Ord. No. 12-__

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2012:

Present	Vote
Thomas G. Shepperd, Jr., Chairman	
Sheila S. Noll, Vice Chairman	
Walter C. Zaremba	
Donald E. Wiggins	
George S. Hrichak	

On motion of _____, which carried ___, the following ordinance was adopted:

AN ORDINANCE TO AMEND THE CODE OF YORK COUNTY, VIRGINIA, BY ADDING_____

BE IT ORDAINED this ___ day of _____, 2012, that amendments be, and they are hereby, made to the Code of York County, Virginia, by the addition of the following section dealing with solicitors:

ARTICLE 1. GENERAL

Sec. 1. Definitions

(a) For the purposes of this article, the following terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

County: The County of York, Virginia.

Peddle: The word "peddle" shall mean to operate from a temporary stand, display or similar facility or to travel from house to house, door to door, street to street or from place to place, carrying, conveying, or transporting goods, wares, or merchandise for the purpose of offering and exposing the same for sale, whether or not responding to appointments by telephone, telegraph, correspondence or other means of communication; provided, that to solicit orders and as a separate transaction, make deliveries to purchasers as a part of the scheme or design to evade the provisions of this Section shall be deemed peddling.

Peddler: The word peddler shall mean a person who peddles for himself or any other person.

Person: The word “person” shall mean any individual, organization, trust, foundation, association, partnership, corporation, society or other group or combination acting as a unit.

Sale, sell and *sold:* The words “sale”, “sell” and “sold” shall all mean the transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

Sheriff: The Sheriff of the County of York or a member of his staff to whom he may delegate his duties under this article.

Solicit and *solicitation:* The words “solicit” and “solicitation” shall mean to operate-from a temporary stand, display or similar facility, or to travel from house to house, door to door, street to street, or from place to place taking or attempting to take orders for sale of goods, wares or merchandise, subscriptions, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not responding to appointments prearranged by telephone, telegraph, correspondence or other means of communication. To hire, lease, use or occupy any building or structure, lodging house, apartment, shop or any other place within the County for the sole purpose of exhibiting samples and taking orders for future delivery. A solicitation shall be deemed to occur when and at the place the contact is made to induce the recipient to go elsewhere, whether or not the person contacted actually goes to the other location.

Solicitor: The word "solicitor" shall mean any person who goes from one place of human habitation to another in the county, for the purpose of (i) selling or taking orders for, or offering to sell or take orders for goods, wares, merchandise, any article, or services to be performed; or the making, manufacturing, or repairing of any article or thing, regardless of when delivery or performance is actually made; or (ii) inducing persons contacted to go to another location, either within or without the County, where sales presentations or contracts of any nature whatsoever are, or will be made regarding products, services, or properties, either real or personal, which are offered for sale.

(b) *Exceptions.*

The terms "peddler," or "solicitor" as used in this Chapter do not include:

(1) Persons who as wholesalers or distributors solicit orders from or sell to retail dealers in the County or who sell goods or services to be used in manufacturing or other commercial purposes;

(2) Persons selling, offering for sale, or soliciting orders for fresh farm food products, including but not limited to, vegetables and dairy products;

(3) Persons delivering, selling, offering for sale, or soliciting orders for newspapers;

(4) Persons who visit residential premises at the request or invitation of the owner or occupant thereof;

(5) Route deliverymen who make deliveries to regular customers and whose solicitation is only incidental to their regular deliveries;

(6) Persons engaged in canvassing for or on behalf of political candidates, or referenda;

(7) Persons 12 years of age or under;

(8) Persons collecting or attempting to collect a payment due from a purchaser if the collector and original seller are not the same;

(9) Persons licensed by the Commonwealth of Virginia pursuant to Title 38.2 (Insurance) of the *Code of Virginia* or pursuant to Chapter 21 of Title 54.1 (Professions and Occupations) of the *Code of Virginia*; or

(10) Members of any nonprofit religious, civic or charitable organization who have means of identification provided by such organization.

Sec 2. Prohibited acts.

(a) It shall be unlawful for any person to act as a solicitor, without first securing a solicitor's permit from the Sheriff.

(b) It shall be unlawful for any peddler, or solicitor to ring the bell, or knock on the door, or otherwise attempt to gain admittance for the purpose of peddling or soliciting at any residence, dwelling or apartment at which a sign bearing the words "No Peddlers or Solicitors" or words of similar import indicating that such persons are not wanted on said premises, is painted, affixed or otherwise exposed to public view.

(c) It shall be unlawful for any peddler, or solicitor to peddle, or solicit between the hours of one-half hour before sunset and 9:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

(d) It shall be unlawful for any peddler, or solicitor to fail to disclose to the prospective buyer, upon request, his name and the name of the company, product or organization he represents, and if requested so to do, to leave the premises immediately. Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, shall be deemed guilty of a class 2 misdemeanor.

