

## **AMENDED ORDINANCE NO. 2331**

**AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, PERTAINING TO DOOR-TO-DOOR SOLICITATION.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, as follows:**

### **Business Regulations**

#### **Chapter 7. DOOR-TO-DOOR SOLICITATION**

##### **Sections:**

**5-7-1 Title and Purpose.**

**5-7-2 Definitions.**

**5-7-3 All solicitation prohibited by posting of "No Solicitation" or "No Trespassing" sign.**

**5-7-4 No-solicitation list for commercial solicitations.**

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**5-7-21 Administrative Regulations.**

**5-7-22 Violations and penalties.**

**5-7-1 Title and Purpose.**

(a) This Chapter shall be known and cited as the "City of Montrose Door-to-Door Solicitation Ordinance."

(b) The provisions of this Chapter 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, as defined between the hours of 9:00 a.m. and sunset as announced and published by the National Weather Service daily.; and
- (3) Prohibiting solicitations at residences where the owner or occupant has prohibited solicitation in a manner consistent with the provisions of this Chapter.
- (4) This ordinance will go into effect 31 January 2014. Ord. No. 226; 11-4-1937 is superseded by this ordinance

**5-7-2 Definitions.**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section:

*Applicant* means any person or entity who has submitted an application for a permit.

*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 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.

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

*No-solicitation list* means a list of the addresses of City residents who have requested that their residences be placed on a list maintained and published by the City for the purpose of informing the general public and prospective solicitors that all door-to-door solicitation at such addresses is prohibited.

*Permit* means a document issued by the City 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.

*Public entity* means the state, county, city 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, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

*Residence* means a private residence in the City, including but not limited to, condominium units and apartments, including the yards, grounds or hallways thereof.

*Supervising staff* means any person who manages or supervises commercial solicitors.

### **5-7-3 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 City 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, as defined in Section 4-9-1 of the Housing Code, 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.

### **5-7-4 No-solicitation list for commercial solicitations.**

(a) Any owner or lawful occupant of any residence within the City who wishes to prohibit door-to-door commercial solicitation at his or her residence may register the address of such residence with the City by completing a form prepared by the City Clerk, which form may be submitted to the City either in person, by mail, or on the City's website. Such registration shall take effect thirty (30) calendar days after the date of the City's receipt of the registration form.

(b) The City shall maintain and publish on the City's website a no-solicitation list consisting of all residential addresses, but not the names of said residents, that have been

registered under Subsection (a) above and that have not been deleted by the City 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 Article and at such intervals thereafter as may be reasonably necessary to ensure compliance with the requirements of Subsection (c) below.

(c) As of the effective date of the registration of a residential address under Subsection (a) above, all door-to-door commercial solicitation at such address shall be prohibited until such time, if at all, that the address has been deleted from the no-solicitation list.

(d) Each residential address appearing on the City's no-solicitation list will remain on the list for two (2) years from the date it was submitted to the City, 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 (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 City Clerk.

(f) Neither the City 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.

#### **5-7-5 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 City 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 City 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 City Clerk in writing of any persons to be added to or deleted from the list of authorized solicitors; and

(4) Submit to the City Clerk, for each person to be added to such list, the information required under Subparagraph 5-7-6(a)(4), together with payment of the identification badge fee required under Subsection 5-7-6(c).

(c) The City Clerk 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 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 City Clerk determines that the permit application is denied under the criteria stated in Section 5-7-9.

(d) Subsequent to the issuance of any permit, and upon receipt of the information and fee required under Section 5-7-6 below, the City 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 5-7-9. The City Clerk shall also, within seven (7) business days, issue a replacement identification badge to any solicitor who, by affidavit, notifies the City Clerk that his or her identification badge has been lost or stolen, and who pays an additional identification badge fee as established under Subsection 5-7-6(c).

(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 City 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.

**5-7-6 Application contents; fees.**

(a) Each person applying for a door-to-door commercial solicitation permit shall file with the City Clerk an affidavit on a form supplied by the City Clerk stating:

- (1) The full name, business address and business telephone number of the applicant;
- (2) Information regarding the business as required by the City 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. Names, 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 City sales and use tax license;
- (8) Any other information determined to be relevant by the City 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 City Clerk, 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 City Clerk 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.
- (d) At the time of application, the applicant shall pay a fifty dollar (\$50) deposit 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.

