ORDINANCE NO. 2006 - 07

AN ORDINANCE ADOPTING MODEL RESIDENTIAL SOLICITATION RULES AND REGULATIONS IN THE CITY OF WENDOVER, TOOELE COUNTY, UTAH

RECITALS

A. The City of Wendover, Tooele County, Utah is authorized by Utah Code Annotated Title 10, Chapter 8, and by other provisions of law, to enact ordinances, rules and regulations governing the conduct of business within the City;

B. The City is aware of litigation in the United States District Court for the District of Utah pursuant to which a group of businesses challenged the validity of Cities' residential solicitation ordinances;

C. The City is informed that the Cities who are defendant in those cases have entered a settlement agreement contemplating the adoption of a Model Ordinance governing residential solicitation and describing a fee for registering residential solicitors. The City is further informed that the model ordinance has been approved and recommended by the Utah League of Cities and Towns; and

D. The City deems it reasonable and appropriate to adopt the model ordinance and to establish a registration fee, all as contemplated by the settlement agreement and as recommended by the Utah League of Cities and Towns.

ORDINANCE

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WENDOVER, TOOELE COUNTY, UTAH AS FOLLOWS:

Section 1. Finding of Public Interest. The Governing Body of the City of Wendover finds there is a public and municipal interest in adopting rules and regulations governing the activities of residential solicitors in the City.

Section 2. Adoption of Ordinance. Attached hereto is a Model Ordinance entitled: "RESIDENTIAL SOLICITATION." Said Ordinance is hereby adopted by the City, and shall govern the City, its residents, property owners, businesses and other users of the City's services and facilities.

Section 3. Licensing & Registration Fee. The fee for the processing of an application, issuing a certification or registration and an identification badge shall be Fifteen Dollars ($15.00). This fee may be modified from time to time by ordinance or resolution of the City Council, and upon a finding that the fee does not exceed the City's cost of processing of an application, issuing a certification or registration and an identification badge.

Section 4. Penalty and Remedies. Any person or entity who violates the requirements of this Ordinance shall be guilty of a Class B misdemeanor, and subject to the penalties provided by law. The City is further authorized to initiate a civil action or administrative proceeding to enforce the provisions hereof, or to abate any violation of the provisions of this Ordinance. In the event a civil or administrative action is filed to enforce the provisions of this Ordinance or to abate a violation of this Ordinance, the City shall be entitled to recover its reasonable costs and attorney's fees.

Section 5. Severability. If any section, paragraph, clause or provision of this ordinance shall be held invalid, unlawful or unenforceable, the same shall not effect the validity or enforceability of the remaining provisions of this Ordinance.

Section 6. Effective Date. This ordinance shall become effective immediately upon passage by the governing body. The ordinance shall, in any event, be posted or published as required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF WENDOVER, TOOELE COUNTY, UTAH THIS 15TH DAY OF NOVEMBER, 2006.

THE CITY OF WENDOVER, UTAH

BY: _____
BRETT SHELTON
MAYOR

ATTEST:

_____
MARGARET WHEELER
CITY RECORDER

RESIDENTIAL SOLICITATION

1 Purpose
2 No Other City License or Approval Required
3 Definitions
4 Exemptions from Chapter
5 Solicitation Prohibited
6 Registration of Solicitors
7 Application Form
8 Written Disclosures
9 When Registration Begins
10 Issuance of Certificates
11 Form of Certificate and Identification Badge
12 Maintenance of Registry
13 Non-Transferability of Certificates
14 Denial, Suspension or Revocation of a Certificate of Registration
15 Appeal
16 Deceptive Soliciting Practices Prohibited
17 "No Soliciting" Notice
18 Duties of Solicitors
19 Time of Day Restrictions
20 Buyer's Right to Cancel
21 Penalties

1. Purpose.

Residents of the City have an inalienable interest in their personal safety, well-being, 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. The City has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its citizens, which includes the ability to protect citizens from unwanted intrusions upon residential property. The City also has a substantial interest in protecting citizens from fraud or otherwise unfair consumer sales practices as well as criminal activity.

There must be a balance between these substantial interests of the City and its citizens, and the effect of the regulations in this Chapter on the rights of those who are regulated. 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 City adopts this Chapter to promote the City's substantial interests in:

(1) respecting citizen's decisions regarding privacy in their residences;
(2) protecting persons from criminal conduct;

(3) providing equal opportunity to Advocate for and against Religious Belief, Political Position, or Charitable Activities; and

(4) permitting truthful and non-misleading Door-to-Door Solicitation regarding lawful Goods or Services in intrastate or interstate commerce.

The City finds that the procedures, rules and regulations set forth in this Chapter are narrowly tailored to preserve and protect the City interests referred to herein while at the same time balancing the rights of those regulated.

2. No Other City License or Approval Required.

(1) Registered Solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in Door-to-Door Solicitation.