(e) It shall be unlawful for any peddler, or solicitor to make any assertion, representation or statement of fact which misrepresents the purpose of his call, or use any plan, scheme, or ruse which misrepresents such purpose in the course of carrying on the activity for which the permit is granted.

(f) It shall be unlawful for any peddler or solicitor to fail to provide, at the request of the purchaser, a written receipt, which receipt shall be signed by the person making the sale and shall set forth a brief description of the goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment.

(g) It shall be unlawful for any person issued a permit pursuant to this Chapter to use or exploit the fact of being issued a permit so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by this County. Permitting does not imply endorsement by York County.

(h) It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit required by this Chapter.

(i) It shall be unlawful for any peddler, or solicitor to conduct himself in a disorderly or unlawful manner.

Sec. 3. Record.

The Sheriff shall keep a permanent record of all permits issued under this Chapter.

Sec. 4. Conditions.

A solicitor's permit shall be issued subject to all conditions set forth in this Chapter.

Sec. 5. Orders to be in writing, etc.

All orders taken by the holder of a solicitor's permit issued under this Chapter shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and include a statement of the buyer's rights and a notice of cancellation which comply with

the provisions of the Virginia Home Solicitation Sales Act (*Code of Virginia*, Chapter 2.1 of Title 59.1) A copy of such order shall be given to the purchaser.

Sec. 6. Places where solicitation prohibited.

Solicitation for which a permit is required under this Chapter shall be prohibited in the county at the following locations:

(a) Upon any property owned or controlled by the county or by the County School Board of York County, including, but not limited to public buildings; public parking lots owned or under the control of the county; property owned by the County and leased to the Economic Development Authority of York County and developed and used for commercial retail development and known as Riverwalk Landing in Yorktown, and parks and playgrounds owned by the county.

(b) Within ten feet of any handicapped parking space or access ramp.

Sec. 7. Interference with use of streets.

No holder of a solicitor's permit issued under this Chapter shall sell, distribute or circulate literary material or canvass or solicit orders for goods or merchandise or carry on any other activity of a solicitor as defined in section 1 from pedestrian or vehicular traffic on or adjacent to any street within the limits of the county in such manner as will interfere with the normal and usual use of such street.

Sec. 8. Penalties.

The violation of any provision of this Chapter shall be punishable as a class 1 misdemeanor.

Sec. 9. Severability.

If any part, section, subsection, sentence, clause or phrase of this Chapter is, for any reason, declared to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect or impair the constitutionality or validity of the remaining portions hereof.

ARTICLE 2. PERMITS

Sec 1. Permits required; surrender of revoked or suspended Permits.

It shall be unlawful for any peddler or solicitor to engage in such business or act within the meaning and application of this Chapter within the County without first obtaining a permit therefor in compliance with the provisions of this Article. Any permit issued pursuant to this Chapter shall remain the property of York County, Virginia, and upon written notification from the Sheriff, any person who has been issued a permit which has been suspended or revoked shall surrender and return that permit to the Sheriff.

Sec 2. Possession of permit and copy of permit to be provided.

The holder of a solicitor's permit issued under this chapter shall have his solicitor's permit in his possession at all times and shall exhibit such permit at any time upon request by any law enforcement officer of the County, by any purchaser, or by any person being solicited. It shall be unlawful for any person required to be issued a permit by this Chapter to refuse to exhibit to a prospective purchaser, purchaser, or to the Sheriff that permit after being requested to do so.

Sec 3. Identification on vehicles; business sign.

Every vehicle used by a peddler or solicitor in the conduct of his business shall have conspicuously displayed thereon, in letters and numerals not less than three (3) inches high, the name and business address of the person, firm or corporation using such vehicle.

Sec 4. Application for Permit.

(a) All applications for permits and renewals thereof required by this Chapter shall be made in person, on forms provided by the Sheriff. Each applicant, if an individual, shall be required to be fingerprinted and photographed by the County. The applicant shall provide the following information, if applicable, under oath:

(1) Pertinent personal data requested, including name, local and permanent home address, and business address. The applicant must corroborate this information by producing some form of identification, with photograph, issued by a government agency and at least one (1) other means of identification.

(2) Description of applicant's physical condition.

(3) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing of the application, which picture shall be two (2) inches by two (2) inches showing the head and shoulders of the applicant in a clear and distinguishing manner;

(4) If employed, the name and address of the employer, together with credentials establishing the exact relationship.

(5) A brief description of the nature of the business and the goods to be sold or services to be performed, or in the case of solicitation to induce attendance at sales presentations, the location where the sales presentation will be made and the product or products offered for sale.

(6) The name and address of the entity for which solicitations are being sought, if other than for the applicant's employer, together with credentials establishing the authority to solicit on such entity's behalf.

