

MANTUA TOWN

ORDINANCE No. 2019-09-05 A

**AN ORDINANCE REPEALING ORDINANCE NO. 2003-02-06 AND
ADOPTING THE MANTUA RESIDENTIAL SOLICITATION
ORDINANCE.**

WHEREAS, Residents of the Town of Mantua have an inalienable interest in their personal safety, wellbeing, and privacy in their residences, as well as their ability to provide or receive information regarding matters of personal belief, political or charitable activities, and goods and services lawfully in commerce;

WHEREAS, the Town has a substantial interest in protecting the wellbeing, tranquility, personal safety, and privacy of its citizens, which includes the ability to protect citizens from unwanted intrusions upon residential property;

WHEREAS, the Town also has a substantial interest in protecting citizens from fraud or otherwise unfair consumer sales practices as well as criminal activity;

WHEREAS, there must be a balance between these substantial interests of the Town and its citizens, and the effect of the regulations in this chapter on the rights of those who are regulated; and

WHEREAS, after review and discussion, the Town Council has determined there is a need to repeal the Town's prior ordinance that addressed the regulation of solicitors, peddlers, hawkers, and itinerant merchants or transient vendors and adopt a balanced and comprehensive Residential Solicitation Ordinance regulating commercial solicitation in the Town;

NOW, THEREFORE, BE IT ORDAINED, by the Mantua Town Council, Box Elder County, State of Utah, as follows:

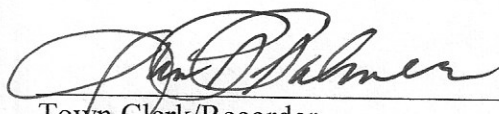
1. Ordinance No. 2003-02-06 is hereby repealed.
2. The attached Residential Solicitation Ordinance is hereby adopted.
3. This Ordinance shall take effect upon its first posting as required by law.

ADOPTED AND PASSED by the Town Council of Mantua Town, Box Elder County, State of Utah, this 5 day of September, 2019.

MANTUA TOWN

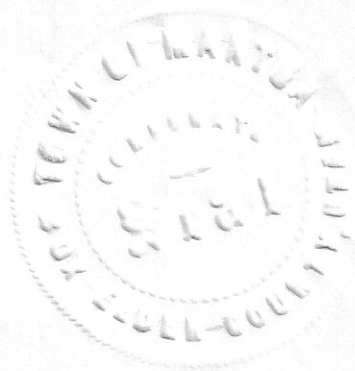

Mayor

ATTEST:


Town Clerk/Recorder

9/6/19
Posting Date

J:\MPJ\Cities\Mantua\Ordinances\Solicitation Ordinance\Residential Solicitation.1.docx



MANTUA TOWN RESIDENTIAL SOLICITATION ORDINANCE

SECTION 1: PURPOSE

Based on the collective experiences of city officials derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries of citizens regarding door to door solicitation, the experience of its law enforcement officers and those affected by door to door canvassing and solicitation, as well as judicial decisions outlining the boundaries of constitutional protections afforded and denied persons seeking to engage in door to door solicitation, the town adopts this ordinance to promote the town's substantial interests in:

- A. Respecting citizens' decisions regarding privacy in their residences;
- B. Protecting persons from criminal conduct;
- C. Providing equal opportunity to advocate for and against religious belief, political position, or charitable activities; and
- D. Permitting truthful and non-misleading door to door solicitation regarding lawful goods or services in intrastate or interstate commerce.

SECTION 2: LIMITED LICENSE AND APPROVAL

A. Registered solicitors and persons exempt from registration need not apply for, nor obtain, any other license, permit, or registration from the Town to engage in door to door solicitation.

B. Any business that uses employees, independent contractors, or agents for door to door solicitation in an effort to provide any tangible or intangible benefit to the business, shall be required to have such solicitors obtain a certificate, unless otherwise exempt from registration.

