

ORDINANCE NO. 2013-43

AN ORDINANCE REVISING CHAPTER 5.04 OF THE CASTLE ROCK MUNICIPAL CODE REGARDING CANVASSERS, SOLICITORS AND DISTRIBUTION OF FLYERS

WHEREAS, the Town of Castle Rock is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, the Town of Castle Rock has an interest in protecting its residents' right to privacy in their own homes, in preserving the public peace and order, and in protecting the public safety and welfare; and

WHEREAS, the Town of Castle Rock is a largely residential community whose residents value the peace and quiet enjoyment of their private property; and

WHEREAS, by Ordinance No. 2008-15 the Town Council enacted certain regulations governing the activities of transient merchants, peddlers and solicitors engaging in business within the Town, and requiring registration of persons prior to engaging in such business activities; and

WHEREAS, the Town Council finds the regulations adopted by Ordinance No. 2008-15 have addressed the health, safety and welfare concerns presented by door-to-door solicitation, but that certain revisions to the regulations, as set forth in the amendments herein, are necessary in order to provide a comprehensive regulatory framework that best serves the interests of the Town and its residents; and

WHEREAS, the Town Council has reviewed such amendments to Chapter 5.04, and finds the amendments will further the Town's interests, purposes and goals regarding regulation of door-to-door solicitation within the Town; and

WHEREAS, the findings and recitals set forth in Ordinance No. 2008-15 are hereby incorporated herein as support for continuation of such regulations, as amended hereby.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Amendment. Chapter 5.04 of the Castle Rock Municipal Code is hereby amended to read as follows:

Chapter 5.04

Canvassers, Solicitors, and Distribution of Flyers

- 5.04.010** **Definitions**
- 5.04.020** **Registration required**
- 5.04.030** **Application Fees**

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5.04.010 Definitions.

As used in this Chapter, the following words have the meanings indicated.

Canvasser is a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident, for the non-commercial primary purpose of:

1. Attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause;
2. Attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service;

Commercial flyer is any printed or written material, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, publication, booklet, handbill or other printed or otherwise reproduced original or copy of any manner of literature or paper containing a written or pictorial message that is predominately and essentially an advertisement and is distributed or circulated for advertising purposes or for any direct or indirect private financial gain of any person or entity so engaged as advertiser or distributor, except that a telephone directory or newspaper of general circulation in the Town published primarily for the purpose of disseminating news shall not be considered a *commercial flyer*.

Noncommercial flyer is any printed or written material, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, booklet, handbill or any other printed or otherwise reproduced original or copy of any manner of literature or paper containing a written or pictorial message that is distributed or circulated solely for nonprofit purposes.

Solicitor is a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service, whether or not the goods or services are actually delivered at the time of sales.

5.04.020 Registration required.

No person shall act as a solicitor within the Town without first registering with the Town Clerk in accordance with this Chapter. Canvassers are not required to register but may do so for the purpose of reassuring Town residents of the canvasser's good faith.

5.04.030 Application fees.

A. No application shall be received by the Town Clerk unless accompanied by an application fee in the following amount:

1. Canvasser: no fee.
2. Solicitor: thirty-five dollars (\$35.00).

B. All application fees are non-refundable. No portion of any application fee paid shall be refunded if registration is denied or a registration, once issued, is suspended or revoked.

5.04.040 Application for registration.

Any person or organization required to register under this Chapter shall provide the following information on application forms to be provided by the Town Clerk:

A. Proof of age, address and identification of applicant, to be provided by presenting the applicant's driver's license, state identification card, passport or other government issued identification card (issued by a government within the United States). The Town Clerk shall make a photocopy of the identification presented by the applicant, which shall be retained with the application.

B. The name, permanent address and (if any) local address of the company represented by the applicant and a copy of the organization's Town business and tax license or Town contractor registration certificate.

C. A brief description of the proposed activity related to this registration. (Copies of literature to be distributed may be substituted for this description, at the option of the applicant.)

D. The motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used by each person.

E. The web, email or other address for the company, where residents having subsequent questions can go for more information.

F. Two (2) identical photographs of the applicant which reasonably identify the applicant; such photographs of the applicant to measure two (2) inches by two (2) inches.

