

ORDINANCE NO. 060, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING AND REENACTING DIVISION 1, ARTICLE IV OF CHAPTER 15
OF THE CODE OF THE CITY OF FORT COLLINS
RELATING TO DOOR-TO-DOOR SOLICITATION

WHEREAS, in 1938, the City Council adopted Ordinance No. 002, 1938, prohibiting solicitors from going in or upon private residences, public buildings and offices in the City, and declaring such practice to be a nuisance; and

WHEREAS, in 1972, the City Council adopted the City's "Green River" Ordinance, which is presently contained in Chapter 15, Article IV, Division I, of the City Code; and

WHEREAS, in 1994, the City Council repealed Article IV, Division 1 of the City Code, Sections 15-106 through 15-108, and reenacted those sections, with revised language that was intended to better protect the privacy and safety interests of the citizens of the City; and

WHEREAS, in 2002, the City Council further amended Section 15-106 of the City Code and modified the prohibition of door-to-door solicitation so that it applied only to residential premises; and

WHEREAS, City staff has recommended that these provisions of the City Code be further revised to ensure that they are consistent with evolving First Amendment jurisprudence, while continuing to protect residents from fraud and crime and to preserve residents' privacy in their homes; and

WHEREAS, the effect of the amendments recommended by City staff would be to replace the current total ban on commercial door-to-door residential solicitation with a permit system regulating such solicitation, and to continue to allow non-commercial residential solicitation without a permit except that both commercial and non-commercial solicitation would be prohibited at residences where a sign prohibiting the same is posted and that commercial solicitation would be prohibited at residences that are shown on a no-solicitation list maintained by the City on its website; and

WHEREAS, the City Council believes that it would be in the best interests of the City to approve the changes to the City Code that have been recommended by the staff.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Sections 15-106 through 15-108 of Article IV, Division 1 of the Code of the City of Fort Collins are hereby repealed and the following sections reenacted to read as follows:

**ARTICLE IV.
AUCTIONS, SPECIAL SALES AND
SOLICITATIONS**

DIVISION 1. DOOR-TO-DOOR SOLICITATION

Sec. 15-106. Title; purpose.

(a) This Division shall be known and cited as the "Fort Collins Door-to-Door Solicitation Ordinance."

(b) The provisions of this Division are intended to balance the First Amendment rights of residential solicitors in the City with the privacy, safety, health and welfare of the City residents by:

- (1) requiring all commercial solicitors to conduct any door-to-door residential solicitation within the City pursuant to a permit and identification badge issued by the City;
- (2) reasonably limiting the hours of door-to-door solicitation activities; and
- (3) prohibiting solicitations at residences where the owner or occupant has prohibited solicitation in a manner consistent with the provisions of this Division.

Sec. 15-107. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

Applicant shall mean any person or entity who has submitted an application for a permit.

Commercial solicitor shall mean any person, whether as volunteer, owner, agent, consignee or employee, who engages in door-to-door commercial solicitation.

Door-to-door commercial solicitation shall mean attempting to make personal contact with a resident at his or her residence, without prior specific invitation by or appointment with the resident, for the primary purpose of:

- (1) attempting to sell, for present or future delivery, any goods, wares or merchandise, other than newspaper or magazine subscriptions, or any services to be performed immediately or in the future, whether or not the person has, carries or exposes a sample of such goods, wares or merchandise, and whether or not he or she is collecting advance payments for such sales; or

- (2) personally delivering to the resident a handbill or flyer advertising a commercial event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a future time.

Door-to-door noncommercial solicitation shall mean attempting to make personal contact with a resident at his or her residence, without prior specific invitation by or appointment with the resident, for the primary purpose of:

- (1) seeking or asking for a gift or donation for a public entity or nonprofit organization exempt from federal income tax under 26 U.S.C. 501(c)(3);
- (2) soliciting the sale of goods, wares or merchandise for present or future delivery, or the sale of services to be performed immediately or in the future, with the entire proceeds of such sale to be paid directly to, or used exclusively for the benefit of, a public entity or nonprofit organization exempt from federal income tax under 26 U.S.C. 501(c)(3);
- (3) personally delivering to the resident a handbill or flyer advertising a future, not-for-profit event, activity, good or service;
- (4) proselytizing on behalf of a religious organization;
- (5) soliciting support for a political candidate or organization, or ballot measure or ideology; or
- (6) soliciting the sale of newspaper or magazine subscriptions.

Employer shall mean any person, company, corporation, business, partnership, organization, or any other entity on behalf of whom a person is acting.

Noncommercial solicitor shall mean any person, whether as volunteer, owner, agent, consignee or employee, who engages in door-to-door non-commercial solicitation.

No-solicitation list shall mean a list of the addresses of City residents who have requested that their residences be placed on a list maintained and published by the City for the purpose of informing the general public and prospective solicitors that all door-to-door solicitation at such addresses are prohibited.