C. Those responsible persons or entities associated with registered solicitors must also comply with any other required license, permit, or registration from the Town in accordance with Town ordinance, including without limitation, obtaining a business license if applicable.

D. Nothing herein is intended to interfere with or supplant any other requirement of federal, state, or other local government law regarding any license, permit, or certificate that a registered solicitor is otherwise required to have or maintain.

SECTION 3: DEFINITIONS

For the purposes of this chapter, the following definitions shall apply:

ADVOCATING: Speech or conduct intended to inform, promote, or support religious belief, political position, or charitable activities.

APPEALS OFFICER: The Town Council or designee of the Town responsible for receiving the information from the Town and appellant regarding the denial or suspension of a certificate and issuing a decision as required by this chapter.

APPELLANT: The person or entity appealing the denial or suspension of a certificate, either personally as an applicant or registered solicitor, or on behalf of the applicant or registered solicitor.

APPLICANT: An individual who is at least sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a certificate permitting door to door solicitation.

APPLICATION FORM: A standardized form provided by the Town to an applicant to be completed and submitted as part of registration.

BCI BACKGROUND CHECK: An original or copy, dated no older than one hundred eighty (180) days prior to the date of the application, of either: a) a Utah Department of Public Safety Bureau of Criminal Identification verified criminal history report personal to the applicant; or b) verification by the Utah Department of Public Safety Bureau of Criminal Identification that no criminal history rising to the level of a disqualifying status exists for the applicant.

BUSINESS: A commercial enterprise licensed by the city as a person or entity under this title, having a fixed or temporary physical location within the city.

CERTIFICATE: A temporary, annual, or renewal certificate permitting door to door solicitation in the Town applied for or issued pursuant to the terms of this chapter.

CHARITABLE ACTIVITIES: Advocating by persons or entities that either are, or support, a charitable organization.

CHARITABLE ORGANIZATION: Includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

A. That is:

1. A benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;

2. For the benefit of a public safety, law enforcement, or firefighter fraternal association; or

3. Established for any charitable purpose; and

B. That is tax exempt under applicable provisions of the internal revenue code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes.

C. Charitable organization includes a chapter, branch, area, or office, or similar affiliate or any person soliciting contributions within the state for a charitable organization that has its principal place of business outside the city or state of Utah.

COMPETENT INDIVIDUAL: A person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.

COMPLETED APPLICATION: A fully completed application form, a BCI background check, two (2) copies of the original identification relied on by the applicant to establish proof of identity, and the tendering of fees.

CRIMINALLY CONVICTED: The final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding of guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the applicant or registered solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.

DISQUALIFYING STATUS: Anything specifically defined in this chapter as requiring the denial or suspension of a certificate, and any of the following:

A. The applicant or registered solicitor has been criminally convicted of: 1) felony homicide, 2) physically abusing, sexually abusing, or exploiting a minor, 3) the sale or distribution of controlled substances, or 4) sexual assault of any kind;

B. Criminal charges currently pending against the applicant or registered solicitor for: 1) felony homicide, 2) physically abusing, sexually abusing, or exploiting a minor, 3) the sale or distribution of controlled substances, or 4) sexual assault of any kind;

C. The applicant or registered solicitor has been criminally convicted of a felony within the last ten (10) years;

D. The applicant or registered solicitor has been incarcerated in a federal or state prison within the past five (5) years;

E. The applicant or registered solicitor has been criminally convicted of a crime, whether felony or misdemeanor, within the past five (5) years involving a crime of: 1) moral turpitude, or 2) violent or aggravated conduct involving persons or property;

F. A final civil judgment has been entered against the applicant or registered solicitor within the last five (5) years indicating that: 1) the applicant or registered solicitor had either engaged in fraud, or intentional misrepresentation, or 2) that a debt of the applicant or registered solicitor was nondischargeable in bankruptcy pursuant to 11 USC section 523(a)(2), (a)(4), (a)(6), or (a)(19);

G. The applicant or registered solicitor is currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;

H. The applicant or registered solicitor has an outstanding arrest warrant from any jurisdiction;

I. The applicant or registered solicitor is currently subject to a protective order or stalking injunction of any kind by a court of competent jurisdiction;

J. It is unlawful for the responsible person or entity to conduct business within the Town for any reason including, without limitation, the responsible person or entity does not have a business license from the Town if required.

