

TITLE IV

BUSINESS REGULATIONS

CHAPTER 1

TRANSIENT MERCHANTS

(Ord. 2014-02)

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4-1-1: Definitions

As used in this Code, the following words, terms, and phrases shall have the indicated meanings:

- A. "Applicant" means any person or entity who has submitted an application for a permit.
- B. "Commercial solicitor" means any person, whether as volunteer, owner, agent, consignee or employee, who engages in door-to-door commercial solicitation.
- C. "Door-to-door commercial solicitation" means 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, 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.

D. “Door-to-door noncommercial solicitation” means 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
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.

E. “Employer” means any person, company, corporation, business, partnership, organization or any other entity on behalf of whom a person is acting.

F. “Noncommercial solicitor” means any person, whether as volunteer, owner, agent, consignee or employee, who engages in door-to-door noncommercial solicitation.

G. “No-solicitation list” means a list of the addresses of Town residents who have requested that their residences be placed on a list maintained and published by the Town for the purpose of informing the general

public and prospective solicitors that all door-to-door solicitation at such addresses is prohibited.

- H. "Permit" means a document issued by the Town Clerk authorizing a commercial solicitor to engage in door-to-door commercial solicitation.
- I. "Permit holder" means any person to whom a permit has been issued under the provisions of this Chapter.
- J. "Person" means 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.
- K. "Public entity" means the state, county, Town 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, Town and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.
- L. "Residence" means a private residence in the Town, including but not limited to, condominium units and apartments, including the yards, grounds or hallways thereof.
- M. "Supervising staff" means any person who manages or supervises commercial solicitors.

4-1-2: All Solicitation Prohibited by Posting of "No Solicitation" or "No Trespassing" Sign

- A. No solicitor, whether commercial or noncommercial, shall enter or remain upon any private premises in the Town if a "No Solicitation" or "No Trespassing" sign is posted at or near the entrance(s) to such premises. For the purposes of this provision, if an occupant of a multiple dwelling wishes to prohibit door-to-door solicitation by the posting of a sign, the sign prohibiting solicitation must be posted at or near the entrance(s) to the occupant's individual dwelling.
- 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.

4-1-3: No-solicitation List for Commercial Solicitations

- A. Any owner or lawful occupant of any residence within the Town who wishes to prohibit door-to-door commercial solicitation at his or her residence may register the address of such residence with the Town by completing a form prepared by the Town Clerk, which form may be submitted to the Town either in person or by mail. Such registration shall take effect thirty (30) calendar days after the date of the Town's receipt of the registration form
- B. The Town shall maintain a current no-solicitation list of properties registered under Subsection 4-1-3-A above and that have not been deleted by the Town under Subsection 4-1-3-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 Chapter and at such intervals thereafter as may be reasonably necessary to ensure compliance with the requirements of Subsection 4-1-3-C below.
- C. As of the effective date of the registration of a residential address under Subsection 4-1-3-A above, all door-to-door commercial solicitation at such address shall be prohibited until such time that the address has been deleted from the no-solicitation list.
- D. Each residential address appearing on the Town's no-solicitation list will remain on the list for two (2) years from the date it was submitted to the Town, 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.
- E. Prior to the expiration of the two-year period referenced in Subsection 4-1-3-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 Town Clerk.
- F. Neither the Town 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.

4-1-4: 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 Town Clerk and pay

the permit fee as provided in this Chapter before commencing any such solicitation.

- B. All permits shall be issued in the name of the applicant. Upon issuance of each permit, the Town Clerk 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 Chapter;
 - 3. Notify the Town Clerk in writing of any persons to be added to or deleted from the list of authorized solicitors; and
 - 4. Submit to the Town Clerk, for each person to be added to such list, the information required under Subsection 4-1-4-A-4, together with payment of the identification badge fee required under Subsection 4-1-5-C.
- C. The Town Clerk shall, within ten (10) business days of the Town's receipt, via mail or in person, of a complete application for a permit under this Chapter, issue such permit, together with identification badges for all persons authorized to engage in door-to-door commercial solicitation under the permit, unless the Town Clerk determines that the permit application is denied under the criteria stated in Section 4-1-8.
- D. Subsequent to the issuance of any permit, and upon receipt of the information and fee required under Section 4-1-5 below, the Town Clerk shall, within seven (7) 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 4-1-7. The Town Clerk shall also, within seven (7) business days, issue a replacement identification badge to any solicitor who, by affidavit, notifies the Town Clerk that his or her identification badge has been lost or stolen, and who pays an additional identification badge deposit as established under Subsection 4-1-5-D.
- E. If an employer applies for and is granted a permit under this Chapter, the employer shall be entitled to obtain identification badges from the Town Clerk 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.

4-1-5: Application Contents; Fees

- A. Each person applying for a door-to-door commercial solicitation permit shall file with the Town Clerk an affidavit on a form supplied by the Town Clerk stating:
1. The full name, business address and business telephone number of the applicant;
 2. Information regarding the business as required by the Town Clerk, 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 and all supervising staff;
 4. For each person authorized to solicit under a permit and all supervising staff, the following information:
 - a. Name, Address, Telephone Number and Date of Birth;
 - b. A current copy of the persons' 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 Chapter;
 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 Town sales tax license;

8. Any other information determined to be relevant by the Town Clerk.
- B. At the time of application, the applicant shall also submit a digital 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 Town Clerk, is suitable for reproduction on the identification badge to be issued by the Town.
 - C. At the time of application, each applicant shall pay a fee in an amount determined by the Town Clerk to be sufficient to defray the costs incurred by the Town 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. All fees shall be nonrefundable.
 - D. At the time of application, the applicant shall pay a deposit of fifty dollars (\$50.00) for each badge, to be refunded to the permit holder at the expiration of the term of the badge or upon revocation or voluntary relinquishment.