Permit shall mean a document issued by the Financial Officer authorizing a commercial solicitor to engage in door-to-door commercial solicitation.

Permit holder shall mean any person to whom a permit has been issued under the provisions of this Division.

Person shall mean a natural person or business entity, such as, without limitation, a corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership or any group or combination thereof.

Public Entity shall mean the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

Residence shall mean a private residence in the City, including but not limited to condominium units and apartments, including the yards, grounds or hallways thereof.

Sec. 15-108. All solicitation prohibited by posting of "No Solicitation" or "No Trespassing" sign.

(a) No solicitor, whether commercial or non-commercial, shall enter or remain upon any public or private premises in the City if a "No Solicitation" or "No Trespassing" sign is posted at or near the entrance(s) to such premises; or

(b) This provision shall apply to all solicitation including, without limitation, all activities that are religious, charitable or political in nature and all solicitation of newspaper or magazine subscriptions.

Sec. 15-109. No-solicitation list for commercial solicitations.

(a) Any owner or lawful occupant of any residence within the City who wishes to prohibit door-to-door commercial solicitation at his or her residence may register the address of such residence with the City by completing a form prepared by the Financial Officer, which form may be submitted to the city either in person, by mail, or on the City's website. Such registration shall take effect thirty (30) calendar days after the date of the City's receipt of the registration form.

(b) The City Manager shall maintain and publish on the City's website a no-solicitation list consisting of all residential addresses that have been registered under Subsection (a) above and that have not been deleted by the City under Subsection (d) below or by the owner or lawful occupant of the registered property. Each permit holder shall be responsible for obtaining and reviewing a copy of such list immediately upon issuance of a permit under this Article and at such intervals thereafter as may be reasonably necessary to ensure compliance with the requirements of Subsection (c) of this Section.

(c) As of the effective date of the registration of a residential address under subparagraph (a) of this Section, all door-to-door commercial solicitation at such address shall be prohibited until such time, if at all, that the address has been deleted from the no-solicitation list.

(d) Each residential address appearing on the City's no-solicitation list will remain on the list for two years from the date it was submitted to the City, at which time it shall be deleted from the list unless a new form requesting no solicitation at such residence has been submitted by the owner or lawful occupant thereof. No less than sixty (60) calendar days prior to the deletion of any address from the no-solicitation list, the City Manager shall provide written notice to the property owner or occupant who registered the address with the City, which notice shall be sent to the registered address or to such other address as may have been provided to the City at the time of registration.

(e) Prior to the expiration of the two (2) year period referenced in Subsection (d) above, the owner or lawful occupant of any residence appearing on the no-solicitation list may cause such residence to be removed from the list by submitting a written request for removal of the same to the Financial Officer.

(f) Neither the City nor any of its officers, employees, agents or authorized volunteers shall be liable to any person for any injuries, damages or liabilities of any kind arising from or relating to any errors or omissions that may occur in compiling or maintaining the no-solicitation list.

Sec. 15-110. Permit and identification badge required for all commercial solicitors.

(a) Any person seeking to engage in commercial door-to-door solicitation must obtain a permit from the Financial Officer and pay the permit fee as provided in this Division before commencing any such solicitation.

(b) All permits shall be issued in the name of the applicant. Upon issuance of each permit, the Financial Officer shall create and maintain a list of all persons authorized to engage in door-to-door commercial solicitation under the permit. It shall be the sole responsibility of the permit holder to:

- (1) provide a copy of the permit to each person authorized to engage in solicitation under the permit;
- (2) ensure that each person authorized to solicit under the permit complies with the terms and conditions of the permit and with the provisions of this Division;
- (3) notify the Financial Officer in writing of any persons to be added to or deleted from the list of authorized solicitors; and

- (4) submit to the Financial Officer, for each person to be added to such list, the information required under § 15-110(a)(4), together with payment of the identification badge fee required under § 15-110(b).

(c) The Financial Officer shall, within ten (10) business days of the City's receipt, via mail or in person, of a complete application for a permit under this Division, issue such permit, together with identification badges for all persons authorized to engage in door-to-door commercial solicitation under the permit, unless the Financial Officer determines that the permit application is denied under the criteria stated in § 15-113.

(d) Subsequent to the issuance of any permit, and upon receipt of the information and fee required under Paragraph (4) above, the Financial Officer shall, within five (5) business days, issue an identification badge to any new or additional person to be authorized to solicit under the permit as long as such person is not prohibited under § 15-113. The Financial Officer shall also, within five (5) business days, issue a replacement identification badge to any solicitor who, by affidavit, notifies the Financial Officer that his or her identification badge has been lost or stolen, and who pays an additional identification badge fee as established under § 15-110(c).