DOOR TO DOOR SOLICITATION: The practice of engaging in or attempting to engage in conversation with any person at a residence, whether or not that person is a competent individual, while making or seeking to make or facilitate a home solicitation sale, or attempting to further the sale of goods and/or services.

ENTITY: Includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

FEES: The cost charged to the applicant or registered solicitor for the issuance of a certificate and/or identification badge, which shall not exceed the reasonable costs of processing the application and issuing the certificate and/or identification badge.

FINAL CIVIL JUDGMENT: A civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.

GOODS: One or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

HOME SOLICITATION SALE: To make or attempt to make a sale of goods or services by a solicitor at a residence by means of door to door solicitation, regardless of:

A. The means of payment or consideration used for the purchase;

B. The time of delivery of the goods or services; or

C. The previous or present classification of the solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.

LICENSING OFFICER: The Town employee(s) or agent(s) responsible for receiving from an applicant or registered solicitor the completed application and either granting, suspending, or denying the applicant's certificate.

NO SOLICITATION SIGN: A reasonably visible and legible sign that states "No Soliciting", "No Solicitors", "No Salespersons", "No Trespassing", or words of similar import.

POLITICAL POSITION: Any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.

REGISTERED SOLICITOR: Any person who has been issued a current certificate by the city.

REGISTRATION: The process used by the Town licensing officer to accept a completed application and determine whether or not a certificate will be denied, granted, or suspended.

RELIGIOUS BELIEF: Any sincerely held belief, or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.

RESIDENCE: Any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the Town, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street or public rights of way.

RESPONSIBLE PERSON OR ENTITY: That person or entity responsible to provide the following to an applicant, registered solicitor, and the competent individual in a residence to whom a sale of goods or services is made or attempted to be made by means of a home solicitation sale:

A. Maintaining a state sales tax number, a special events sales tax number, computing the sales taxes owing from any sale of goods or services, paying the sales taxes, and filing any required returns or reports;

B. Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and

C. Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.

SALE OF GOODS OR SERVICES: The conduct and agreement of a solicitor and the competent individual in a residence regarding a particular good(s) or service(s) that entitles the consumer to rescind the same within three (3) days under any applicable federal, state, or local law.

SERVICES: Those intangible goods or personal benefits offered, provided, or sold to a competent individual of a residence.

SOLICITING OR SOLICIT OR SOLICITATION: Any of the following activities:

A. Seeking to obtain sales or orders for the exchange of goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought.

B. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications.

C. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or entity.

D. Seeking to obtain orders or prospective customers for goods or services.

E. Seeking to engage an individual in conversation at a residence for the purpose of promoting or facilitating the receipt of information regarding religious belief, political position, charitable conduct, or a home solicitation sale.

F. Other activities falling within the commonly accepted definition of soliciting, such as hawking or peddling.

SOLICITOR OR SOLICITORS: A person(s) engaged in door to door solicitation.

SUBMITTED IN WRITING: The information for an appeal of a denial or suspension of a certificate, submitted in any type of written statement to the Town offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

SUBSTANTIATED REPORT: An oral, written, or electronic report:

A. That is submitted to and documented by the Town;

B. By any of the following:

1. A competent individual who is willing to provide law enforcement or other Town employees with publicly available identification of their name, address, and any other reliable means of contact;

2. Town law enforcement or licensing officer; or

3. Any other regularly established law enforcement agency at any level of government;

C. That provides any of the following information regarding a registered solicitor:

1. Documented verification of a previously undisclosed disqualifying status of a registered solicitor;

2. Probable cause that the registered solicitor has committed a disqualifying status which has not yet been determined to be a disqualifying status;

3. Documented, eyewitness accounts that the registered solicitor has engaged in repeated patterns of behavior that demonstrates failure by the registered solicitor to adhere to the requirements of this chapter; or

4. Probable cause that continued licensing of the registered solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the city.