4-1-6: 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 Chapter must apply for the renewal of the permit no less than thirty (30) days prior to the expiration of its term. Such application shall be accompanied by a criminal background check as required under Subsection 4-1-5-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 such thirty-day period of time, the permit will expire. The renewal fee for each permittee shall be determined by the Town Clerk in an amount sufficient to defray the costs incurred by the Town in processing the renewal application. Such fee shall be nonrefundable.

4-1-7: Persons Prohibited

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

- A. Such person has been released within the ten (10) years immediately preceding the application from any form of incarceration, court-ordered supervision, including a deferred sentence, resulting from conviction of any 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
- B. A permit or an identification badge previously issued to such person by the Town Clerk under Section 4-1-4 has been revoked by the Town Clerk under §§ 4-1-13 or 4-1-14 below.

4-1-8: Denial of Permit

The Town Clerk shall deny an application for a permit or any renewal of a permit under this Chapter if the Town Clerk determines that the applicant has:

- A. Made any material misrepresentation or false statement in the application for the permit; or
- B. Failed to obtain a sales tax license as required by the Town or to remit any sales tax due the Town; or
- C. 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;
- D. Had a badge or permit revoked under Section 4-1-14.

4-1-9: 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.

4-1-10: 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 Chapter 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 Chapter shall exhibit his or her identification badge and permit.

4-1-11: Permissible Times

All door-to-door commercial solicitation shall be undertaken and completed between the hours of 9:00 a.m. and 7:00 p.m.

4-1-12: Transfer of Permits Prohibited

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

4-1-13: Suspension or Revocation of Identification Badge

- A. After written notice of no less than ten (10) calendar days and a hearing before the Town Administrator, if requested in writing by the badge holder within ten (10) calendar days after the date of mailing of such notice, the Town Clerk may suspend or revoke the identification badge of any solicitor that has engaged in any unlawful solicitation. The grounds for such suspension or revocation may include, but shall not be limited to, the following:
 - 1. Failure to solicit in a manner that is in compliance with the permit and the provisions of this Chapter;
 - 2. Soliciting in such a manner as to constitute a menace to the health, safety or general welfare of the public.
- B. In the event the alleged conduct that is the basis for the suspension or revocation of the identification badge is the subject of a pending criminal or non-traffic civil citation, the Town Clerk may either defer his or her decision regarding suspension or revocation until such citation has been resolved or immediately proceed with the foregoing administrative action prior to the resolution of such citation.

4-1-14: Suspension, Revocation or Nonrenewal of Permit

- A. After written notice of no less than ten (10) calendar days and a hearing before the Town Administrator, if requested in writing by the permit holder within ten (10) calendar days after the date of the mailing of such notice, the Town Clerk may suspend and revoke the permit of any person that has engaged in any unlawful solicitation. The grounds for such suspension or revocation may include, but shall not be limited to, the following:
 - 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 Town or to remit any sales tax due the Town;
 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 Chapter; 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.
- B. In the event the alleged conduct that is the basis for the suspension or revocation of the identification badge is the subject of a pending criminal or non-traffic civil citation, the Town Clerk may either defer his or her decision regarding suspension or revocation until such citation has been resolved or immediately proceed with the foregoing administrative action prior to the resolution of such citation.

4-1-15: Emergency Summary Suspension of Identification Badge or Permit

- A. If reasonable grounds exist to believe that a permittee or badge holder has engaged in illegal activity such that the public health, safety or welfare imperatively requires emergency action, the Town Clerk may summarily suspend the permit or badge pending the outcome of the proceedings set forth in Section 4-1-13 or Section 4-1-14 above, as applicable.
- B. The temporary suspension of a permit or badge without notice pending a hearing shall be for a period not to exceed fifteen (15) days.

4-1-16: Displaying a Badge after Suspension, Revocation, or Nonrenewal

No person shall display an identification badge after it has been invalidated by suspension, revocation or nonrenewal.

4-1-17: Promulgation of Rules and Regulations

The Town Clerk may promulgate administrative rules and regulations to effectuate the purposes of this Article.

4-1-18: Records

The Town Clerk shall maintain records showing each permit issued and the alleged violations of this Chapter.

4-1-18: Appeal

An applicant may appeal any decision relating to his, her, or its permit by the Town Clerk or hearing officer to the Town Administrator. The Town Administrator's decision shall be final.

4-1-19: Administrative Regulations

The Town Clerk is authorized to promulgate rules and regulations as are necessary to effectuate the implementation, administration and enforcement of this Chapter.

4-1-20: Violations and penalties

- A. In addition to the revocation, suspension or denial of a permit or identification badge issued under this Chapter, any applicant, permittee or solicitor who violates any of the provisions of this Chapter, and any person who violates §§ 4-1-2, 4-1-4, 4-1-9, or 4-1-10, shall be guilty of a misdemeanor punishable by a fine of not more than three hundred dollars (\$300.00) or imprisonment for not more than ninety (90) days or by both such fine and imprisonment.
- B. Each and every day a violation of the provisions of this Chapter is committed, exists, or continues shall be deemed a separate offense;
- C. The Town is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate, or remove the violation; and
- D. Continuing violations of this Chapter are declared to be a nuisance and the Town is authorized to seek to abate such nuisance under Title VIII, Chapter 3, of this Code.
- E. Any remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provide by law or in equity.