. It has not filed the appropriate license application with the Director of the [*name of the office within the locality*] as required by law. Contributors are cautioned that their contributions to such organization may be used for non-charitable purposes.

A copy of said warning shall immediately thereupon be forwarded to the Commissioner of the Virginia Department of Agriculture and Consumer Services.

**§ 1-5. Publication of warnings concerning solicitation by professional solicitors.**

If the Director determines that any charitable or civic organization required to be licensed with this locality has contracted with a professional solicitor to solicit on its behalf and that the professional solicitor may be soliciting or has solicited in this locality, directly or indirectly, by any means including, without limitation, by telephone or telegraph, by direct mail or by advertising in national media, and the professional solicitor has not registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services as required by § 57-61, Code of Virginia (1950), as amended, the Director may, after five days' written notice mailed to the charitable or civic organization, cause to be printed in one or more newspapers published in this locality a notice in substantially the following form:

WARNING--UNREGISTERED CHARITABLE SOLICITATION BY  
PROFESSIONAL SOLICITOR

The charitable or civic organization named below has contracted with a professional solicitor to solicit on its behalf. The professional solicitor has not registered with the Commonwealth of Virginia as required by law. Contributors are cautioned that their contributions may be used for noncharitable purposes.

A copy of said warning shall immediately thereupon be forwarded to the Commissioner of the Virginia Department of Agriculture and Consumer Services.

**§ 1-6. Records to be kept by charitable or civic organizations.**

Every charitable or civic organization required to be licensed with this locality shall keep true fiscal records for all fiscal years beginning on and continuing after the effective date hereof, in accordance with the standards set out in § 57-53, Code of Virginia (1950), as amended. Such records shall be retained for a period of at least three (3) years after the end of the period to which they relate.

**§ 1-7. Charitable solicitation disclosure.**

Every professional solicitor who solicits contributions from a prospective contributor in this locality: (i) shall identify himself and his employer; (ii) shall disclose that he is a paid solicitor; and (iii) shall further disclose, in writing, the fact that a financial statement for the last fiscal year is available from the Virginia Department of Agriculture and Consumer Services. Such disclosure shall comply with the requirements set forth in the Rules Governing the Solicitation of Contributions promulgated by the Virginia Board of Agriculture and Consumer Services.

**§ 1-8. Information filed to become public records.**

License applications, reports, and all other documents and information required to be filed under this Chapter shall become public records in the office of the Director, and shall be open to the general public for inspection at such time and under such conditions as the Director may prescribe. A charge not exceeding one dollar per page may be made for any copy of such documents and information as may be furnished any person by the Director.

**§ 1-9. Prohibited acts.**

(a) No charitable or civic organization shall use or exploit the fact of licensing under this Chapter so as to lead the public to believe that such license in any manner constitutes an endorsement or approval by this locality. The use of the following statement shall not be deemed a prohibited exploitation, "Licensed with the Director of the Bureau of Business Licenses as required by law. Licensure does not imply endorsement of a public solicitation for contributions."

(b) No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services represent, or lead anyone by any manner, means, practice or device whatsoever to believe, that the person on whose behalf such solicitation or sale is being conducted is a bona fide charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if he has reason to believe such not to be the fact.

(c) No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services for charitable purposes, represent or lead anyone by any manner,



means, practice or device whatsoever to believe, that any other person sponsors or endorses such solicitation of contributions, sale of tangible personal property or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith when such other person has not given written consent to the use of his name for these purposes.

Any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign. Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(d) No person shall denominate any membership fee or purchase price of goods or services sold, as a contribution or as a donation or in any other manner represent or imply that the member or the purchaser of such goods or services will be entitled to an income tax deduction for his cost or any portion thereof unless:

- (1) There shall have been first obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding such cost to be deductible or
- (2) The member or purchaser is informed in writing that such cost may not be deductible.

No person shall represent or imply that a contributor will be entitled to an income tax deduction for his contribution unless a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding gifts to such organization to be so deductible has been obtained.

(e) No person shall make any representation that he is soliciting contributions for or on behalf of a charitable or civic organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable or civic organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable or civic organization.

(f) No professional solicitor shall solicit in the name of or on behalf of any charitable or civic organization unless such solicitor has:

- (1) Written authorization of two officers of such organization, a copy of which shall be filed with the Director. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued.
- (2) Such authorization with him when making solicitations and exhibits the same on request to persons solicited, or police officers, or agents of the Director.

(g) No charitable or civic organization shall accept any contribution exceeding five dollars (\$5) in cash or tangible property without providing, on request of the donor, a written receipt acknowledging such contribution on behalf of the organization.

(h) No person, and no organization of which such person is an officer, professional fund-raising counsel or professional solicitor, shall solicit within this locality if:

- (1) Such person has been convicted in any jurisdiction of embezzlement, larceny or other crime involving the obtaining of money or property by false pretenses or the misapplication of funds impressed with a trust, unless such person has received a pardon for such offense or the public is informed of such conviction in a manner approved in writing by the Director before any solicitation occurs; or
- (2) Such person has ever been enjoined by any court or otherwise prohibited from soliciting in any jurisdiction, unless the Director first determines in writing that such person is entitled to solicit in such jurisdiction at the time of soliciting within this locality or that the reason for such injunction or prohibition does not involve moral turpitude.