G. A statement as to whether or not the applicant;

1. has been convicted of any felony, misdemeanor or ordinance violation

(other than a traffic violation), and if so, the nature of the offense or violation, the penalty or punishment imposed, the date when and place where such offense occurred, and the pertinent details thereof; or

2. has been institutionalized for mental illness which caused acts of violence against the person or property of another or

3. is required to be registered as a sex offender or as a sexual predator and the nature of the offense or the punishment or penalty assessed therefor, in this or any other state.

H. Names, addresses and telephone numbers of former places of employment of the applicant during the previous two years, if any.

I. All licenses currently held or previously held by the applicant within the five (5) years preceding the date of application related to soliciting or a similar business endeavor, noting any nonrenewal, suspension or revocation by the issuing authority, and the pertinent details thereof;

J. A statement as to whether a civil judgment has ever been entered against the applicant or, to the applicant's knowledge, the company, for fraud, deceit or misrepresentation and, if so, the full details thereof.

K. Authorization for the Town Clerk to conduct a background check, to verify information disclosed on the application.

5.04.050 Registration; grounds for denial.

A. The Town Clerk may deny registration for any of the following reasons:

1. Any person against whom a judgment based upon, or a conviction for, misrepresentation, fraud, deception, breach of warranty or breach of contract in the Town or elsewhere has been entered within the five (5) years preceding the date of application.

2. Failure to comply with this Chapter or violation of any ordinance applicable to his or her permitted activities.

3. Failure to obtain a business license or contractor's registration certificate as required by the Town or failure of the applicant, his or her supervisor or his or her employer to remit any sales tax due the Town.

4. Registration as a sex offender or as a sexual predator, in this or any other state, or conviction of any crime that requires such registration.

5. Felony convictions for crimes against the person or property of another,

6. Institutionalization for mental illness which caused acts of violence

against the person or property of another; provided, however, that such felony convictions or institutionalization occurred within the five (5) years preceding the date of application. For the purposes of this Section:

Crimes or acts against the property of another shall include: theft, burglary, breaking and entering, larceny and other similar felonies involving moral turpitude by whatever name.

Crimes or acts of violence against the person or another shall include: homicide, attempted homicide, rape, attempted rape, sexual assault, assault, battery and other similar felonies involving moral turpitude by whatever name.

6. Any false, misleading or fraudulent statement on an application, or when an applicant has omitted pertinent information on the application for registration.

7. The applicant is a person whose character and record are such as not to warrant the Town Clerk's confidence that he or she will conduct the business of soliciting lawfully, honestly and fairly or without resorting to duress, coercion, intimidation or harassment of any person being solicited for business or other acts of violence or force against persons or property.

8. Any person who has been denied registration or had their registration revoked pursuant to this Chapter within the previous year, unless the applicant can and does show to the satisfaction of the Town Clerk that the reasons for such earlier denial or revocation no longer exist.

B. In making a determination pursuant to subsection A, above, when considering a criminal or ordinance violation conviction or judgment, the Town Clerk shall be governed by the provisions of C.R.S. § 24-5-101, pertaining to the effect of criminal convictions on employment rights. The Town Clerk shall also give consideration to the following criteria:

1. The reliability of any source as to character and record and any corroboration of any such evidence;

2. The nature of any criminal conviction or ordinance violation or any judgment involving fraud, deceit or misrepresentation, including the classification of any felony or misdemeanor conviction; length of time incarcerated or severity of remedy or penalty imposed; mitigating or aggravating factors involved; subsequent record of conduct, including educational achievements and work history; subsequent convictions or parole or probation violations; and the correlation, if any, between the illegal or fraudulent activity and the solicitor registration for which application has been made; and

3. Any evidence presented tending to show the applicant's rehabilitation as being a law-abiding and productive member of society.

C. Persons whose applications for registration have been denied shall be notified in writing of the reason for such denial within three (3) business days of receipt of application

for registration by the Town Clerk. Upon written request to the Town Clerk, applicants that have been denied are entitled to an administrative review of the denial by the Town Manager or his or her designee. The Town Manager or his or her designee shall determine whether the reasons for registration denial in fact exist, and shall notify the applicant in writing of said determination within three (3) business days of receipt of written request for administrative review by the Town Manager or his or her designee.

5.04.060 “No Knock” list.