(e) If an employer applies for and is granted a permit under this Division, the employer shall be entitled to obtain identification badges from the Financial Officer for each employee or agent authorized to solicit under the permit. The identification badges shall contain a photograph of the solicitor, bear the words "Permitted Solicitor," include the names of the employer and solicitor, and the expiration date of the permit.

Sec. 15-111. Application contents; fees.

(a) Each person applying for a door-to-door commercial solicitation permit shall file with the Financial Officer an affidavit on a form supplied by the Financial Officer stating:

- (1) the full name, business address, and business telephone number of the applicant;
- (2) information regarding the business as required by the Financial Officer, including, without limitation, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State;
- (3) a complete list of all persons to be authorized to solicit under the permit;
- (4) for each person authorized to solicit under a permit, the following information:

- a. name, address, telephone number and date of birth;
 - b. a current copy of the person's criminal background check, as maintained by the Colorado Bureau of Investigation, dated no more than sixty (60) days prior to the date of the application;
 - c. a description of the individual, including height, weight, color of eyes and color of hair; and
 - d. the number and state of issuance of the individual's motor vehicle operator's license or chauffeur's license, if any, or other state-issued photo identification;
- (5) a brief explanation of the nature of the solicitation activity that requires a permit under this Division;
 - (6) if the applicant is a foreign corporation or an employee of such corporation, the name, address and telephone number of an agent for process residing in the state;
 - (7) proof that the applicant has obtained a valid City of Fort Collins sales and use tax license;
 - (8) proof that the applicant has deposited the sales tax deposit or has received a valid waiver of such sales tax deposit; and
 - (9) any other information determined to be relevant by the Financial Officer.

(b) At the time of application, the applicant shall also submit a photograph of each person to be authorized to solicit under the permit, taken no more than six (6) months prior to the date of application, which photograph fairly depicts the appearance of the proposed solicitor as of the date of application and which, in the judgment of the Financial Officer, is suitable for reproduction on the identification badge to be issued by the City.

(c) At the time of application, each applicant shall pay a fee in an amount determined by the Financial Officer to be sufficient to defray the costs incurred by the City in processing the application, plus an additional fee to defray the costs of preparing and issuing an identification badge for each person to be authorized to solicit under the permit, including the applicant. Said fees shall be nonrefundable.

Sec. 15-112. Duration of permit; renewal.)

(a) Each permit shall be valid for two (2) years, effective from the date of issuance.

(b) Any permittee wishing to renew a permit issued under this Division must apply for the renewal of the permit no less than thirty (30) days prior to the expiration of its term. Said application shall be accompanied by a criminal background check as required under § 15-110(a)(4)b for each person who is to be authorized to solicit under the permit during the renewal term of the permit. If a permittee fails to apply for such renewal within said thirty (30) day period of time, the permit will expire. The renewal fee for each permittee shall be determined by the Financial Officer in an amount sufficient to defray the costs incurred by the City in processing the renewal application. Said fee shall be nonrefundable.

Sec. 15-113 Sales tax deposit.

(a) If at the time of filing the application, the applicant has not maintained a City sales tax license for at least the previous twenty-four (24) months, the applicant shall deposit with the Financial Officer a sales tax deposit in the sum of two hundred fifty (\$250.). The Financial Officer may waive the sales tax deposit upon a showing that the applicant has maintained a City sales tax license for at least the previous twenty-four (24) months and has a record of promptly paying any sales tax due.

(b) Upon issuance of the solicitation permit and subsequent verification by the City that the permittee has paid the sales tax due the City, the balance of the deposit required under Subsection (a) of this Section, if any, shall be returned to the permittee. If the permittee fails to pay the City's sales tax and does not seek return of the sales tax deposit within ninety (90) days from the expiration of the permit, the City Manager may declare the deposit forfeited and notify the permittee thereof at the address shown on the permit. Forfeiture of the sales tax deposit, however, shall not release the permittee from the obligation to remit the correct amount of sales tax due.

Sec. 15-114. Persons prohibited.

A person shall not be eligible for issuance of a permit or identification badge under this Division if:

- (1) such person has been convicted of a felony or Class 1 misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law; or
- (2) a permit or an identification badge previously issued to such person by the Financial Officer under § 15-110 has been revoked by the Financial Officer under §§ 15-120 or 15-121.

Sec. 15-115. Denial of Permit.

The Financial Officer shall deny an application for a permit, or any renewal of a permit under this Division if the Financial Officer determines that the applicant has:

- (1) made any material misrepresentation or false statement in the application for the permit; or
- (2) failed to obtain a sales and use tax license as required by the City or to remit any sales tax due the City; or
- (3) been convicted of a felony or Class 1 misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law.

Sec. 15-116. False or deceptive representation prohibited.

No person shall attempt to obtain, by telephone or otherwise, an invitation to visit any private residence for the purpose of soliciting the purchase or sale of goods, services or any other thing of value, by knowingly making a false or deceptive representation or statement.