(i) No person shall solicit within this locality for the benefit of any other person located without the locality, if such other person refuses to supply any information which the Director deems necessary to assure himself that the provisions of this Chapter are complied with. A solicitation shall be deemed to be on behalf of every person who or which receives, directly or indirectly, more than ten percent of the gross amount collected.

(j) No charitable or civic organization shall allow a professional solicitor to solicit on its behalf if the professional solicitor has not registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to § 57-61, Code of Virginia (1950), as amended.

(k) No professional solicitor shall solicit in this locality on behalf of a charitable or civic organization if the professional solicitor has not registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to § 57-61, Code of Virginia (1950), as amended.

(l) No charitable or civic organization shall solicit in this locality without being duly licensed or exempt under this Chapter.

(m) No person shall employ in any solicitation or collection of contributions for a charitable purpose any device, scheme or artifice to defraud or obtain money or property by any misrepresentation or misleading statement.

(n) No officer, agent, director or trustee of any charitable or civic organization, professional fund-raising counsel or professional solicitor shall refuse or fail, after notice, to produce to the Director any books and records of such organization.

(o) No person shall use or permit the use of the funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purposes of the charitable or civic organization on whose behalf the solicitation was made.

(p) No person shall knowingly and willfully make any false statements in any license application or statement, report or other disclosure required by this Chapter.

(q) No professional solicitor shall solicit in this locality on behalf of a charitable or civic organization unless the charitable or civic organization has submitted the appropriate license application as required by § 1-2 of this Chapter or is qualified for an exemption under § 1-12 of this Chapter, and the organization has registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to § 57-49, Code of Virginia (1950), as amended, or the charitable or civic organization has been granted the appropriate exemption by the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to § 57-60, Code of Virginia (1950), as amended

(r) No person shall represent, in any solicitation, that tickets to events will be donated for use by another unless he complies with the following requirements:

- (1) He shall have obtained commitments, in writing, from persons or charitable or civic organizations stating that they will accept donated tickets and specifying the number of persons for whom they are willing to accept tickets;
- (2) He shall not collect or accept more contributions for donated tickets than the number of ticket commitments he has received from persons or charitable or civic organizations;
- (3) He shall have printed in advance on each ticket the exact number of persons to be admitted by the ticket and the dollar price or value of each ticket;
- (4) He shall distribute the tickets in a timely fashion to those having given commitments; and
- (5) He shall maintain during the solicitation and for a period of three years thereafter:
  - (i) records reflecting the name and address of each contributor and the amount of money and number of tickets donated by each such contributor; and
  - (ii) the written commitments of each person or charitable or civic organization to accept tickets and specifying the number of persons on whose behalf tickets were to be accepted, as required in paragraph 1 of this subsection.

(s) No person shall knowingly use or permit the use of funds raised by a solicitation or by contribution to benefit or provide support, directly or indirectly, in cash or in kind, to terrorists, terrorist organizations, terrorist activities or to family members of any terrorist.

**§ 1-10. Fund-raising expenses.**

Each charitable or civic organization shall, as a part of its license application, compute the percentage which its fund-raising expenses for its preceding fiscal year bore to its support received directly from the public during such year.

Each federated fund-raising organization shall clearly disclose on any license application the percentage that is withheld from a donation designated for a member agency.

**§ 1-11. Enforcement and penalties.**

(a) Any person who willfully and knowingly violates or causes to be violated any provision of this Chapter, or who willfully and knowingly gives false or incorrect information to the Director in filing license applications or reports required by this Chapter, whether such report or license application is verified or not, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not less than one hundred dollars (\$100) and not more than \$1,000 or by confinement in jail for not more than six months, or both, and for the second and any subsequent offense by a fine of not less than five hundred dollars (\$500) and not more than \$2,500 or by confinement in jail for not more than one year, or both.

The following property shall be subject to lawful seizure by any law-enforcement officer charged with enforcing the provisions of this Chapter: all moneys or other property, real or personal, together with any interest or profits derived from the investment of such money and used in substantial connection with an act of terrorism as defined in § 18.2-46.4 Code of Virginia (1950), as amended. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, Code of Virginia (1950), as amended.

(b) Whenever the Director has reasonable cause to believe that a violation of this Chapter may have occurred, the Director, upon his own motion or upon complaint of any person, may investigate any charitable or civic organization, professional fund-raising counsel or professional solicitor to determine whether such charitable or civic organization, professional fund-raising counsel or professional solicitor has violated the provisions of this Chapter or has filed any application or other information required under this Chapter which contains false or misleading statements. In the conduct of such investigation, the Director may:

- (1) Require or permit any person to file a statement in writing, under oath or otherwise as the Director determines, as to all facts and circumstances concerning the matter to be investigated.
- (2) Administer oaths or affirmations and, upon his motion or upon request of any party, subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the

discovery of material evidence.

Any proceedings or hearings by the Director under this chapter, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within [*name of locality*].

Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the Director may apply to the Circuit Court of [*name of locality*] for an order imposing punishment for contempt of the subpoena or compelling compliance.

(c) Whenever the [*name of locality*] Attorney or the attorney for the Commonwealth has reason to believe that any charitable or civic organization, commercial co-venturer, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this Chapter or is about to operate in violation of the provisions of this Chapter, in addition to all other actions authorized by law, the [*name of locality*] Attorney, or the attorney for the Commonwealth may bring an action in the name of this locality or the Commonwealth against such charitable or civic organization and its officers, commercial co-venturer, professional fund-raising counsel or professional solicitor or their officers, directors or other agents to enjoin the continuation of such violation, solicitation or collection, or engaging therein, or the conducting of any acts in furtherance thereof and for such other relief as the court deems appropriate.

(d) In any action brought under subsection c, the court may also award to the Commonwealth a civil penalty of not more than \$5,000 per violation, to be paid to the Literary Fund, reasonable expenses incurred by the state or local agency in investigating and preparing the case, not to exceed \$250 per violation, and attorney's fees. Such expenses and attorney's fees shall be paid into the general fund of the [*name of locality*] which such attorney represented.

### **§ 1-12. Exemption.**

(a) The following persons shall be exempt from the application requirements of § 1-2 of this Chapter and the requirements of § 1-6 of this Chapter, but shall otherwise be subject to the provisions of this Chapter:

- (1) Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association Montessori Internationale, the American Montessori Society, the Virginia Independent Schools Association or the Virginia Association of Independent Schools, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.
- (2) Organizations that solicit only within the membership of the organization by the members thereof.

- (3) Charitable or civic organizations that solicit within the Commonwealth from a place outside the Commonwealth solely by telephone, telegraph, direct mail or advertising in national media, and having no chapter, branch, area or office within the Commonwealth.
- (4) Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-122.7, Code of Virginia (1950), as amended.
- (5) Organizations which have registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services under § 57-49, Code of Virginia (1950), as amended, or organizations which are a chapter, branch or affiliate included in the consolidated report of an organization or federated organization which is so registered with said Commissioner, except that such charitable or civic organization shall not be exempted from that portion of any local ordinance that requires such organization to register its name, the names of its solicitors and the dates and times that they will be soliciting in the locality.
- (6) Health care institutions defined herein as any facilities that have been granted tax-exempt status under § 501 (c)(3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or Department of Behavioral Health and Developmental Services; (ii) designated by the Health Care Financing Administration (HCFA) as federally qualified health centers, (iii) certified by the HCFA as rural health clinics; or (iv) wholly organized for the delivery of health care services without charge; and any supporting organization that exists solely to support any such health care institutions. For the purposes of clause (iv), “delivery of health care services without charge” includes the delivery of dental, medical or other health services where a reasonable minimum fee is charged to cover administrative costs.
- (7) No museum that has registered with the Commissioner as required by § 57-49, Code of Virginia (1950), as amended and that has been granted tax-exempt status under § 501 (c)(3) of the Internal Revenue Code shall be required to comply with the regulation or licensing provisions of any local charitable solicitations ordinance.

**§ 1-13. Liability imposed by other laws not decreased.**

Nothing contained in this Chapter shall be construed as making lawful any act or omission which is now unlawful, or as decreasing the liability, civil or criminal, of any person, imposed by existing laws.

**§ 1-13.1. Time and effect of licensure.**

- (a) Licenses by charitable or civic organizations are effective, if complete, upon receipt by the Director. Incomplete license application forms and license application forms lacking required

accompanying documents are not effective until completed or until the required accompanying documents are received by the Director. No person shall be considered licensed under this Chapter for any purpose until his license application is complete.

(b) If the Director at any time determines that (i) the requirements of § 1-2 of this Chapter have not been met or (ii) the licensee is violating any requirement of § 1-9 of this Chapter, then the Director may suspend the license until the licensee meets the requirements or complies and provides evidence thereof satisfactory to the Director. The suspension may be based upon an informal conference pursuant to § 2.2-4019, Code of Virginia (1950), as amended.

(c) If the Director finds that the public health, safety or welfare requires urgent action, and if he also finds reasonable cause to believe that the licensee has failed to comply with § 1-2 of this Chapter or is violating § 1-9 of this Chapter, then the Director may provide advance notice of as little as twenty-four hours for the conduct of the informal conference under § 2.2-4019, Code of Virginia (1950), as amended.

#### **§ 1-14. Application to court for relief.**

Any person aggrieved by any final order of the Director, denying such person any right to which he is entitled under law, may within fifteen days from the date of such order, apply for relief to the Circuit Court for this locality. Either party may appeal any final order of such court in the same manner as provided by law in cases other than cases of appeals of right.

#### **§ 1-15. Severability.**

If any provision of this Chapter or the application of such provision to any person or under any circumstances shall be held invalid, the remainder of this Chapter, or the application of such provisions to persons or under circumstances, other than those to which it shall have been held invalid, shall not be affected thereby.

#### **§ 1-16. Effective Date.**

This ordinance, if not inconsistent with the requirements of § 57-63, Code of Virginia (1950), as amended, shall be effective upon its adoption, which date shall not be later than *[date]*.