(2) Any Business licensed by the City under another City Ordinance 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.

(3) Those Responsible Persons or Entities associated with Registered Solicitors need not apply for, nor obtain, any other license, permit, or registration from the City, provided they do not establish a temporary or fixed place of business in the City.

(4) 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.

3. Definitions. For the purposes of this Chapter, the following definitions shall apply:

(1) **"Advocating"** means speech or conduct intended to inform, promote, or support Religious Belief, Political Position, or Charitable Activities.

(2) **"Appeals Officer"** means the City Council or designee of the City responsible for receiving the information from the City and Appellant regarding the denial or suspension of a Certificate and issuing a decision as required by this Chapter.

(3) **"Appellant"** means 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.

(4) **"Applicant"** means 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.

(5) **"Application Form"** means a standardized form provided by the City to an Applicant to be completed and submitted as part of Registration.

(6) **"B.C.I."** means an original or copy, dated no older than 180 days prior to the date of the Application, of either: (1) a Utah Department of Public Safety Bureau of Criminal Identification verified criminal history report personal to the Applicant; or (2) 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.

(7) **"Business"** means 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.

(8) **"Certificate"** means a temporary, annual, or renewal Certificate permitting Door-to-Door Solicitation in the City applied for or issued pursuant to the terms of this Chapter.

(9) **"Charitable Activities"** means Advocating by persons or Entities that either are, or support, a Charitable Organization.

(10) **"Charitable Organization"** includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other Entity:

A. that is:

(I) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;

(ii) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or

(iii) 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.[1]

(11) **"Competent Individual"** means 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.

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1 Charitable Solicitation Act UCA § 13-22-2(1)(a) & (b).

(12) **"Completed Application"** means a fully completed Application Form, a B.C.I, two copies of the original identification relied on by the Applicant to establish Proof of Identity, and the tendering of Fees.

(13) **"Criminally Convicted"** means 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.

(14) **"Disqualifying Status"** means 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: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.

B. Criminal charges currently pending against the Applicant or Registered Solicitor for: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) 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 misdemeanor within the past five (5) years involving a crime of: (I) moral turpitude, or (ii) violent or aggravated conduct involving persons or property.

F. A Final Civil Judgment been entered against the Applicant or Registered Solicitor within the last five (5) years indicating that: (I) the Applicant or Registered Solicitor had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant or Registered Solicitor was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19);

G. The Applicant or Registered Solicitor 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; or

I. The Applicant or Registered Solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

(15) **"Door to Door Solicitation"** means 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.

(16) **"Entity"** includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

(17) **"Fees"** means 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.

(18) **"Final Civil Judgment"** means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.

(19) **"Goods"** means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

(20) **"Home Solicitation Sale"** means 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.

(21) **"Licensing Officer"** means the City 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.

(22) **"No Solicitation Sign"** means a reasonably visible and legible sign that states "No Soliciting," "No Solicitors," "No Salespersons," "No Trespassing," or words of similar import.

(23) **"Political Position"** means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.

(24) **"Registered Solicitor"** means any person who has been issued a current Certificate by the City.

(25) **"Registration"** means the process used by the City Licensing Officer to accept a Completed Application and determine whether or not a Certificate will be denied, granted, or suspended.

(26) **"Religious Belief"** means 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.

(27) **"Residence"** means 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 City, 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.

(28) **"Responsible Person or Entity"** means 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.

(29) **"Sale of Goods or Services"** means 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 days under any applicable federal, state, or local law.

(30) **"Services"** means those intangible goods or personal benefits offered, provided, or sold to a Competent Individual of a Residence.

(31) **"Soliciting"** or "Solicit" or "Solicitation" means 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.

(32) **"Solicitor" or "Solicitors"** means a person(s) engaged in Door-to-Door Solicitation.

(33) **"Submitted in Writing"** means the information for an appeal of a denial or suspension of a Certificate, submitted in any type of written statement to the City offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

(34) **"Substantiated Report"** means an oral, written, or electronic report:

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

B. By any of the following:

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

2. City 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, eye-witness 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.

(35) **"Waiver"** means the written form provided to Applicant by the City wherein Applicant agrees that the City 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.

4. Exemptions From Chapter. The following are exempt from Registration under this Chapter:

(1) Persons specifically invited to a Residence by a Competent Individual prior to the time of the person's arrival at the Residence;

(2) 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;

(3) 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;

(4) 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

(5) 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 000-017, 000-018 and 000-019 while Advocating or Soliciting.

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 City 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.

6. Registration of Solicitors. Unless otherwise exempt under this Chapter, all persons desiring to engage in Door-to-Door Solicitation within the City, prior to doing so, shall submit a Completed Application to the Licensing Officer and obtain a Certificate.

7. Application Form. 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 drivers 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;

(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:

A. An original or a copy of a BCI background check as defined in section 3; and

B. A signed copy of a Waiver whereby Applicant agrees to allow the City to obtain a name/date of birth BCI background check on Applicant for purposes of enforcement of this Chapter. [2]

(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: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.

B. Are any criminal charges currently pending against the Applicant for: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) 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: (I) moral

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2 See Utah Code Ann. §53-10-108(1)(b).

turpitude, or (ii) 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: (I) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 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; or

I. Is the Applicant currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

(9) **Fee.** The Applicant shall pay such fees as determined applicable by the City, 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.

8. Written Disclosures. The Application Form shall be accompanied by written disclosures notifying the Applicant of the following:

(1) The Applicant's submission of the Application authorizes the City to verify information submitted with the Completed Application including:

A. the Applicant's address;

B. the Applicant's and/or Responsible Person or Entity's state tax identification and special use tax numbers, if any;

C. the validity of the Applicant's Proof of Identity;

(2) The City may consult any publically available sources for information on the Applicant, including but not limited, to databases for any outstanding warrants, protective orders, or civil judgments.

(3) Establishing Proof of Identity is required before Registration is allowed;
(4) Identification of the fee amount that must be submitted by Applicant with a Completed Application;

(5) The Applicant must submit a BCI background check with a Completed Application;

(6) To the extent permitted by State and/or federal law, the Applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection;

(7) The City will maintain copies of the Applicant's Application Form, Proof of Identity, and Identification Badge. These copies will become public records available for inspection on demand at the City offices whether or not a Certificate is denied, granted, or renewed.

(8) The criteria for Disqualifying Status, denial, or suspension of a Certificate under the provisions of this Chapter.

(9) That a request for a temporary Certificate will be granted or denied the same business day that a Completed Application is submitted.

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. If an original B.C.I. background check is submitted by the Applicant, the Licensing Officer shall make a copy of the B.C.I. and return the original to the Applicant.

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:

(1) **Temporary Certificate.**

A. A temporary Certificate shall issue allowing the Applicant to immediately begin Door-to-Door Solicitation upon the following conditions:

(I) Applicant's submission of a Completed Application;

(ii) Applicant's submission of the required fee;

(iii) Applicant establishes Proof of Identity;

(iv) the Applicant's representations on the Application Form do not affirmatively show a Disqualifying Status;

(v) the B.C.I. does not affirmatively show a Disqualifying Status; and

(vi) the Applicant has not previously been denied a Certificate by the City, or had a Certificate revoked for grounds that still constitute a Disqualifying Status under this Chapter.

B. 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.

(2) **Annual Certificate.** Within twenty-five (25) calendar days of the issuance of a temporary Certificate the City shall:

A. 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.

B. Issue written notice to the Applicant and the Responsible Person or Entity, if any, that the Applicant either:

(i) will be issued an annual Certificate, eligible for renewal one year from the date of issuance of the temporary Certificate; or

(ii) will not be issued an Annual Certificate for reasons cited in Section 000-014 of this Chapter.

(3) **Renewal Certificate.** An annual Certificate shall be valid for one year from the date of issuance of the temporary Certificate and shall expire at 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 000-014, or a Disqualifying Status is present.

11. Form of Certificate and Identification Badge.

(1) **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 License Officer. The Certificate shall be carried by the Registered Solicitor at all times while Soliciting in the City.

(2) **Identification Badge.** With both the temporary and annual Certificates, the City shall issue each Registered Solicitor an Identification Badge that shall be worn prominently on his or her person while Soliciting in the City. The Identification Badge shall bear the name of the City and shall contain: (a) the name of the Registered Solicitor; (b) address and phone number of the Registered Solicitor, or the name,

address, and phone number of the Responsible Person or Entity is provided; © a recent photograph of the Registered Solicitor; and (d) the date on which the Certificate expires.

12. Maintenance of Registry. 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 City. The Applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection. The Licensing Officer may furnish to the head of the City's law enforcement agency a listing of all Applicants, those denied, and those issued a Certificate.

13. Non-Transferability of Certificates. 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 non-transferable. 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 City, after payment of the Fee for the Identification Badge.

14. Denial, Suspension or Revocation of a Certificate of Registration.

(1) **Denial.** Upon review, the Licensing Officer shall refuse to issue a Certificate to an Applicant for any of the following reasons:

Denial of Temporary Certificate.

(I) the Application Form is not complete;
(ii) the Applicant fails to (1) establish Proof of Identity, (2) provide a B.C.I. or (3) pay the Fees;
(iii) the Completed Application or B.C.I. indicates that the Applicant has a Disqualifying Status; or
(iv) The Applicant has previously been denied a Certificate by the City, or has had a Certificate revoked for grounds that still constitute a Disqualifying Status under this chapter.

B. **Denial of Annual Certificate.**

(i) The information submitted by the Applicant at the time of the granting of the temporary Certificate is found to be incomplete or incorrect;
(ii) Since the submission of the Completed Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;
(iii) Failure to complete payment of the Fees;

(iv) Since the submission of the Application, the City has received a Substantiated Report regarding the past or present conduct of the Applicant;

(v) Since the submission of the Application, the City 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

(vi) Since the submission of the Application, a Final Civil Judgment has been entered against the Applicant indicating that: (I) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19).

C. **Denial of Annual Certificate Renewal.**

(i) The information submitted by the Applicant when seeking renewal of a Certificate is found to be incomplete or incorrect;

(ii) Since the submission of the renewal Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;

(iii) Failure to complete payment of the Fees;

(iv) 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;

(v) The City 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

(vi) Since the submission of the Application, a Final Civil Judgment has been entered against the Applicant indicating that: (I) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19).

(2) **Suspension or Revocation.** The City shall either suspend or revoke a Certificate when any of the reasons warranting the denial of a Certificate occurs.

(3) **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 City 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 City relied on to make the decision, the availability of the documentation for review by Applicant upon one (1) business day notice to the City,

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 Section 000-003(34)(C)(4), 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.

15. Appeal. An Applicant or Registered Solicitor whose Certificate has been denied or suspended shall have the right to appeal to the City Council or its designee. 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:

(1) Any appeal must be Submitted in Writing to the City Recorder with a copy to the License 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.

(2) Upon request of the Applicant or Registered Solicitor, within one business day, the City will make available any information upon which it relied in making the determination to either deny or suspend the Certificate.

(3) 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 City, 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.

(4) 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 Section 000-015(3), the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.

A. 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 or Registered Solicitor's Certificate.

B. 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.

C. 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.

(5) After the ruling of the Appeals Officer, the Applicant or Solicitor is deemed to have exhausted all administrative remedies with the City.

(6) 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.

16. Deceptive Soliciting Practices Prohibited.

(1) No Solicitor shall intentionally make any materially false or fraudulent statement in the course of Soliciting.

(2) A Solicitor shall immediately disclose to the consumer during face-to-face Solicitation; (i) the name of the Solicitor; (ii) the name and address of the entity with whom the Solicitor is associated; and (iii) 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.

(3) No Solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.

(4) No Solicitor shall represent directly or by implication that the granting of a Certificate of Registration implies any endorsement by the City of the Solicitor's Goods or Services or of the individual Solicitor.

17. "No Solicitation" Notice.

(1) 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.

(2) 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.

(3) It shall be the responsibility of the Solicitor to check each Residence for the presence of any such Notice.

(4) The provisions of this Section shall apply also to Solicitors who are exempt from Registration pursuant to the provisions of this Chapter.

18. Duties of Solicitors.

(1) 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.

(2) 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.

(3) 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.

(4) Any Solicitor who is at any time asked by an occupant of a Residence or dwelling to leave shall immediately and peacefully depart.

(5) The Solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent;

(6) The Solicitor shall not follow a person into a Residence without their explicit consent;

(7) 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;

(8) The Solicitor shall not use obscene language or gestures.

19. Time of Day Restrictions. It shall be unlawful for any person, whether licensed or not, to Solicit at a Residence before 9:00 a.m. or after 9:00 p.m Mountain Time, unless the Solicitor has express prior permission from the resident to do so.

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 § 70C-5- 103, Utah Code Annotated, 1953, or a current version thereof or any State or Federal law modifying or amending such provision.

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 a fine of not to exceed $1,000.00 and/or a jail sentence of not to exceed six (6) months.

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Date of first publication/posting: 11/20, 2006

MAYOR
Brett Shelton

CITY ADMINISTRATOR
Glenn Wadsworth

CITY COUNCIL
Ms. Gertrude Tripp
Mr. Florencio Bermejo
Mr. Karl Jorgenson
Mr. Mike R. Crawford
Mr. Gary Bean

CERTIFICATE OF POSTING CITY ORDINANCES

I, THE DULY APPOINTED AND ACTING CITY CLERK/RECORDER FOR THE CITY OF WENDOVER, UTAH, HEREBY CERTIFY THAT COPIES OF THE FOREGOING ORDINANCE-2006-07 WAS POSTED AT THREE PUBLIC PLACES WITHIN THE MUNICIPALITY THIS 20TH DAY OF NOVEMBER 2006 WHICH PUBLIC PLACES ARE:

1. **FRED'S MARKET**
2. **WENDOVER, UTAH CITY OFFICES**
3. **WENDOVER, UTAH POST OFFICE**

DATED THIS 20TH DAY OF NOVEMBER2006.

RECORDER: Margaret L Wheeler

100 South 9th Street P.O. Box 430 Wendover, Utah 84083 (435) 665-7030 Fax (435) 665-2523