WAIVER: The written form provided to applicant by the Town wherein applicant agrees that the Town may obtain a name/date of birth BCI background check on the applicant for licensing purposes under this chapter, and which contains applicant's notarized signature.

SECTION 4: EXEMPTIONS FROM REGISTRATION

The following are exempt from registration under this chapter:

A. Persons specifically invited to a residence by a competent individual prior to the time of the person's arrival at the residence;

B. Persons whose license, permit, certificate or registration with the state of Utah permits them to engage in door to door solicitation to offer goods or services to an occupant of the residence;

C. Persons delivering goods to a residence pursuant to a previously made order, or persons providing services at a residence pursuant to a previously made request by a competent individual;

D. Persons advocating or disseminating information for, against, or in conjunction with, any religious belief, or political position regardless of whether goods, services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase; and

E. Persons representing a charitable organization. The charitable exemption shall apply to students soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs, provided that the solicitation has been approved in writing by the school administration, and that such student solicitors carry current picture student identification from the educational institution for which they are soliciting.

Those persons exempt from registration are not exempt from the duties and prohibitions outlined in Sections 17, 18, and 19 of this chapter while advocating or soliciting

SECTION 5: SOLICITATION PROHIBITED

Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this chapter, the practice of being in and upon a private residence within the Town by solicitors, for the purpose of home solicitation sales or to provide goods or services, is prohibited and is punishable as set forth in this chapter.

SECTION 6: REGISTRATION OF SOLICITORS:

Unless otherwise exempt under this chapter, all persons desiring to engage in door to door solicitation within the Town, prior to doing so, shall submit a completed application to the licensing officer and obtain a certificate.

SECTION 7: APPLICATION FORM:

A. The licensing officer shall provide a standard application form for use for the registration of solicitors. Upon request to the licensing officer, or as otherwise provided, any person or entity may obtain in person, by mail, or facsimile, a copy of this application form. Each application form shall require disclosure and reporting by the applicant of the following information, documentation, and fee:

1. Review Of Written Disclosures: An affirmation that the applicant has received and reviewed the disclosure information required by this chapter.

2. Contact Information:

a. Applicant's true, correct and legal name, including any former names or aliases used during the last ten (10) years;

b. Applicant's telephone number, home address and mailing address, if different;

c. If different from the applicant, the name, address, and telephone number of the responsible person or entity; and

d. The address by which all notices to the applicant required under this chapter are to be sent.

3. Proof Of Identity: An in person verification by the licensing officer of the applicant's true identity by use of any of the following which bear a photograph of said applicant:

a. A valid driver's license issued by any state;

b. A valid passport issued by the United States;

c. A valid identification card issued by any state;

d. A valid identification issued by a branch of the United States military. Upon verification of identity, the original identification submitted to establish proof of identity shall be returned to the applicant.

4. Proof Of Registration With Department Of Commerce: The applicant shall provide proof that either the applicant, or the responsible person or entity, has registered with the Utah State Department of Commerce, if required by State law.

5. Special Events Sales Tax Number: The applicant shall provide a special events sales tax number for either the applicant, or for the responsible person or entity for which the applicant will be soliciting.

6. Marketing Information:

a. The goods or services offered by the applicant, including any commonly known, registered or trademarked names;

b. Whether the applicant holds any other licenses, permits, registrations, or other qualifications required by federal or state law to promote, provide, or render advice regarding the offered goods or services.

