

SUBJECT

First Reading of Ordinance No. 029, 2011, Repealing And Reenacting Division 1, Article IV of Chapter 15 of the City Code Relating To Door-To-Door Solicitation.

EXECUTIVE SUMMARY

The City of Fort Collins currently has an ordinance prohibiting door-to-door residential solicitation by commercial businesses, often referred to as a "Green River Ordinance." The proposed ordinance would replace the current total ban on commercial door-to-door residential solicitation with a permit system licensing and regulating such solicitation. As is currently the case, all door-to-door solicitation, whether commercial or non-commercial, would be prohibited under the proposed ordinance by a "No Trespassing" or a "No Solicitation" sign posted at a public or private premises.

BACKGROUND / DISCUSSION

Since 1938, the City of Fort Collins has had a so called "Green River Ordinance" which prohibits door-to-door residential solicitation by commercial businesses. This Ordinance has been effective in eliminating unwanted solicitors from approaching individual residences with the goal of protecting the privacy and safety interests of City residents.

The current Ordinance prohibits all door-to-door solicitation, whether commercial or non-commercial, on both public and private property when there is a "No Trespassing" or a "No Solicitation" sign posted on the premises. It prohibits door-to-door commercial solicitation at residential premises whether or not a sign is posted on the premises with the exception of charitable, religious or political solicitations or the solicitation of newspapers or magazines.

The City's total ban on commercial door-to-door solicitation at residential premises is currently being challenged in federal district court. Because of the uncertainty and expense of litigation, staff is asking City Council to consider changes to the ordinance that would bring the City's regulations more in line with the approach that many other Colorado cities have taken.

There is a related provision under Section 17-42 of the Code which prohibits the posting of notices and handbills on public property without permission and private property if a "No Trespassing," "No Soliciting," or "No Posting" sign is present, access has been restricted by the owner, or the owner has given notice that the posting is prohibited. This provision will remain in the Code.

Current Proposal

The current solicitation ordinance would be repealed and replaced with the proposed ordinance. The proposed ordinance is referred to as the Fort Collins Door-To-Door Solicitation Ordinance. It would replace the current total ban on commercial door-to-door residential solicitation with a permit system regulating such solicitation. Residential commercial solicitors would be required to wear a photo identification badge, complete a criminal history background check, and would be prohibited from soliciting in the City if the background check indicates a felony or class one misdemeanor conviction. The hours of solicitation would be limited to between 8:00 a.m. and one half hour after sunset.

Non-commercial solicitations are not regulated under the current ordinance and would remain unregulated under the proposed ordinance. By law, non-commercial solicitations include things such as religious and political contacts, fundraisers for schools and other tax-exempt organizations, and the sale of newspaper and magazine subscriptions.

As is currently the case, all door-to-door solicitation, whether commercial or non-commercial, would be prohibited by a "No Trespassing" or a "No Solicitation" sign posted at a particular residence.

FINANCIAL / ECONOMIC IMPACTS

Companies seeking a permit for door-to-door solicitation would be charged a fee aimed at covering the City's costs for issuing the permit and producing the identification badge required of each individual solicitor. Solicitors will also be required to obtain and maintain a valid sales tax license and remit appropriate sales tax to the City.

The ability of businesses to solicit customers through door-to-door sales may provide some economic benefit to the community, but staff does not project a significant impact on City revenues.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

PUBLIC OUTREACH

On February 11, 2011, staff issued a press release and began providing information to the community about the proposed change in the City's door-to-door solicitation ordinance. This limited level of outreach was intended to inform residents of the proposed change and notify them of the proposed date for Council's consideration of the Ordinance. Residents were not specifically asked for formal feedback on the proposal because of the circumstances of the pending lawsuit in Federal Court.

In 2009, when City Council previously discussed changes to this Ordinance, staff conducted a significant outreach effort including an opportunity for community feedback. Residents responded overwhelmingly that they preferred to maintain the total ban on door-to-door solicitation. Staff believes that those sentiments have not changed since 2009.

