

ORDINANCE # O-25-2017

AN ORDINANCE REGARDING DOOR TO DOOR SOLICITATION IN THE VILLAGE AND DECLARING AN EMERGENCY

WHEREAS, the Village of Bolivar has an ordinance regarding door to door solicitation within the village, which is not currently meeting the needs of the Village;

WHEREAS, there have been reports of scammers and an increase in criminal activity in the area in recent months and the Village wishes to protect its residents against these threats;

WHEREAS, courts have recognized a community's right to control commercial activity and door-to-door solicitation of funds so long as such regulations do not impose a burden on the First Amendment rights of non-commercial organizations;

WHEREAS, the Village desires to maintain a restriction against door-to-door solicitations to protect the right to privacy of our citizens, to regulate commercial activity within residential areas of the Village which by zoning rules do not authorize commercial activity as a permitted use, to control crime and potential fraud by requiring all solicitors to carry appropriate photo identification to present to residential homeowners and occupants on request, and to protect juveniles traveling door-to-door within the community.

WHEREAS, this Ordinance shall repeal and replace any prior ordinances on this subject.

NOW THEREFORE, BE IT ORDAINED by the Village Council of the Village of Bolivar:

SECTION 1. Definitions. For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Commercial Solicitors. Any individual, group of individuals, business entity, organization (both for-profit or not-for-profit) or any agent of such business entity or organization which travels door-to-door within the community, which either solicits or offers for sale either for present or future delivery any goods, merchandise or services, whether monies are collected at the time of such solicitation or to be paid in the future.

Non-Commercial Solicitors. Any individual, group of individuals, business entity, organization (both for-profit or not-for-profit) or any agent of such business entity or organization which travels door-to-door within the community, which either solicits or requests donations for any organization, person or cause, whether monies are collected at the time of such solicitation or to be paid in the future.

Canvassers. Any person traveling door-to-door within the community, to canvas or advocate for a cause, organization or person, or any person conducting a survey, advocating a religious organization or ministry, or presenting handbills for a person, cause or organization so long as such canvassing does not involve the solicitation or request for donations.

Community. As referenced herein, the term community shall mean the Village of Bolivar, Ohio.

Door-to-Door. Travel by foot, motor vehicle or any other type of conveyance from house-to-house, building-to-building or door-to-door within the community. Such solicitation does not include telephone, Internet or any other electronic communication. Door-to-door travel is intended to mean the personal contact between two or more individuals at a home, office or building within the community.

SECTION 2.

General Rules.

A. In addition to the requirements set forth below for permits by Commercial Solicitors, all Solicitors, commercial or non-commercial, or Canvassers traveling door-to-door within any residential area of the Village of Bolivar to solicit donations, canvas, or offer goods or services for sale, shall carry appropriate photo identification and shall exhibit the same upon the request of any resident contacted within the Village.

B. In addition to the permit required for Commercial Solicitors as set forth below, any Solicitor, commercial or non-commercial, or Canvasser under the age of fourteen (14) years of age traveling door-to-door within any residential area of the Village of Bolivar to solicit donations, canvas, or offer goods or services for sale, must be accompanied by a parent, guardian or supervising adult. Such parent, guardian or supervising adult shall have photo identification for himself or herself with him or her at all times, and shall exhibit the same upon request of any resident contacted within the community.

C. No person or organization shall solicit, whether commercial or non-commercial, or canvass within any residential area of the community between the hours of 7:00 p.m. and 9:00 a.m. daily.

D. Non-Commercial Solicitors and Canvassers shall not be required to obtain a permit to operate within the Village.

SECTION 3.

Commercial Solicitation Permit Requirements. Commercial Solicitors intending to sell or offer for sale goods or services through door-to-door solicitation in any residential area of the Village of Bolivar shall be required to register in advance with the Village through the Police Department. Each organization, business entity, groups of individuals or individuals will be issued a permit upon appropriate application to the Village so long as such organization, business entity, group of individuals or individuals meet the requirements of this Ordinance for appropriate registration and authorization to conduct the solicitation within the community.

SECTION 4.

Applications for Commercial Solicitation Permits. Applicants for permits under this Chapter shall pay a non-refundable application fee of Seventy Five & no/100 Dollars (\$75.00) per person, plus the cost incurred by the Village for background checks for each agent and applicant who shall offer or sell goods or services within the Village, and shall file with the Chief of Police or his designated clerk, in writing, in duplicate, on an application containing the following information:

A. Name of applicant and all agents of the applicant who will offer or sell goods or services within the Village of Bolivar, and their respective social security number and/or federal identification number.

B. Permanent home address and/or business address of the applicant who will offer for sale or solicit sales of goods or services within the Village of Bolivar, as well as a list of all places of residence and employment for any individual for the past two years.

