

ORDINANCE NO. 7.14, Series of 2012

TITLE: A BILL FOR AN ORDINANCE TO REPEAL AND READOPT CHAPTER 5.05 OF THE PARKER MUNICIPAL CODE CONCERNING PEDDLERS AND SOLICITORS

WHEREAS, the Town of Parker is a home rule municipal corporation organized in accordance with article XX of the Colorado Constitution;

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

WHEREAS, based on the findings set forth below, the Town Council desires to adopt a regulatory program addressing door-to-door solicitation in furtherance of the interests, purposes, and goals set forth below.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Chapter 5.05 of the Town of Parker Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

CHAPTER 5.05

Solicitors

5.05.010 Findings and Legislative Intent.

The Town Council makes the following legislative findings:

- (1) The Town of Parker is a home rule municipal corporation organized in accordance with article XX of the Colorado Constitution;
- (2) The Town of Parker has an interest in protecting its citizens' right to privacy in their own homes, in preserving the public peace and order, and in protecting the public safety and welfare;
- (3) The Town of Parker is a largely residential community whose residents value the peace and quiet enjoyment of their private property;
- (4) The Town Council finds that unregulated door-to-door solicitation within the Town would degrade and have an adverse impact on the peace and quiet enjoyment of private property;

(5) Criminal activity on private property often occurs during nighttime hours;

(6) The Town Council finds and determines that unregulated door-to-door solicitation within the Town would present a danger to Town residents and their private property;

(7) The Town Council finds and determines that the interests of the Town and of the public are accommodated by a regulatory scheme that permits solicitation during reasonable daytime and evening hours while promoting public safety through the use of a reasonable registration method;

(8) The Town Council finds that the owner or occupant should be given the opportunity to post signs prohibiting entry onto his or her property for door-to-door commercial solicitation and the opportunity to opt in to a no-visit list prohibiting entry onto their property for door-to-door commercial solicitation and that these methods provide a balance between the individuals' right to privacy within their home, promote and protect the safety and privacy of the public, and protect the interests of commercial solicitors; and

(9) The Town Council desires to adopt a regulatory program in furtherance of these interests, purposes, and goals.

5.05.020 Title.

The ordinance codified in this Chapter shall be known and cited as the Parker solicitors' ordinance.

5.05.030 Definitions.

As used in this Chapter, unless the context otherwise requires, the following words shall have the following meanings:

Canvasser means a person who enters or remains upon any private premises in the Town, not having been requested or invited by the occupants thereof, for the purpose of distributing a noncommercial flyer or for the purpose of 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.

Clerk means the Town Clerk of the Town.

Commercial flyer means 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 predominantly 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*.

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

Door-to-door commercial solicitation means to enter or remain upon any private premises in the Town, not having been requested or invited by the occupants thereof, to attempt to make or to make personal contact with the occupant for the primary purpose of:

(1) contacting to solicit the immediate or future purchase or sale of 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 means to enter or remain upon any private premises in the Town, not having been requested or invited by the occupants thereof, to attempt to make or to make personal contact with the occupant 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; or

(5) soliciting support for a political candidate or organization, or ballot measure or ideology.

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

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.

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

Permit means a document issued by the Town Clerk authorizing a commercial solicitor to engage in door-to-door commercial solicitation.

Permit holder means any person to whom a permit has been issued under the provisions of this Chapter.

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.

Residence means private residences located within the Town, including, but not limited to, houses, condominium units, and apartments, or the yards, grounds, or hallways thereof.

Sales tax means the tax authorized and levied by and within the Town, pursuant to ordinance.

Town means the Town of Parker, Colorado.

5.05.040 All solicitation prohibited by posting of “No solicitation” or “No Trespassing” sign.

It shall be unlawful for any solicitor, including any commercial solicitor and any noncommercial solicitor, to enter or remain upon any public or private premises in the Town if a “No Solicitation”, “No Trespassing”, or other sign conveying a similar message is posted at or near the entrance or entrances to such premises. This provision shall apply to all solicitation including, without limitation, all solicitation activities that are religious, charitable, or political in nature and all solicitation of newspaper or magazine subscriptions.

5.05.050 “Do Not Solicit” list for commercial solicitations.