ATTACHMENTS

1. Powerpoint presentation

Door-to-Door Solicitation

March 1, 2011



1

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Purpose of Regulating Solicitation

- Since 1938, the City has regulated door-to-door solicitation (peddlers)
- Main purpose: protect safety and privacy of residents in their homes
- Residents have appreciated the ban's ability to limit solicitation

2

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Existing Ordinance

- Prohibits all door-to-door commercial solicitations at residences
- Does not prohibit non-commercial solicitation:
 - Religious
 - Political
 - Non-profit organizations
 - Newspapers and magazines
- Allows residents to individually prohibit ALL solicitation by posting sign on property

3



Proposed Ordinance Modifications

- Regulates commercial door-to-door solicitation
 - Requires permit from City
 - Requires Solicitor Badge
 - Provides background checks for individual solicitors
 - Limits hours

4



Proposed Ordinance Modifications

- Exemptions continue—Political, religious, non-profit organizations and newspapers/ magazines
- Posting of “No Solicitation” sign still prohibits all solicitors on resident’s property



5

Permitting

- Commercial companies may apply for permit
 - Valid 2 years
 - Verifies Sales Tax license
 - Includes detailed company information and contacts
 - Lists individual solicitors

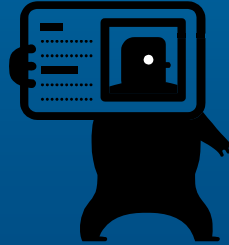


6

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Badges for Solicitors

- Individual employees of permittee must apply for Badge
- Badge Requirements:
 - Background check free of felonies and Class 1 misdemeanors
 - State issued photo identification
 - Current photo for display on badge
- Badge must be displayed while soliciting



7

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Safety and Privacy

- Allows residents to continue to post “No Soliciting” sign to prohibit all solicitors
- If a licensed solicitor disregards sign, residents may have more information to use in filing a complaint
- Violations by a badge holder may result in loss of company’s license



8

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Information Sharing with Community

- Focused public outreach on informing residents about proposed code change
 - Press release
 - Articles: Coloradoan, Denver Post, TV news
 - Coloradoan editorial
 - Social Media: Twitter, Facebook
 - Web site spotlight
 - Neighborhood News email blast



9

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Timeline

- March 1 and 15—First and Second Reading
- March 25—Effective Date
- April 11—Staff begins issuing Permits/Badges as applications are approved

10

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ORDINANCE NO. 029, 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 if a sign prohibiting the same is posted at a particular residence; 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:

DOOR-TO-DOOR SOLICITATION

Sec. 15-106. Purpose.

(a) 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 soliciting on property where residents have posted a sign prohibiting trespass and/or soliciting.

This Division shall be known and cited as the *Fort Collins Door-to-Door Solicitation Ordinance*.

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: (a) 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 (b) 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 non-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: (a) seeking or asking for a gift or donation for a tax-exempt organization; (b) 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 tax exempt organization; (c) personally delivering to the resident a handbill or flyer advertising a future, not-for-profit event,

activity, good or service; (d) proselytizing on behalf of a religious organization; (e) soliciting support for a political candidate or organization, or ballot measure or ideology; or (d) 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.

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

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

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.

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.

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. 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. 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 commercial, door-to-door solicitations.

(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 Section 15-110(a)(4), together with payment of the identification badge fee required under Section 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 solicitation under the permit, unless the Financial Officer determines that the permit application is denied under the criteria stated in Section 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 Section 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 Section 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. 15-110. 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 list of all cities and towns in which a peddler's or solicitor's permit or license is presently held by the applicant;
 - (6) a brief explanation of the nature of the solicitation activity that requires a permit under this Division;
 - (7) 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;
 - (8) proof that the applicant has obtained a valid City of Fort Collins sales and use tax license;
 - (9) proof that the applicant has deposited the sales tax deposit or has received a valid waiver of such sales tax deposit; and
 - (10) 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. 15-111. 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 Section 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 (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. 15-112 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. 15-113. Persons prohibited.

A person shall not be eligible for issuance of a permit or identification badge under this Division if such person has been convicted of a felony or class one (1) misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law.

Sec. 15-114. Denial of Permit.

(a) 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 one (1) misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law.

Sec. 15-115. 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. 15-116. 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. 15-117. Permissible times.

All door-to-door commercial solicitation and all door-to-door noncommercial solicitation shall be undertaken and completed between the hours of 8:00 a.m. and one-half (1/2) hour after sunset as announced and published by the National Weather Service daily.

Sec. 15-118. Transfer of permits prohibited.

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

Sec. 15-119. 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 ensure that all persons authorized to solicit pursuant to a permit issued by the City are in compliance with the terms of said permit and with the provisions of this Division; or
- (4) conducting the activity authorized by the permit in an unlawful manner, or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

Sec. 15-120. Records.

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

Sec. 15-121. 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 IV of the City Code. The City Manger's decision shall be final.

Sec. 15-122. 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. 15-123. Violations and penalties.

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

Introduced, considered favorably on first reading, and ordered published this 1st day of March, A.D. 2011, and to be presented for final passage on the 15th day of March, A.D. 2011.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 15th day of March, A.D. 2011.

Mayor

ATTEST:

City Clerk