7. BCI Background Check: The applicant shall provide an original or a copy of a current BCI background check.

8. Responses To Questions Regarding "Disqualifying Status": The applicant shall be required to affirm or deny each of the following statements on the application form:

a. Has the applicant been criminally convicted of: a) felony homicide, b) physically abusing, sexually abusing, or exploiting a minor, c) the sale or distribution of controlled substances, or d) sexual assault of any kind?

b. Are any criminal charges currently pending against the applicant for: a) felony homicide, b) physically abusing, sexually abusing, or exploiting a minor, c) the sale or distribution of controlled substances, or d) sexual assault of any kind?

c. Has the applicant been criminally convicted of a felony within the last ten (10) years?

d. Has the applicant been incarcerated in a federal or state prison within the past five (5) years?

e. Has the applicant been criminally convicted of a misdemeanor within the past five (5) years involving a crime of: a) moral turpitude, or b) violent or aggravated conduct involving persons or property?

f. Has a final civil judgment been entered against the applicant within the last five (5) years indicating that: a) the applicant had either engaged in fraud, or intentional misrepresentation, or b) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 USC section 523(a)(2), (a)(4), (a)(6), or (a)(19)?

g. Is the applicant currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device?

h. Does the applicant have an outstanding arrest warrant from any jurisdiction?

i. Is the applicant currently subject to a protective order or stalking injunction of any kind issued by a court of competent jurisdiction?

9. Fee: The applicant shall pay such fees as determined applicable by the Town, which shall not exceed the reasonable cost of processing the application and issuing the certificate and/or identification badge.

10. Execution Of Application: The applicant shall execute the application form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the applicant, the information provided is complete, truthful and accurate.

B. Establishing proof of the applicant's identity is required before registration is allowed.

C. The application form shall provide identification of the fee amount that must be submitted by applicant with a completed application.

D. The application form shall indicate to the applicant the criteria for disqualifying status, denial, or suspension of a certificate under the provisions of this chapter.

SECTION 8: APPLICANT'S AUTHORIZATION TO THE TOWN

By submitting the application form, the applicant authorizes the Town to perform the following:

A. To verify information submitted with the completed application including:

1. The applicant's address;
2. The applicant's and/or responsible person's or entity's state tax identification and special use tax numbers, if any;
3. The validity of the applicant's proof of identity.

B. To consult any publicly available sources for information on the applicant, including, but not limited to, databases for any outstanding warrants, protective orders, or civil judgments.

C. To disseminate the information of the applicant's application, including the BCI background check, as needed for the processing and review of the application or its contents or as needed to enforce the provisions of this chapter.

SECTION 9: WHEN REGISTRATION BEGINS

The licensing officer shall not begin the registration process unless the applicant has submitted a completed application. The original identification submitted to establish proof of identity shall be returned after the licensing officer verifies the applicant's identity. A copy of the identification may be retained by the licensing officer..

SECTION 10: ISSUANCE OF CERTIFICATES

The licensing officer shall review the completed application submitted by the applicant and issue a certificate in accordance with the following:

A. Temporary Certificate:

1. A temporary certificate shall issue allowing the applicant to immediately begin door to door solicitation upon the following conditions:

- a. Applicant's submission of a completed application;

- b. Applicant's submission of the required fee;
- c. Applicant establishes proof of identity;
- d. The applicant's representations on the application form do not affirmatively show a disqualifying status;
- e. The BCI background check does not affirmatively show a disqualifying status; and
- f. The applicant has not previously been denied a certificate by the Town, or had a certificate revoked for grounds that still constitute a disqualifying status under this chapter.

2. A temporary certificate will automatically expire after twenty five (25) calendar days from issuance, or upon grant or denial of an annual certificate, whichever period is shorter.

B. Annual Certificate: Within twenty five (25) calendar days of the issuance of a temporary certificate the Town shall:

1. Take any and all actions it deems appropriate to verify the truthfulness and completeness of the information submitted by the applicant, including, but not limited to, those disclosed with the application form.

2. Issue written notice to the applicant and the responsible person or entity, if any, that indicates:

a. The application has been granted and the applicant will be issued an annual certificate, eligible for renewal one year from the date of issuance of the temporary certificate; or

b. The application has been denied and the applicant will not be issued an annual certificate for reasons cited in Section 14 of this chapter.