Sec. 15-117. Duty to display identification badge and to exhibit permit.

(a) Any commercial solicitor engaging in door-to-door commercial solicitation under a permit issued pursuant to this Division shall conspicuously display his or her identification badge.

(b) Whenever requested by any police officer or by any customer or prospective customer, any commercial solicitor engaged in door-to-door commercial solicitation under a permit issued pursuant to this Division shall exhibit his or her identification badge and permit.

Sec. 15-118. Permissible times.

All door-to-door commercial solicitation and all door-to-door noncommercial solicitation shall be undertaken and completed between the hours of 9:00 a.m. and sunset as announced and published by the National Weather Service daily.

Sec. 15-119. Transfer of permits prohibited.

No permit issued pursuant to this Division shall be transferred to any person.

Sec. 15-120. Revocation of identification badge.

The Financial Officer may suspend or revoke the identification badge of any solicitor that has engaged in any unlawful solicitation or any solicitation conducted in such a manner as to constitute a menace to the health, safety or general welfare of the public.

Sec. 15-121. Nonrenewal or revocation of permit.

The Financial Officer shall revoke and shall not renew any permit issued pursuant to this Division if the Financial Officer determines that any of the following have occurred:

- (1) fraud, misrepresentation or false statement in the application for the permit or any renewal application, including, without limitation, representations made as to the criminal history of any person to be authorized to solicit under the permit;
- (2) failure to obtain a sales and use tax license as required by the City or to remit any sales tax due the City;
- (3) failure to supervise solicitation conducted under the permit so as to reasonably ensure that such solicitation is in compliance with the terms of the permit and with the provisions of this Division; or
- (4) authorizing, condoning or knowingly tolerating any unlawful solicitation or any solicitation conducted in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

Sec. 15-122. Records.

The Financial Officer shall maintain records showing each permit issued and the alleged violations of this Division.

Sec. 15-123. Appeal.

An applicant may appeal any decision relating to his or her permit by the Financial Officer or hearing officer to the City Manager in accordance with Chapter 2, Article VI of the City Code. The City Manager's decision shall be final.

Sec. 15-124. Administrative Regulations.

The Financial Officer is authorized to promulgate rules and regulations as are necessary to effectuate the implementation, administration and enforcement of this Division.

Sec. 15-125. Violations and penalties.

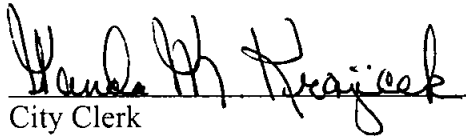
In addition to the revocation, suspension or denial of a permit or identification badge issued under this Division, any applicant, permittee or solicitor who violates any of the provisions of this Division, and any person who violates §§ 15-108, 15-109, 15-115 or 15-117, shall be guilty of a misdemeanor punishable in accordance with § 1-15.

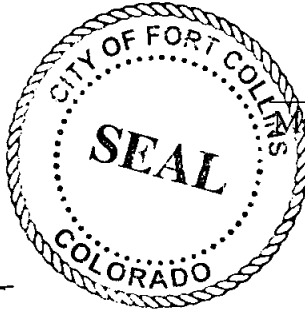
Secs. 15-126 - 15-128. Reserved.

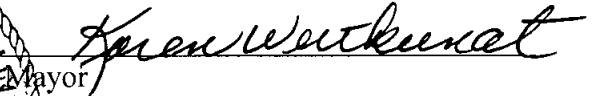
Section 2. That Sections 15-121 through 15-123 shall be renumbered as Sections 15-129 through 15-131 respectively.

Introduced, considered favorably on first reading, and ordered published this 3rd day of May, A.D. 2011, and to be presented for final passage on the 17th day of May, A.D. 2011.

ATTEST:

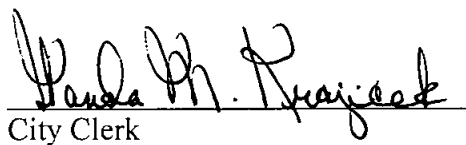

City Clerk

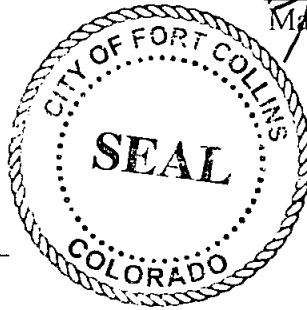


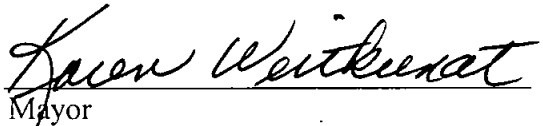

Mayor

Passed and adopted on final reading on the 17th day of May, A.D. 2011.

ATTEST:


City Clerk




Mayor