(a) Any owner or lawful occupant of private property within the Town who wishes to prohibit door-to-door commercial solicitation at his or her residence may register such property on the Town’s “Do Not Solicit” list by completing a form prepared by the Town Clerk, which form may be submitted to the Town either in person, by mail, or on the Town’s website. Such registration shall take effect thirty (30) calendar days after the date of the Town’s receipt of the

registration form and shall remain in effect until cancelled by the owner or occupant, or until the person filing the form ceases to be the owner or occupant of the property, whichever occurs soonest.

(b) The Town Clerk shall maintain and publish on the Town's website a "Do Not Solicit" list consisting of all residential addresses that have been registered under subsection (a) above and that have not been removed by the Town 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 Chapter and at such intervals thereafter as may be reasonably necessary to ensure compliance with this requirements of subsection (c) below.

(c) As of the effective date of the registration of a residential address under subsection (a) above, no person shall engage in door-to-door commercial solicitation at any property listed on the "Do Not Solicit" list. All door-to-door commercial solicitation at any such property shall be prohibited until such time, if at all, that the property has been removed from the "Do Not Solicit" list.

(d) Each residential address appearing on the Town's "Do Not Solicit" list will remain on the list until cancelled by the owner or occupant, or until the person filing the form ceases to be the owner or occupant of the property, whichever occurs soonest.

(e) 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 "Do Not Solicit" list.

5.05.060 Registration required.

No person shall act as a commercial solicitor or otherwise engage in door-to-door commercial solicitation within the Town without first registering with the Town Clerk and obtaining a permit in accordance with this Chapter. Canvassers and noncommercial solicitors are not required to register or obtain a permit, but may do so for the purpose of reassuring Town residents of the canvasser or noncommercial solicitor's good faith.

5.05.070 Permits and identification badges for commercial solicitors.

(a) Any person seeking to engage in commercial door-to-door solicitation, when not previously requested or invited to do so by the owner or occupant of the residence, must obtain a permit from the Town Clerk and pay the permit fee as provided in this Chapter before commencing any commercial door-to-door 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 removed 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 Paragraph 5.05.090(a)(3), together with payment of the identification badge fee.

(c) Permit applicants shall submit their applications to the Town Clerk via mail or in person. The Town Clerk shall, within ten (10) business days of the receipt 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.

(d) Subsequent to the issuance of any permit, and upon receipt of the information and fee required by this Section, the Town Clerk shall, within five (5) business days, issue an identification badge to any new or additional person that is to be authorized to solicit under the permit, so long as such person is not otherwise prohibited from solicitation under this Chapter. The Town Clerk shall also, within five (5) business days, issue a replacement identification badge to any permitted commercial 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 fee set forth in Section 5.05.080.

(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.

(f) Each employer who engages any other person for salary, compensation, or other remuneration to engage in door-to-door commercial solicitation, shall, before commencing such solicitation, register and obtain a sales tax license from the Town and pay the license fee as provided by Section 4.03.380 of this Code.

5.05.080 Fees.

(a) Permit fee. The permit fee for each permit issued hereunder shall be fifty dollars (\$50.00) and such permit shall be issued for one (1) year. In addition, each person engaging in door-to-door commercial solicitation under such permit

shall be required to pay the amount of thirty dollars (\$30.00) for the providing of an identification badge.

(b) Replacement identification badge fee. The fee to replace a lost or stolen identification badge shall be thirty dollars (\$30.00) per badge.

5.05.090 Application contents.

Each person applying for a door-to-door commercial solicitation permit shall submit to 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) A complete list of all persons to be authorized to solicit under the permit

(3) For each person to be 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 provided by the Parker Police Department, dated no more than sixty (60) days prior to the date of the application or the person's authorization for the Town Clerk to conduct a criminal background check;

c. whether the person is presently on parole or probation for any criminal violations;

d. a description of the individual, including height, weight, eye color, and hair color;

e. the number and state of issuance of the person's motor vehicle operator's license or chauffeur's license, if any, or copy of other state-issued photo identification;

f. the license plate number and state of issuance of any motor vehicle owned, rented, or being driven by the person and of any motor vehicle which the person intends to use in the course of door-to-door commercial solicitation, a description of such vehicle, and the name and address of the owner of such vehicle;

g. a brief explanation of the nature of the door-to-door commercial solicitation activity requiring a permit under this Chapter;

h. if the applicant is a foreign corporation or an employee of a foreign corporation, the name, address, and telephone number of an agent for process residing in the state of Colorado; and

i. proof that the applicant has obtained a valid Town of Parker sales tax license.

j. a list of all cities in which the applicant presently holds a peddler's or solicitor's license;

k. whether the applicant is presently on parole or probation for any criminal violations;

l. the names, business addresses, and business telephone numbers of all individuals employing and/or supervising the applicant; and

m. the number of permits requested and the names and addresses of all persons who may use such permits, not to exceed twenty-five (25) permits.