C. Renewal Certificate: An annual certificate shall be valid for one year from the date of issuance of the temporary certificate and shall expire at twelve o'clock (12:00) midnight on the anniversary date of issuance. Any annual certificate that is not suspended, revoked, or expired may be renewed upon the request of the registered solicitor and the submission of a new completed application and payment of the fee, unless any of the conditions for the denial, suspension or revocation of a certificate are present as set forth in Section 14 of this chapter, or a disqualifying status is present.

SECTION 11: FORM OF CERTIFICATE AND IDENTIFICATION BADGE

A. Certificate Form: Should the licensing officer determine that the applicant is entitled to a certificate, the licensing officer shall issue a certificate to the applicant. The certificate shall list the name of the registered solicitor and the responsible person or entity, if any, and the date on which the certificate expires. The certificate shall be dated and signed by the licensing officer. The certificate shall be carried by the registered solicitor at all times while soliciting in the Town.

B. Identification Badge: With both the temporary and annual certificates, the Town shall issue each registered solicitor an identification badge that shall be worn prominently on his or her person while soliciting in the Town. The identification badge shall bear the name of the Town and shall contain: 1) the name of the registered solicitor; 2) address and phone number of the registered solicitor (or the name, address, and phone number of the responsible person or entity is provided); 3) a recent photograph of the registered solicitor; and 4) the date on which the certificate expires.

SECTION 12: MAINTENANCE OF RECORDS

The licensing officer shall maintain and make available for public inspection a copy or record of every completed application received and the certificate or written denial issued by the Town. The applicant's BCI background check shall remain a confidential, protected, or private record not available for public inspection as provided by the Utah Government Records Access and Management Act. The licensing officer may furnish to the head of the Town's law enforcement agency a listing of all applicants, those denied, and those issued a certificate.

SECTION 13: CERTIFICATES NOT TRANSFERABLE

Certificates shall be issued only in the name of the applicant and shall list the responsible party or entity, if any. The certificate shall be nontransferable. A registered solicitor desiring to facilitate or attempt to facilitate home solicitation sales with different: a) goods or services; or b) responsible person or entity, from those designated in the originally submitted completed application, shall submit a written change request to the licensing officer. A new certificate based on the amended information shall issue for the balance of time remaining on the solicitor's previous certificate before the amendment was filed. Before the new certificate is given to the registered solicitor, the registered solicitor shall obtain a revised identification badge from the Town, after payment of the fee for the identification badge.

SECTION 14: DENIAL, SUSPENSION OR REVOCATION OF A CERTIFICATE OF REGISTRATION

A. Denial: Upon review, the licensing officer shall refuse to issue a certificate to an applicant for any of the following reasons:

1. Denial Of Temporary Certificate:

- a. The application form is not complete;
- b. The applicant fails to: 1) establish proof of identity, 2) provide a BCI or 3) pay the fees;
- c. The completed application or BCI indicates that the applicant has a disqualifying status; or
- d. The applicant has previously been denied a certificate by the Town, or has had a certificate revoked for grounds that still constitute a disqualifying status under this chapter.

2. Denial Of Annual Certificate:

- a. The information submitted by the applicant at the time of the granting of the temporary certificate is found to be incomplete or incorrect;
- b. Since the submission of the completed application, the applicant is subject to a previously undisclosed or unknown disqualifying status;
- c. Failure to complete payment of the fees;
- d. Since the submission of the application, the Town has received a substantiated report regarding the past or present conduct of the applicant;
- e. Since the submission of the application, the Town or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this chapter or similar federal, state, or municipal laws in a manner rising to the level of a disqualifying status; or
- f. Since the submission of the application, a final civil judgment has been entered against the applicant indicating that: 1) the applicant had either engaged in fraud, or intentional misrepresentation, or 2) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 USC section 523(a)(2), (a)(4), (a)(6), or (a)(19).

3. Denial Of Annual Certificate Renewal:

- a. The information submitted by the applicant when seeking renewal of a certificate is found to be incomplete or incorrect;
- b. Since the submission of the renewal application, the applicant is subject to a previously undisclosed or unknown disqualifying status;
- c. Failure to complete payment of the fees;

d. Since the submission of the application or granting of a certificate, the city has received a substantiated report regarding the past or present conduct of the solicitor;

e. The Town or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this chapter or similar federal, state, or municipal laws in a manner rising to the level of a disqualifying status; or

f. Since the submission of the application, a final civil judgment has been entered against the applicant indicating that: 1) the applicant had either engaged in fraud, or intentional misrepresentation, or 2) that a debt of the applicant was nondischargeable in bankruptcy pursuant to 11 USC section 523(a)(2), (a)(4), (a)(6), or (a)(19).

B. Suspension Or Revocation: The Town shall either suspend or revoke a certificate when any of the reasons warranting the denial of a certificate occurs.

C. Notice Of Denial Or Suspension: Upon determination of the licensing officer to deny an applicant's completed application or to suspend a registered solicitor's certificate, the Town shall cause written notice to be sent to the applicant or registered solicitor by the method indicated in the completed application. The notice shall specify the grounds for the denial or suspension, the documentation or information the Town relied on to make the decision, the availability of the documentation for review by applicant upon one business day's notice to the Town, and the date upon which the denial or suspension of the certificate shall take effect. It shall further state that the applicant or registered solicitor shall have ten (10) business days from the receipt of the notice of denial or suspension to appeal the same. The denial or suspension of the certificate shall be effective no sooner than two (2) calendar days from the date the notice is sent, unless that suspension is because of exigent circumstances outlined in subsection (C)4 of the definition of "Substantiated Report", in Section 3 of this chapter, in which case, the suspension is effective immediately. The denial or suspension shall remain effective unless and until the order is rescinded, overturned on appeal, or determined by a court to be contrary to equity or law. Failure to appeal the suspension of a certificate automatically results in its revocation.

SECTION 15: APPEAL

An applicant or registered solicitor whose certificate has been denied or suspended shall have the right to appeal to the appeals officer. Any appeal must be submitted by either the applicant, the responsible person or entity, or legal counsel for either who: a) documents the relationship with the applicant or responsible person or entity; or b) is licensed or authorized by the state of Utah to do so, and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

A. Any appeal must be submitted in writing to the Town clerk with a copy to the licensing officer within ten (10) business days of the decision from which the appeal is

taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal.

B. Upon request of the applicant or registered solicitor, within one business day, the Town will make available any information upon which it relied in making the determination to either deny or suspend the certificate.

C. The appeals officer shall review, de novo, all written information submitted by the applicant or registered solicitor to the licensing officer, any additional information relied upon by the licensing officer as the basis for denial, suspension or revocation, and any additional information supplied by the Town, applicant or registered solicitor. Any additional information submitted by any party to the appeal to the appeals officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3) business days to submit rebuttal documentation to the appeals officer regarding the additional information submitted by the opposing party.

D. The appeals officer will render a decision no later than fifteen (15) calendar days from the date the appeal was taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in subsection C of this section, the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.

1. The denial or suspension of the certificate shall be reversed by the appeals officer if upon review of the written appeal and information submitted, the appeals officer finds that the licensing officer made a material mistake of law or fact in denying or suspending the applicant's or registered solicitor's certificate.

2. If the written appeal and information submitted indicates that the licensing officer properly denied or suspended the certificate of the applicant or registered solicitor, the denial or suspension of the certificate shall be affirmed and constitute a determination that the suspended certificate is revoked.

3. The decision of the appeals officer shall be delivered to the applicant or registered solicitor by the means designated in the completed application, or as otherwise agreed upon when the appeal was filed.

E. After the ruling of the appeals officer, the applicant or solicitor is deemed to have exhausted all administrative remedies with the Town.