**5-7-7 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. Said application shall be accompanied by a criminal background check as required under § 5-7-6(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

thirty-day period of time, the permit will expire. The renewal fee for each permittee shall be determined by the City Clerk in an amount sufficient to defray the costs incurred by the City in processing the renewal application. Said fee shall be nonrefundable.

#### **5-7-8 Persons prohibited.**

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

(1) 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

(2) A permit or an identification badge previously issued to such person by the City Clerk under § 5-7-5 has been revoked by the City Clerk under §§ 5-7-14 or 5-7-15 below.

#### **5-7-9 Denial of permit.**

The City Clerk shall deny an application for a permit or any renewal of a permit under this Chapter if the City Clerk 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 1 misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law.

#### **5-7-10 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.

#### **5-7-11 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.

**5-7-12 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 sunset as announced and published by the National Weather Service daily.

**5-7-13 Transfer of permits prohibited.**

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

**5-7-14 Suspension or revocation of identification badge.**

After written notice of no less than ten (10) calendar days and a hearing, if requested in writing by the badge holder within twenty (20) calendar days after the date of mailing of such notice, the City 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.

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 City 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.

**5-7-15 Suspension, revocation or nonrenewal of permit.**

After written notice of no less than ten (10) calendar days and a hearing if requested in writing by the badger holder within twenty (20) calendar days after the date of the mailing of such notice, the City Clerk may suspend and 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) 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 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.

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 City 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.

**5-7-16 Emergency summary suspension of identification badge or permit.**

(a) If reasonable grounds exist to believe that a permittee and/or badge holder has engaged in illegal activity such that the public health, safety or welfare imperatively requires emergency action, the City Clerk may summarily suspend the permit and/or badge pending the outcome of the proceedings set forth in § 5-7-14 or § 5-7-15 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.

**5-7-17 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.

**5-7-18 Promulgation of rules and regulations.**

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

**5-7-19 Records.**

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

**5-7-20 Appeal.**

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

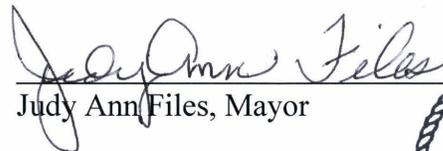
**5-7-21 Administrative Regulations.**

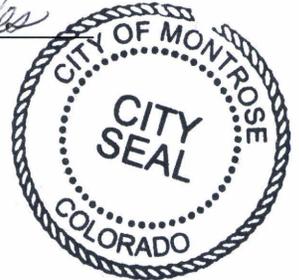
The City Clerk is authorized to promulgate rules and regulations as are necessary to effectuate the implementation, administration and enforcement of this Chapter.

**5-7-22 Violations and penalties.**

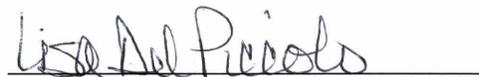
In addition to the revocation, suspension or denial of a permit or identification badge issued under this Chapter, any applicant, permittee or solicitor who violates any of the provisions of this Chapter, and any person who violates §§ 5-7-3, 5-7-4, 5-7-9, 5-7-11, shall be guilty of a misdemeanor punishable by fines of not more than \$2,600 or up to one year in jail or both, for each violation of this ordinance.

INTRODUCED, READ and PASSED on first reading this 3rd day of December, 2013.

  
Judy Ann Files, Mayor

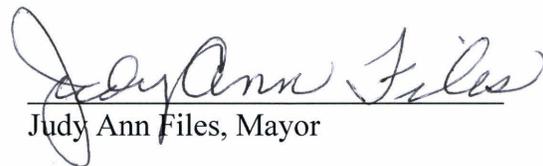


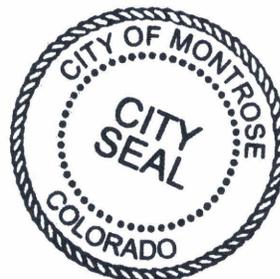
ATTEST:

  
Lisa DelPiccolo, City Clerk

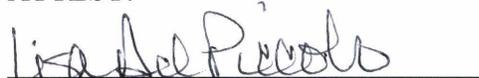
You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its adoption on second reading on Tuesday, the 17th day of December, 2013, at the hour of 6:00 p.m. at the City Council Chambers in the Elks' Civic Building, in Montrose, Colorado.

INTRODUCED, READ AND ADOPTED on second reading this 3rd day of December, 2013.

  
Judy Ann Files, Mayor



ATTEST:

  
Lisa DelPiccolo, City Clerk