5.05.100 Grounds for denying permit.

(a) The Town Clerk may deny the issuance of a permit for any of the following reasons:

(1) Any misrepresentation, fraud, deception, breach of warranty, or breach of contract in the Town or elsewhere;

(2) Failure to comply with this Chapter or violation of any ordinance applicable to the applicant's permitted activities;

(3) Failure to obtain a sales tax license 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 to the Town;

(4) Any felony conviction for crimes against the person or property of another, or 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 the application.

(5) Conviction of any crime committed while engaged in solicitation in the Town.

(b) For purposes of this Section:

(1) *Crimes or acts of violence against the person of another* shall include homicide, attempted homicide, rape, attempted rape, sexual assault, assault,

battery, and other similar felonies involving moral turpitude by whatever name;

(2) *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.

5.05.110 Revocation of permit.

If the Town Clerk finds that any of the grounds for denial set forth in Section 5.05.100 above exist, or that an applicant has made a false statement in his or her application, or that an employer has failed 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 that the permit holder has authorized, condoned, or knowingly tolerated 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, the Town Clerk shall revoke and shall not renew the permit. The permittee may appeal the Town Clerk's decision in the manner set forth in Section 5.05.140 below.

5.05.120 Transfer of permits.

Permits may not be transferred from person to person.

5.05.130 Records.

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

5.05.140 Appeal.

At his or her election, an applicant may appeal any decision relating to his or her permit by the Town Clerk to the Town Council. If the applicant requests, the Town Council shall hold a hearing pursuant to the procedures set forth in the Town Charter, Ordinances and Resolutions of the Town. The Town Council's decision shall be by a majority of a quorum of the Town Council.

5.05.150 Expiration of permit.

Each permit shall expire one year from the date of issuance, unless otherwise revoked as provided by law. Any person wishing to renew a permit must apply for the renewal 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 Paragraph 5.05.090(3)(b) for each person who is to be authorized to solicit under the permit during its renewal term. Failure to apply for such renewal within said thirty (30) day time period shall result in the expiration of the permit. The renewal fee shall be determined by the Town Clerk in an amount

sufficient to defray the costs incurred by the Town in processing the renewal application. Said fee shall be nonrefundable.

5.05.160 Identification badges.

The Town Clerk shall issue to each permitted commercial solicitor, at the time of the delivery of his or her permit, an identification badge bearing the words "Permitted Solicitor", the period of time for which the permit issued, and the number of the permit. The identification badges shall contain a photograph of the solicitor and include the names of the solicitor and employer, if any. Each permitted commercial solicitor shall conspicuously display such identification badge whenever he or she is engaged in door-to-door commercial solicitation. The Town Clerk may cause the same document to be used as the identification badge and the permit.

5.05.170 Exhibit of permit.

Whenever requested by any police officer or by any customer or prospective customer of the commercial solicitor, the commercial solicitor shall exhibit his or her identification badge and his or her permit.

5.05.180 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 the later of 8:00 p.m. or sunset, as announced and published by the National Weather Service daily.

5.05.190 Distribution of handbills and commercial flyers.

In addition to the other regulations contained in this Chapter, a person attempting to distribute or distributing commercial or noncommercial flyers within the Town shall observe the following regulations:

(1) No commercial or noncommercial flyer shall be left at or attached to any sign, utility pole, transit shelter, or other structure within the public right-of-way.

(2) No commercial or noncommercial flyer shall be left at or attached to any privately owned property in a manner that causes damage to such privately owned property.

(3) Any commercial solicitor observed distributing commercial flyers shall be required to identify himself or herself to the police and verify his or her registration.