F. Nothing herein shall impede or interfere with the applicant's, solicitor's, or city's right to seek relief in a court of competent jurisdiction.

SECTION 16: DECEPTIVE SOLICITING PRACTICES PROHIBITED

A. No solicitor shall intentionally make any materially false or fraudulent statement in the course of soliciting.

B. A solicitor shall immediately disclose to the consumer during face to face solicitation: 1) the name of the solicitor; 2) the name and address of the entity with whom the solicitor is associated; and 3) the purpose of the solicitor's contact with the person and/or competent individual. This requirement may be satisfied through the use of the badge and an informational flyer.

C. No solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.

D. No solicitor shall represent directly or by implication that the granting of a certificate of registration implies any endorsement by the Town of the solicitor's goods or services or of the individual solicitor.

SECTION 17: "NO SOLICITATION" NOTICE

A. Any occupant of a residence may give notice of a desire to refuse solicitors by displaying a "no solicitation" sign which shall be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the residence.

B. The display of such sign or placard shall be deemed to constitute notice to any solicitor that the inhabitant of the residence does not desire to receive and/or does not invite solicitors and shall fulfill the requirement for "posting of signs reasonably likely to come to the attention of intruders" for the purposes of criminal trespass under Utah Code Ann. § 76-6-206.

C. It shall be the responsibility of the solicitor to check each residence for the presence of any such notice.

SECTION 18: DUTIES OF SOLICITORS

A. Every person soliciting or advocating shall check each residence for any "no soliciting" sign or placard or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, "no solicitation" signs. If such sign or placard is posted such solicitor shall desist from any efforts to solicit at the residence or dwelling and shall immediately depart from such property. Possession of a certificate of registration does not in any way relieve any solicitor of this duty.

B. It is a violation of this chapter for any person soliciting or advocating to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a residence that bears a "no solicitation" sign or similar sign or placard for the purpose of engaging in or attempting to engage in advocating, a home solicitation sale, door to door soliciting, or soliciting.

C. It is a violation of this chapter for any solicitor through ruse, deception, or fraudulent concealment of a purpose to solicit, to take action calculated to secure an audience with an occupant at a residence.

D. Any solicitor who is at any time asked by an occupant of a residence or dwelling to leave shall immediately and peacefully depart.

E. The solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent.

F. The solicitor shall not follow a person into a residence without their explicit consent.

G. The solicitor shall not continue repeated soliciting after a person and/or competent individual has communicated clearly and unequivocally their lack of interest in the subject, goods or services of the solicitor.

H. The solicitor shall not use obscene language or gestures.

SECTION 19: TIME OF DAY RESTRICTIONS

It shall be unlawful for any person, whether licensed or not, to solicit at a residence before nine o'clock (9:00) A.M. or after nine o'clock (9:00) P.M., unless the solicitor has express prior permission from the resident to do so.

SECTION 20: BUYER'S RIGHT TO CANCEL

In any home solicitation sale, unless the buyer requests the solicitor to provide goods or services without delay in an emergency, the seller or solicitor shall present to the buyer and obtain buyer's signature to a written statement which informs the buyer of the right to cancel within the third business day after signing an agreement to purchase. Such notice of "buyer's right to cancel" shall be in the form required by section 70C-5-103, Utah Code Annotated, 1953, or a current version thereof or any state or federal law modifying or amending such provision.

SECTION 21: PENALTIES

Any person who violates any term or provision of this chapter shall be guilty of a class B misdemeanor and shall be punished by the following:

A. A fine in accordance with the following amounts but which may never exceed one thousand dollars (\$1000):

1. Not less than \$150 for the first offense under this chapter; and

2. Not less than \$680 for any offense after the first offense under this chapter;
and/or

B. A jail sentence of not to exceed six (6) months.

J:\MPJ\Cities\Mantua\Ordinances\Solicitation Ordinance\Residential Solicitation.3.docx
N-4817.37