C. A brief description of the nature of the business or organization offering such goods or services to be sold and a brief description of the goods or services to be sold.

D. The length of time during which the right to do business or the right to solicit sales within the community is desired; provided, however, that this right may not exceed a period of six months. This shall not restrict a Commercial Solicitor from selling or soliciting for sale for a period of twelve months throughout the community, but the Commercial Solicitor must renew such permit after its six month expiration with such renewal being similar to the procedure for the issuance of a new permit.

E. Photographic identification of the applicant and photographic identification of all agents of the applicant who will be selling or soliciting for sales within the Village of Bolivar.

F. A statement as to whether or not the applicant, or any agent of the applicant who will be selling or soliciting for sales within the Village of Bolivar, has been convicted of any crime or misdemeanor, the year in which the offense occurred, the nature of the offense and the punishment or penalty assessed for such violation. The application shall acknowledge that the Bolivar Police Department shall access and review the applicant's and any agent of the applicant's criminal record, and the applicant shall be responsible for paying the cost incurred by the Village to run a background check on all individuals or agents who shall be selling or soliciting within the Village.

G. A list of other municipalities in which the applicant recently conducted solicitation activities.

Payment of the application fee must be made via cash, cashier's check, or money order at the time of application.

SECTION 5.

Investigation. Upon receipt of the completed application for a commercial solicitation permit by the Chief of Police, the Chief of Police shall cause an investigation of the applicants or applicant's agents business and moral character to be made as the Chief may deem necessary for the protection of the public good. This review shall be completed by the Chief of Police within five business days. If the investigation is not completed within that period of time, the applicant may deem the application to be denied and the applicant may appeal the deemed denial similar to an appeal as set forth in Section 6 herein. If the Chief of Policy's review of the application determines that any applicant or agent of the applicant has been convicted of a crime or moral turpitude, any crime of violence, any sex offense or drug offence or crime against property, the application or the right of any agent of the applicant to solicit in the community may be denied. If such application is denied, the Chief of Police shall endorse such denial upon the application and state the reasons for the same and then return the application to the applicant with a copy to the Mayor. The application shall be returned either in person or by ordinary mail directed to the applicant's address as listed on the original application.

SECTION 6.

Appeal of Denial. If an application has been denied as stated herein, the applicant may file such appeal within ten calendar days after written notice of such denial has been either delivered to the applicant or mailed to the applicant by ordinary mail to the applicant's last known address. Such appeal shall be brought by filing a copy with the office of the Mayor and a copy with the Chief of Police.

The Village shall then hold a public hearing upon such appeal at which the Chief of Police or his designee shall present the appropriate evidence to the Mayor upon which the application was denied. The applicant may be present at the public hearing and may present evidence to refute the findings of the Chief of Police. Upon hearing all evidence the Village Council may either affirm, modify, or overrule the decision of the Chief of Police, or for good cause shown, the Mayor may overrule the Chief of Police and grant the applicant's permit. The decision of the Village shall be rendered within ten days of the conclusion of the public hearing. Such decision shall be made in writing and presented personally to the applicant or mailed by ordinary mail to the applicant at the last known address provided in the application. The decision by the Village may be appealed as an administrative decision according to Ohio law.

SECTION 7.

Issuance of Commercial Solicitation Permit.

A. If as a result of the investigation the Chief of Police approves the permit, the Chief shall endorse such approval upon the commercial solicitation permit application. Each application shall then be assigned an appropriate permit number and a copy of the approved application shall be returned to the applicant. The Village shall keep a current picture of each agent or applicant on file with the approved permits. The applicant must at all times carry a copy of such approved permit and appropriate photo identification upon his person when soliciting for sales within the Village of Bolivar. A copy of the approved application shall be provided to all agents of the applicant who have been identified to solicit sales within the community, all of whom shall carry appropriate identification upon his person when soliciting sales within the Village of Bolivar.

B. In addition to any criminal offense for a violation of this section, the approved permit granted to such applicant or the applicant's agent may immediately be suspended for failure to comply with this section. Any such suspension may be appealed by the permittee under Section 6.

SECTION 8.

Revocation of Commercial Solicitation Permits.

A. Commercial solicitation permits issued under the provisions of this Chapter may be revoked by the Chief of Police after notice and hearing for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for a permit;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business of the Commercial Solicitor;
- (3) Any violation of this Ordinance;

(4) Conviction of any crime or misdemeanor involving any crime of violence which may present a danger to the public or any sex offense crime or drug offense;

(5) Conducting the business of the Commercial Solicitor in an unlawful manner or in such a manner as to constitute a breach of peace or a menace to the health, safety or general welfare of the public.