The Town Clerk shall make available on the Town web site a list of persons within the Town who restrict visits to their residential property (including their leasehold, in the case of a tenant) by solicitors. Each solicitor registered pursuant to this Chapter shall be responsible for verification of addresses contained on the No Knock list prior to engaging in solicitation within the Town; such verification may be made by reviewing the No Knock list maintained on the Town’s web site.

5.04.065 Identification badge; replacement.

A. When an application for registration is approved, the Town Clerk shall issue an identification badge to the solicitor, which badge shall be worn so as to be plainly visible at all times while the solicitor is performing any activities within the Town that require registration pursuant to this Chapter.

B. Upon receipt of an application for a replacement badge, stating the previously issued identification badge has been lost or stolen, payment of a replacement fee in the amount of ten dollars (\$10.00), and submission of new passport-sized photographs, the Town Clerk may issue a replacement identification badge. No replacement badge shall be issued unless the Town Clerk is able to verify the solicitor remains employed by the company listed in the original application, or otherwise will be engaged in the same soliciting activities as specified in the original application.

5.04.070 Distribution of flyers.

Any person attempting to distribute commercial or noncommercial flyers within the Town shall observe the following regulations:

A. No flyer shall be left at, or attached to, any mailbox or any sign, utility pole, transit shelter or other structure within the public right-of-way.

B. No flyer shall be left at, or attached to, any privately owned property in a manner that causes damage to such privately owned property.

C. Distribution of flyers shall occur only between the hours of 9:00 a.m. and 7:00 p.m.

5.04.080 General prohibitions.

A. No solicitor shall:

1. Enter upon private property where the current occupant has included the property on the Town's "No Knock" list, regardless of whether a Town-issued sticker indicating the property has been included on the Town's "No Knock" list is posted, or remain upon any private property where any form of sign or sticker is clearly displayed advising the occupant does not wish to be called upon by solicitors, including but not limited to the Town-issued "No Knock" sticker or a "no soliciting" sign.

2. Use, or attempt to use, any entrance other than the front or main entrance to the dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.

3. Remove any yard sign, door or entrance sign, or sticker that gives notice to such person that the resident or occupant does not invite visitors.

B. It shall be unlawful for any person, organization, corporation or business entity to instruct, direct, command, order, organize or otherwise arrange for any person to engage in solicitation in violation of Subsections A.1-4 of this Section or in violation of Section 5.04.020 of this Chapter.

C. It shall be an affirmative defense to any violation of this Chapter that the solicitor has an express invitation from the resident or occupant of a dwelling allowing him or her to enter upon any posted property.

5.04.090 Violations record.

The Municipal Court Clerk shall report to the Town Clerk all convictions for violations of this Chapter. The Town Clerk, in his or her record for each certificate of registration issued, shall record the reports of violations therein.

5.04.100 Registration; revocation.

A. Each registration is issued in the name of the person and for solicitation on behalf of the organization specified in the application, and is not transferable to any other person or organization.

B. If the Town Clerk finds that any of the grounds stated in Section 5.04.050 above exist or that the applicant has, during the period of registration, been convicted of a violation of this Chapter or any other crime or ordinance violation that would be cause for denial of a registration, the Town Clerk shall revoke the certificate of registration; or for other just cause related to the health, safety or welfare of the citizens of the Town or related to the person's business integrity or responsibility, the Town Clerk may revoke the certificate of registration.

C. Persons whose certificate of registration have been revoked shall be notified in writing of the reason for such revocation immediately upon revocation and, upon written request to the Town Clerk, are entitled to an administrative review of the revocation by the Town Manager or his or her designee. The Town Manager or his or her designee shall determine whether the reasons for revocation in fact exist, and shall notify the applicant in writing of said determination within three (3) business days of receipt of written request for administrative review by the Town Manager or his or her designee.

5.04.110 Registration; expiration.

Each registration shall expire on the date specified on the identification badge, and the Town Clerk shall issue no registration for a period longer than one (1) year. On the expiration of a registration, any person may apply for the issuance of a new registration. Each successive registration shall be subject to all requirements for issuance of a new registration, including but not limited to a new background check, new photographs being provided, and a new application fee being paid.

5.04.120 Transfer of registration.

No person shall transfer or attempt to transfer a registration or any identification badge issued pursuant to this Chapter to any other person, and no person shall use a registration or identification badge issued to any other person.

5.04.130 Violations.

Any person charged with a violation of this Chapter, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by any such person.

Section 2. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 3. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.