(7) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor, together with a signed authorization for the Sheriff to conduct a criminal background check of the applicant.

(8) The approximate length of time the applicant intends to do business in the County.

(9) If a vehicle is to be used, a description of the same, together with the registration and license number, or other means of identification.

(10) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced; where such goods or products are located at the time such application is filed; and the proposed method of delivery.

(11) The names of at least two (2) persons who will certify as to the applicant's good character and business responsibility, or in lieu of the names of references, such other available evidence as will enable the Sheriff to evaluate properly such character and responsibility.

(12) Any other permits or licenses required under other applicable County or state laws or regulations to enable the applicant to peddle or solicit in the manner or location indicated in his or her application.

Sec 5. Fee.

Every applicant for a permit pursuant to this Chapter shall first pay the Sheriff the sum of Twenty Dollars ($20.00) to cover processing and the costs of administration prescribed by this Article. This fee shall not be refunded to the applicant in the event that a permit is refused or revoked.

Sec 6. Bond required.

(a) Every applicant, not a resident of the County, or who is a resident of the County and represents a firm whose principal place of business is located outside the Commonwealth of Virginia, shall file with the Sheriff a surety bond from a bonding or insurance company licensed to do business in the Commonwealth of Virginia, running to the County in the amount of one thousand dollars ($1.000.00), with surety acceptable to and approved by the Sheriff, conditioned that the applicant shall comply fully with all the applicable provisions of this code, the ordinances of the County and Virginia law regulating and concerning the business of peddling and guaranteeing to any citizen of the County that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor, and further guaranteeing to any citizen of the County doing business with such solicitor that the property purchased or services for which contracted will be delivered or performed according to the representations of such solicitor. Action on such bond may be brought in the name of the County to the use or benefit of the aggrieved person.

(b) If the applicant is an agent, employee, or solicitor of a corporation authorized to do business in the Commonwealth of Virginia or registered under the fictitious name act of the Commonwealth of Virginia, such corporation or fictitious name business may furnish one (1) bond in the amount of one thousand dollars ($1,000.00) for any and all of its agents, employees, or solicitors.

Sec. 7. Service of process.

Before any permit shall be issued under this article, there shall also be filed with the Sheriff an instrument in writing, signed by the applicant under oath, nominating and appointing the Sheriff his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on the behalf of such applicant, and service of summons in any action brought upon the applicant's bond shall be deemed made when served on the Sheriff.

Sec 8. Investigation of applicant.

The Sheriff shall have an investigation made of the applicant. A confidential record of the investigation shall be kept on file by the Sheriff and be made available to the York County Board of Supervisors if necessary to the York County Board of Supervisor's consideration of an appeal of a denial of a license or renewal thereof. Such record shall also be made available to the applicant upon his request.

Sec 9. Issuance and denial.

(a) Except for any action taken pursuant to Paragraphs (b) of this Section, the Sheriff shall issue the applicant a permit within fifteen (15) days following the date of the filing of a permit application which is completed in proper form and accompanied by the fee required in this Article. Such permit shall be dated and signed by the Sheriff.

(b) The Sheriff may, after investigation and finding that the health, safety and welfare of the public so demand, refuse to issue a permit to an applicant for reasons including, but not limited to, the following:

(1) Conviction of any felony within the five (5) years immediately preceding the date of filing of the application.

(2) Conviction of any crime within the five (5) years immediately preceding the date of filing of the application, involving a crime against a person or involving moral turpitude, including, but not limited to, violation of any law regulating sexual conduct or the production, sale, possession or use of narcotics.

(3) Fraud, misrepresentation or intentional false statement of material or relevant facts contained in the application or previous denial or revocation of any permit as provided by this Chapter.

(4) The applicant does not have other necessary permits or licenses required to peddle or solicit in the manner or location indicated in his or her application or is prohibited under other applicable laws or regulations from conducting his or her business in such a manner or location.

(c) In the event the Sheriff denies a permit, he shall notify the applicant, in writing, within ten (10) days of the denial of the permit. Such notification shall be sent by certified mail. The applicant may appeal therefrom as provided for in this Article.

Sec 10. Contents of Permit.

Such permit shall contain the following information: a permit number, name and address of the applicant, photograph and thumbprint of applicant, if an individual; the kind of goods to be sold or services performed; name of employer, if any; date of issuance and expiration; signature of the Sheriff; and an identifying description of any vehicle used in such business.

Sec 11. Duration of Permit; non-transferable.

All permits issued pursuant to this Article shall be valid for a period of one (1) month from the date of issuance. No permit shall be transferable. A permit shall become void at such time as a permitee hereunder changes (i) the permitee's employer, if not self-employed, (ii) the kinds of goods to be sold, or (iii) the type of services to be performed.

Sec. 12. Renewal.

A solicitor's permit issued under this Chapter may be renewed on its expiration date for the next consecutive calendar month, upon the execution of a renewal application setting forth that the statements made in the original application are true and accurate statements at the time the renewal application is filed, or a renewal application setting forth all changes in the original application required by a change in facts since the date of filing the original application. For each renewal permit, the applicant shall pay the Sheriff a fee of $5.00. The permit may be renewed at the end of each calendar month during which it remains in force for the next successive calendar month. If, however the permit holder fails to timely renew same it shall lapse and may not be renewed, provided that a new permit may be issued in accordance with the application requirements for a new permit.

Sec 13. Suspension of Permit.

Any permit issued under this Article may be suspended by the Sheriff, without notice or hearing, for a period of up to ten (10) days for any of the reasons for which a license could be denied under this Article or for any violation of any provision of this Chapter. Such suspension may be extended beyond the initial period until the charge(s) upon which it is grounded have been disposed of; provided, that the permitee shall be so notified in writing within the initial ten-day period of suspension.

Sec 14. Revocation of Permit.

(a) Any permit issued under the provisions of this Article may be revoked by the Sheriff after first giving seven (7) days' written notice to the permitee stating the reasons therefor, which may include, but shall not be limited to, the following:

(1) Any of the reasons for which a permit can be denied under this Chapter.

(2) Cancellation or termination of the bond required in this Article.

(3) Conduct of the business or activity for which the permit was issued in an unlawful manner or in such manner as to constitute a breach of the peace or a danger to the health, safety, and welfare of the public, including but not limited to, the following:

a. Use of a threat, expressed or implied, or of coercion as inducement to make a sale; or

b. Refusal to discontinue efforts to make a sale when specifically requested to do so by the prospective purchaser.

c. Fraud, misrepresentation or false statements contained in the application for the solicitation permit.

d. Fraud, misrepresentation or false statements made in the course of carrying on the business as a solicitor.

e. Conviction of any crime or misdemeanor involving moral turpitude.

(4) Violating any provision of this Chapter.

(5) Violating any provision of the Virginia Home Solicitation Sales Act (*Code of Virginia*, Chapter 2.1 of Title 59.1), the Virginia Consumer Protection Act (*Code of Virginia*, Chapter 17 of Title 59.1) or any other applicable consumer protection measures which are pertinent to the conduct of the permitted business activity.

(b) Notice of revocation shall be sent by certified mail to the permitee at the business address appearing on the permit application; or if there be none, to the residence address appearing thereon. The permitee may file an appeal therefrom in accordance with this Article.

(c) The Sheriff shall keep a permanent record of all permits revoked.

Sec 15. Appeals.

(a) *From Decisions of the Sheriff.*

(1) *Right of appeal.* If the Sheriff denies, suspends or revokes any permit, any person affected thereby may appeal such decision to the York County Board of Supervisors.

(2) *Procedure.* The appellant or his attorney may file with the Chairman of the York County Board of Supervisors or the York County Administrator a written notice of appeal signed by the appellant or his attorney requesting a hearing and setting forth a brief statement of the reasons therefor. Such appeal shall be filed within ten (10) days of receipt of the notice of denial, suspension or revocation.

a. Upon receipt of such notice of appeal, the York County Board of Supervisors shall forthwith set a time and place for such hearing which shall be scheduled within sixty (60) days of receipt of the request therefor and shall mail written notice thereof to the appellant or his attorney in the same manner as is notice of denial or revocation of a permit as stated in this Article.

b. Hearings pursuant to this Article shall be open to the public and shall be, insofar as is reasonably practicable, informal and free of technical rules of law or evidence. Appellant may call such witnesses as are deemed necessary.

(i) The York County Board of Supervisors shall hear the matter de novo, and shall consider the evidence presented to it, including any statements offered by interested parties.

(ii) The York County Board of Supervisors may establish such additional rules of procedure for the conduct of its hearings as may be consistent with the provisions of this Chapter.

c. Decisions of the York County Board of Supervisors shall be reduced to writing, and rendered within thirty (30) days of concluding the hearing. A copy thereof shall be furnished to appellant or his attorney.

d. If the York County Board of Supervisors affirms the decision of the Sheriff to deny, suspend or revoke a permit, the denial, suspension or revocation shall be effective from the date of the York County Board of Supervisors' order, except as hereinafter provided in this Section.

e. If the York County Board of Supervisors reverses the decision of the Sheriff, the York County Board of Supervisors shall direct the Sheriff to issue or restore the permit in accordance with its order.

(b) *Decisions of the* York County Board of Supervisors. The decisions of the York County Board of Supervisors shall in all cases be final and conclusive.

Sec 16. Filing of application after denial or revocation.

No application for a permit under the provisions of this Article shall be accepted from any person whose application for a permit has been denied or whose permit has been revoked for a period one (1) year from the date of such denial or revocation.