

First Reading: October 25, 2005  
Second Reading: November 9, 2005  
Third Reading: November 22, 2005

**ORDINANCE 36 -2005**

**AN ORDINANCE REGULATING DOOR-TO-DOOR SOLICITATION**

**WHEREAS**, the United States Supreme Court in *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton* struck down a door-to-door solicitation ordinance similar to the restrictions imposed within the Village of Newtown; and

**WHEREAS**, the Court within such decision did recognize 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; and

**WHEREAS**, the Village does desire 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.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the Village of Newtown, State of Ohio:

**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 Newtown, 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 Newtown 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 eighteen (18) years of age traveling door-to-door within any residential area of the Village of Newtown 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 9:00 p.m. and 8:00 a.m. daily.

## **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 Newtown 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 Chapter 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 an application fee of Seventy Five & no/100 Dollars (\$75.00) per person 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 Newtown.
- 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 Newtown.
- 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 Newtown.
- 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 Newtown, has been convicted of any crime or misdemeanor, the nature of the offense and the punishment or penalty assessed for such violation. The application shall acknowledge that the Chief of Police shall access and review the applicant's and any agent of the applicant's criminal record.

#### **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 three 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 Police's review of the application determines that any applicant or agent of the applicant has been convicted of a crime of moral turpitude, any crime of violence which may present a danger to the public, any sex offense crime or drug offense, 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 to the Mayor by filing a copy with the office of the Mayor and a copy with the Chief of Police.

The Mayor or his designee 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 Mayor 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 Mayor 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 Mayor 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 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 Newtown. 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 Newtown.
- 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 the same procedure for application appeals as set forth in Section 6 above.

## **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 Chapter;
  - (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.
- 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 Mayor.
- 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 ten business days of the notice of revocation unless extended by agreement with the permit holder.
- D. Such hearing shall be conducted by the Mayor, or his designee, as a public hearing. The Mayor, 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. The Mayor'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 Mayor, the commercial solicitation permit shall be temporarily suspended. If the Mayor 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 Notice.** Any resident or business within the community may file a Notice of No Solicitation with the Police Department and post a No Solicitation sign conspicuously on the property to bar entry to the property from any Commercial or Non-Commercial Solicitors or Canvassers. The Notice shall be on a form provided by the Police

Department and the sign shall be a weatherproof sign, a minimum of three inches by four inches in size, stating *No Solicitors* or words of similar meaning. The letters on such sign shall be at least one-third inch in height. No Commercial or Non-Commercial Solicitors or Canvassers shall enter upon such residential or business property where such sign has been posted and where such Notice has been filed with the Police Department.

#### **SECTION 10.**

##### **Violations.**

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

- (1) Enter upon any residential or business property within the community if such property has been appropriately posted to prohibit on-site solicitation;
- (2) To solicit or canvass within any residential area of the community between the hours of 9:00 p.m. and 8:00 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 Chapter 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 Chapter 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.

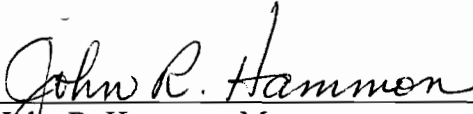
**SECTION 12.** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

**SECTION 13.** This Ordinance shall take effect the earliest opportunity as allowable by law.

**VOTE RECORD:**

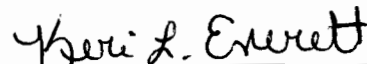
Mr. Evans	<u>Yes</u>	Ms. Hueber	<u>Yes</u>	Ms. McCarthy	<u>Yes</u>
Mr. Kobasuk	<u>Yes</u>	Mr. Pulskamp	<u>Yes</u>	Mr. Thomas	<u>Yes</u>

**PASSED** this 22<sup>nd</sup> day of November, 2005

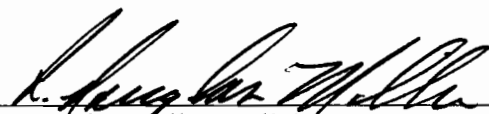
  
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John R. Hammon, Mayor  
Village of Newtown, Ohio

**AUTHENTICATION**

This is to certify that this ordinance was duly passed, and filed with the Village of Newtown Fiscal Officer, this 22<sup>nd</sup> day of NOVEMBER, 2005.

  
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Keri Everett, Fiscal Officer  
Village of Newtown, Ohio

**APPROVED AS TO FORM**

  
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R. Douglas Miller, Solicitor  
Village of Newtown, Ohio