5.05.200 Construction.

It is the intent of the Town Council that not only each person who engages in door-to-door commercial solicitation in the Town, but also each principal on behalf of whom such person is acting, shall be registered and permitted as required by this Chapter.

5.05.210 Exemptions

(a) The following classes of persons otherwise engaging in door-to-door commercial solicitation shall not be required to obtain a permit otherwise required by this Chapter:

(1) Delivery persons or route persons who are engaged in the business of servicing and soliciting in connection with sales and delivery routes of newspapers, milk and bread;

(2) All companies that have a franchise agreement with the Town;

(3) Persons advocating civic, religious, charitable, or political causes;

(4) Members of a nationally recognized youth organization including, but not limited to, the Boy Scouts of America, the Girl Scouts of America, and the Boys and Girls Clubs of America, engaging in such organization's sponsored fundraising events; and

(5) School children engaging in school authorized or sponsored fundraising activities.

(b) Notwithstanding the exemptions contained in this Section, such persons otherwise exempt pursuant to Paragraphs (1) through (5) of Subsection (a) above shall not be required to obtain an identification badge as described in Section 5.05.160 prior to engaging in door-to-door commercial solicitation or solicitation of contributions, and shall not pay the fee for such identification badge as set forth in Section 5.05.080 above.

5.05.210 Violation; penalties.

(a) It is unlawful for any person to engage in door-to-door commercial solicitation without a permit or an identification badge as required by this Chapter; any person who so engages in door-to-door commercial solicitation shall, upon conviction, be punished by a fine not to exceed four hundred ninety-nine dollars (\$499.00) per offense. Each day of such violation shall be deemed a separate offense.

(b) It is unlawful for any applicant, permittee, or solicitor to violate any Section of this Chapter. Any such violator shall, upon conviction, be punished by a fine not to exceed four hundred ninety-nine dollars (\$499.00) and shall be

subject to having his or her permit, permit application, and/or identification badge revoked, suspended, or denied. Each violation of the provisions of this Chapter shall be deemed a separate offense.

(c) It is unlawful for any person to employ any other person to engage in door-to-door commercial solicitation for a salary, commission, or other remuneration in the Town, without causing such employee to comply with this Chapter, and such person shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars (\$499.00) and shall be subject to having his or her permit, permit application, and/or identification badge revoked, suspended, or denied. Each person employed without compliance with the provisions of this Chapter shall be deemed a separate offense.

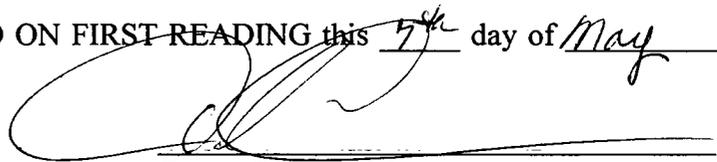
(d) Any person in violation of Section 5.05.040 shall, upon conviction, be punished by a fine not to exceed four hundred ninety-nine dollars (\$499.00) per offense and, if a commercial solicitor, shall be subject to having his or her permit, permit application, and/or identification badge revoked, suspended, or denied.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the publication of an agenda that contains the title to this Ordinance in a newspaper of local circulation prior to first and second reading of this Ordinance creates a financial burden on the Town and that the title to this Ordinance was posted in two public places two days before the Town Council meeting as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. 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 application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this 5th day of May, 2012.

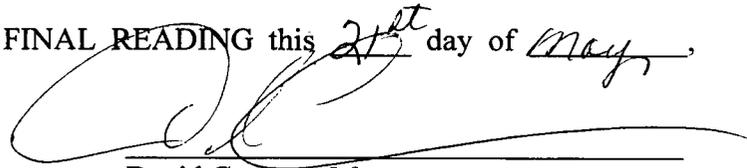


David Casiano, Mayor

ATTEST:

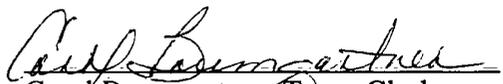

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this 27th day of May,
2012.



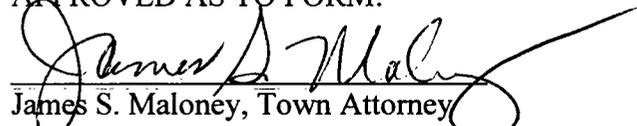
David Casiano, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney