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ORDINANCE 2017-26

AN ORDINANCE ESTABLISHING A SOLICITATION POLICY IN THE TOWN OF WHITESTOWN, INDIANA

WHEREAS, the Town Council ("Town Council") of the Town of Whitestown, Indiana ("Town") has an interest in protecting its citizens' health, safety, and welfare; and

WHEREAS, the Town Council desires to protect the privacy and safety of its citizens, including the quiet enjoyment of their homes, by regulating door-to-door solicitation in a content-neutral manner; and

WHEREAS, pursuant to Ind. Code 25-37-1-11 the Town may "regulate transient merchants and charge a fee for the transaction of business by them" and "provide for punishment of violators"; and

WHEREAS, some citizens affix no soliciting signs and/or stickers on their doors to indicate that preference for solicitors to not approach their residence; and

WHEREAS, the Town Council desires to regulate door-to-door solicitation in the Town and to enforce a citizen's preference as to whether solicitors may approach a citizen's residence; and

WHEREAS, the Town Council desires to permit certain door-to-door canvassers to be exempt from the regulations provided in this ordinance including those engaged in protected political or religious speech or activity, and those engaged in solicitation of funds and/or sale of fundraising items for a not-for-profit or nonprofit organization or association that is exempt from the Indiana Gross Retail Tax; and

WHEREAS, the Town Council further desires to repeal and replace all ordinances, resolutions, or parts of ordinances and/or resolutions which are inconsistent with this Ordinance, including, but not necessarily limited to, those provisions collected in Chapter 5.10 "Solicitors" of the online compilation of the Town of Whitestown Municipal Code ("Town Code").

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana as follows:

Section 1. Definitions: Whenever used in this Ordinance, the following words and phrases shall be defined as herein stated below:

(A) "**Door-to-Door Solicitation**" shall mean all methods and means of soliciting funds and/or selling commercial products, services, or property within the corporate limits of the Town of Whitestown by and through the uninvited in-person solicitation of Town citizens on private property.

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(B) "**Exempt Person**" shall mean any of the following:

(1) An individual while and to the extent he or she is engaged in protected political speech or activity;

(2) An individual while and to the extent he or she is engaged in protected religious speech or activity;

(3) An individual engaged in the solicitation of funds and/or sale of cookies, candies, paper products, or similar sundries solely for and on behalf of a not-for-profit or nonprofit organization or association that is exempt from the Indiana Gross Retail Tax;

(4) An individual who, due to the preemption of applicable federal or state law, is exempt from local licensing requirements.

(C) "**Transient Vendor**" shall mean all persons, firms, limited liability companies, and corporations, both as principals and agents, who is not an Exempt Person, and

a. engage in, do, or transact any temporary or transient business in Whitestown, offering for sale or selling goods, wares, or merchandise, as a transient merchant under I.C. § 25-37-1-2; or

b. is engaged in Door-to-Door Solicitation;

Section 2. Posted Premises:

(A) The Whitestown Police Department is hereby directed to obtain a supply of "No Soliciting" signs or stickers or other means of notification for free distribution to any resident of the Town upon the request of such citizen.

(B) The Whitestown Police Department is urged to provide prompt response to any call for assistance from a citizen upon whose private property a trespass has occurred after warning by a sign or other notification reasonably intended to advise a person or persons to not engage in Door-to-Door Solicitation at such private property.

(C) An Exempt Person is not subject to the provisions of this Ordinance. However, nothing in this Ordinance shall be seen as giving any right to a an Exempt Person (or any Transient Vendor) to trespass upon property, or to otherwise engage in Door-to-Door Solicitation at any private property against the will of the property owner or occupant, or where the words "No Solicitation" (or words of similar import) are displayed.

Section 3. Licensing:

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(A) Any Transient Vendor who desires to engage in Door-to-Door Solicitation shall first obtain from the Whitestown Police Department a non-transferable Door-to-Door Solicitation license ("License") permitting such activity by the Transient Vendor and/or Transient Vendor's employees and agents. An Exempt Person shall not be required to obtain a License.

(B) If the Transient Vendor intends to sell or offers to sell any type of food or beverage, the Whitestown Police Department shall refer the application to the Boone County Health Department for review and recommendation of whether any refrigeration equipment to be used by the Transient Vendor is acceptable and/or of whether the Transient Vendor meets applicable minimum sanitation requirements.

(C) The Whitestown Police Department shall provide to any person, upon request, a Transient Vendor application form ("Application") to be completed by a Transient Vendor and processed by the Whitestown Police Department. The Application shall be created by the Whitestown Police Department and shall seek general information about the Transient Vendor, Transient Vendor's business, and the nature of Transient Vendor's proposed Door-to-Door Solicitation. The Application shall seek relevant information about the Transient Vendor's company such as: date of incorporation, state of incorporation, and/or date on which such corporation was qualified to transact business in Indiana. The Application shall also require a Transient Vendor to list the name of every employee and agent who will be involved in Door-to-Door Solicitation pursuant to a License issued to the Transient Vendor under this Ordinance, and to obtain from the Indiana State Police Department and attach to the application a copy of the limited criminal history of the Transient Vendor and each employee and agent of same who will be involved in the Door-to-Door Solicitation. The Application shall require the Transient Vendor to state the name, address, and telephone number of the contact person who will respond to consumer complaints who shall be available for a period of time not less than sixty (60) days following the last date that the Transient Vendor sells or offers goods, wares, merchandise, food, services, or subscriptions in the Town. All completed Applications shall be submitted to the Whitestown Police Department for review by the Chief of Police, or his/her designee.

(D) If, while any Application is pending, or during the term of any License granted thereon, there is any substantial change in fact, policy, or method that would materially alter the information given in the Application, the applicant or licensee shall notify the Whitestown Police Department, in writing, of any such change within seventy-two (72) hours after any such change. If the applicant or licensee fails to so notify the Whitestown Police Department, any License issued to the applicant or licensee shall be suspended pursuant to a hearing as set forth in this Ordinance.

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(E) A non-transferable License and identification card shall be issued to a Transient Vendor by the Chief of Police upon such applicant's completion of an Application, confirmation that such applicant has no felony or misdemeanor conviction within fifteen (15) years of the Application date for a crime of dishonesty, fraud, theft, and/or moral turpitude, and such applicant has paid a license fee of $25 for a 10-day License or $90 for a 120-day License. Upon receipt of a License, a licensee must also purchase from the Police Department, at the cost of $5 each, non-transferable identification cards for each employee and agent of Transient Vendor listed on the Application and for whom the Chief of Police has confirmed has no felony or misdemeanor conviction within fifteen (15) years of the Application date for a crime of dishonesty, fraud, theft, and/or moral turpitude.

(F) A veteran who holds an honorable discharged from the armed forces of the United States is exempt from the payment of a fee for a License (applicable to the veteran) or identification card (applicable to the veteran) under this Ordinance. Upon presentation of the veteran's certificate and paper of discharge and proof of the veteran's identity, the Chief of Police may waive the applicable fees. Fees will still be owned for non-veteran agents or employees.

(G) The decision as to whether approve or deny an Application shall be made by the Chief of Police or his/her designee within thirty (30) days from the date the Application is submitted to the Whitestown Police Department for processing. If a decision is not made by the Chief of Police within thirty (30) days, the Application shall be deemed denied.

(H) Transient Vendor and each of its employees and agents, shall openly display upon his or her person an identification card issued by the Whitestown Police Department whenever engaging in Door-to-Door Solicitation inside the Town's corporate boundaries.

Section 4. Restrictions on Door-to-Door Solicitation

(A) Except as specifically provided in this Ordinance, no Transient Vendor may engage in Door-to-Door Solicitation without first obtaining a License.

(B) Subject to earlier revocation, pursuant to this Section 4, a License, as well as any identification card(s) issued therewith, shall be valid for exactly ten (10) or one-hundred twenty (120) days, as applicable, from the date the License was issued, and shall thereafter immediately expire and become null and void.

(C) Transient Vendor and its employees and agents shall comply with all applicable federal, state, and local laws and regulations while engaging in Door-to-Door Solicitation.

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(D) It is unlawful for any Transient Vendor to ring the bell, knock on the door, or otherwise attempt to gain an audience with the occupant for the purpose of peddling or soliciting at any residence, dwelling, or place of business at which the words "No Solicitors" (or words of similar import indicating that solicitors are not wanted on said premises) are conspicuously painted, affixed, or otherwise exposed to public view; provided that this Section 4(D) shall not apply to any Transient Vendor who rings the bell, knocks on the door, or otherwise attempts to gain an audience at such residence or dwelling at the invitation or with the consent of the occupant thereof.

Section 5. License Revocation or Denial:

(A) If the Chief of Police or his designee, determines that one or more of the following apply to a Transient Vendor or to any of its employees or agents who applies for a License or who is involved in Door-to-Door Solicitation, then the Chief of Police shall deny the Application and/or revoke an issued License and/or identification card(s) relating thereto, whichever action is applicable under the circumstances.

1. Transient Vendor submitted an Application that contains materially false or misleading information;

2. Transient Vendor or any of its employees or agents was, within fifteen (15) years prior to the date of the Application, convicted of a felony or misdemeanor crime of dishonesty, fraud, theft, and/or moral turpitude;

3. Transient Vendor or any of its employees or agents has violated this Ordinance or has been charged with or convicted of a felony or misdemeanor crime of dishonesty, fraud, theft, and/or moral turpitude after the issuance but prior to the expiration date of such person's License and/or identification card.

4. Transient Vendor and any of its employees or agents has failed to properly display his/her identification card while engaged in Door-to-Door Solicitation;

5. Two or more written and sworn complaints have been delivered to the Whitestown Police Department regarding allegedly illegal or untruthful conduct concerning Transient Vendor and any of its employees or agents during his/her Door-to-Door Solicitation;

(B) All License and/or identification card denials/revocations shall be in writing, shall state thereon the effective date of the denial/revocation and the reason for same, and shall be served by U.S. mail or by personal service on Transient Vendor or any employee or agent of Transient Vendor engaged in Door-to-Door Solicitation.

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(C) Any Transient Vendor, within twenty (20) days from the date on which notice of such License and/or identification card denial or revocation notice is served thereon, may by written request made and delivered to the Chief of Police, or his designee, within such time period, appeal such action to the Whitestown Board of Metropolitan Police Commissioners ("Commission"). If a timely appeal is not made the decision of the Chief of Police is final. If a timely appeal is made, the Commission shall hear the appeal at a public hearing. The Commission shall set the matter for a public hearing no later than at the next regular meeting of the Commission after the appeal is received. Except where notice is otherwise given by the Commission, the Commission shall issue its written decision on the appeal no more than thirty (30) days from the ending date of the hearing thereon, which Commission decision shall be final.

(D) No Application, License, or identification card fee shall be returned or refunded upon revocation of a License and/or identification card issued pursuant to this section, all such monies being deemed forfeited.

Section 6. Temporary Association: A temporary association or partnership with a person excluded from the definition of Transient Vendor and/or an Exempt Person does not relieve a Transient Vendor from complying with this Ordinance.

Section 7. Penalty:

(A) Any Transient Vendor and/or any of its employees or agents who engage in Door-to-Door Solicitation in violation of this Ordinance shall be subject to a fine of $500.00 for each separate offense during which the same engages in such conduct.

(B) The Town may seek a temporary and/or permanent restraining order against any Transient Vendor and/or any employee or agent thereof in any court of competent jurisdiction.

(C) The Town's remedies hereunder shall be cumulative and pursuit of any one remedy shall not preclude the pursuit of others under this section or otherwise.

(D) Willful or intentional disregard of this Ordinance shall, to the full extent permitted by law, entitle the Town to collect from the violator the Town's attorney fees, court costs, litigation expenses, and all other reasonable costs and expenses incurred in obtaining a restraining order and/or any other enforcement remedies against same.

Section 8. Superseding Clause: The provisions of this Ordinance shall supersede any conflicting provisions in prior ordinances, resolutions, rules, or regulations of the Town. Chapter 5.10 "Solicitors" of the online compilation of the Town Code is hereby repealed, to the extent not previously superseded or repealed.

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Section 9. Severability: The provisions of this Ordinance are severable. In the event any one or more of the provisions contained in this Ordinance should be held illegal, invalid, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and/or the prior ordinances, rules, regulations, or policies of Whitestown shall not in any way be affected or impaired and shall remain in full force and effect.

Section 10. Effective Date: This Ordinance, except to the extent it incorporates already existing or permissible policies or procedures, shall be in full force and effect from and after its passage and any applicable publication.

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Adopted by the Town Council of the Town of Whitestown, Indiana, this 16 day of August, 2017.

THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA	YAY/NAY
Eric Miller, President	Yes
Susan Austin, Vice-President	Y
Kevin Russell	YAY
Clinton Bohm	YAY
Jeffrey Wishek	Yay

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

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