(6) Complaints from the public regarding the conduct of the Commercial Solicitor, if substantiated.

(7) Soliciting at a location on the No Solicitation List or a location displaying a sign prohibiting solicitation.

B. An issued permit will be immediately suspended upon the issuance of a notice of hearing by the Chief of Police, under this section, and will remain suspended pending a decision to reinstate the permit by the Village Council.

C. Notice of the hearing for revocation of permits shall be given in writing setting forth specifically the grounds for such revocation and the time and place of the hearing. The notice shall be delivered personally to the permit holder or mailed to the permittee at his last known address at least five business days prior to the date set for the hearing. Such hearing shall be held within thirty business days of the notice of revocation unless extended by agreement with the permit holder.

D. Such hearing shall be conducted by the Village Council, as a public hearing. Council, upon reviewing the evidence presented, may uphold the decision of the Chief of Police to revoke the commercial solicitation permit, may modify the decision or may overrule the decision of the Chief of Police. Council's decision shall be rendered within ten calendar days of the hearing and shall be rendered in writing with a copy mailed, postage prepaid, to the permittee at his last known address. Pending a review by the Village Council, the commercial solicitation permit shall be temporarily suspended. If Council fails to render a decision within ten calendar days after the hearing then a decision of the Chief of Police shall be deemed to be overruled and the permit reinstated.

SECTION 9.

No Solicitation List and Sign. Any resident or business within the community may sign up with the Police Department to be placed upon a No Solicitation List. This list shall be distributed to all Commercial Solicitation permit holders.

The owners or occupants of any residence or place of business may evidence a determination to refuse to receive any uninvited solicitors by displaying a weatherproof card, decal or sign not less than three inches by four inches in size nor more than one square foot in total surface area upon or near the main entrance door to the residence or place of business, containing the words "No Solicitors" or words of similar meaning with letters at least one-third inch in height. Any such weatherproof card, decal or sign which complies with the requirements of this section shall be exempt from any additional or different requirements contained in the provisions of Bolivar Zoning Regulations.

No person shall go upon any premises and ring the door bell, rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of any occupant of such

residence or place of business for the purpose of securing an audience with the occupants thereof and engage in peddling or solicitation in defiance of a notice displayed pursuant to this section, or who is on the No Solicitation List.

SECTION 10.

Violations.

A. It shall be unlawful for any person, organization or entity regulated by this Ordinance to:

- (1) Enter upon any residential or business property within the community if such property has been appropriately posted signs to prohibit on-site solicitation or is on the No Solicitation List;
- (2) To solicit or canvass within any residential area of the community between the hours of 7:00 p.m. and 9:00 a.m. daily;
- (3) To solicit sales within the community without appropriately obtaining a permit in advance;
- (4) To solicit sales within the community without having a copy of such permit on such person;
- (5) To solicit, whether commercial or non-commercial, or canvass in the community without appropriate photo identification or refuse to exhibit such photo identification to a resident or business resident when requested;
- (6) Remain on such residential or business property without permission of the occupant or homeowner after the Commercial or Non-Commercial Solicitor or Canvasser has been requested by the owner/occupant or person in charge of the premises to leave such private premises;
- (7) Make any false statement or misrepresentation in the process of applying for a commercial solicitation permit.

B. Any violation of any provisions of this Ordinance shall be a minor misdemeanor and may be subject to a fine not to exceed One Hundred Fifty Dollars (\$150.00) for any first offense in a calendar year, not to exceed Two Hundred Fifty Dollars (\$250.00) for any second offense within a calendar year, and not to exceed Five Hundred Dollars (\$500.00) for any third offense within a calendar year. Each day a person, organization or entity is in violation of this Ordinance may be charged as a separate criminal offense.

SECTION 11.

If any part or parts of this Ordinance are determined to be unlawful or unconstitutional, then such part determined to be unlawful or unconstitutional shall be stricken from the Ordinance, but such determination shall not affect the validity of any other section of the Ordinance which has not been subject to such determination by a Court of law.

SECTION 12.

All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

SECTION 13.

This Ordinance shall take effect the earliest opportunity as allowable by law.

SECTION 14.

This Ordinance is hereby declared to be an emergency measure and its passage is immediately necessary in order to preserve, protect, and maintain health, safety and welfare of the citizens of the Village of Bolivar, Ohio, to protect its residence and businesses from potential threats in the form of scam artists or criminal posing as solicitors and from those solicitors which disturb the peace of the Village, and therefore the same shall be in full force and effect immediately.

READ: June 5, 2017

PASSED: June 5, 2017

REBECCA HUBBLE, MAYOR

ATTEST:

MARIA APP, FISCAL OFFICER