

ORDINANCE #02-2015

**BOROUGH OF ROSELAND
COUNTY OF ESSEX, STATE OF NEW JERSEY**

**AN ORDINANCE AMENDING CHAPTER IV OF THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF ROSELAND
ENTITLED “LICENSING AND BUSINESS REGULATIONS”,
REPLACING SECTION 4-4 ENTITLED “SOLICITORS AND
CANVASSERS” WITH NEW SECTION 4-4 ENTITLED
“SOLICITATION”**

WHEREAS, Section 4 entitled “Solicitors and Canvassers” of Chapter IV of the Revised General Ordinances entitled “Licensing and Business Regulations” of the Borough of Roseland currently regulates solicitors and canvassers operating in the Borough of Roseland; and

WHEREAS, the Mayor and Council of the Borough of Roseland wish to deter the use of peddling or soliciting to gain access to homes or other premises for criminal purposes; maintain peace, comfort, quiet and privacy for residents of the Borough of Roseland while balancing the same against the opportunity for peddlers and solicitors to exercise their rights of free speech; discourage unethical, dishonest and illegal business practices; prevent dishonest solicitation of funds; protect the safety and welfare of the inhabitants of the Borough of Roseland as well as peddlers and solicitors engaged in such activities within the Borough of Roseland; preserve safety and order in and about the streets, sidewalks, businesses and public areas in the Borough of Roseland.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Roseland that Section 4 entitled “Solicitors and Canvassers” of Chapter IV of the Revised General Ordinances entitled “Licensing and Business Regulations” of the Borough of Roseland shall be replaced by new Section 4-4 entitled “Solicitation” as follows:

SECTION I

That section 4-4 entitled “Solicitors and Canvassers” shall be replaced in its entirety by new section 4-4 as follows:

4-4 SOLICITATION.

**Article I
Commercial**

4-4.1 Definitions; word usage.

For the purpose of this Article, the following terms, words and phrases shall be interpreted as follows:

Applicant – A person or entity seeking to obtain a license for commercial solicitation.

Canvasser – Any person who travels, either by foot or automobile or any other type of conveyance, from place to place, from house to house or from street to street to seek or develop support for, to conduct market research about, to determine feelings or opinions about, to conduct a survey about, or explain a position about and on behalf of any commercial product, cause or organization.

Employee – Any individual receiving compensation, in any form whatsoever, from an entity for engaging in solicitation within the Borough.

Goods and/or Services – Includes but is not limited to food (including but not limited to ice cream, refreshments and farm products), magazines and periodicals, advertisements, commercial handbills, personal property, coupons, products, merchandise, wares, orders or contracts for a service, home improvement or alterations.

Itinerant Vendor or Solicitor – Any person who travels, either by foot or automobile or any other type of conveyance, from place to place, from house to house or from street to street taking or attempting to take orders for the sale of goods of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether or not such person has, carries or exposes for sale a sample of the object to be sold, and whether he/she is collecting advance payments on such sales; but shall not include wholesalers calling on retail merchants.

License – A license for commercial solicitation issued by the Borough of Roseland pursuant to the provisions of this article.

Peddler or Hawker – Any person who travels, either by foot or automobile or any other type of conveyance, from place to place, from house to house or from street to street, carrying, conveying or transporting goods for the purpose of selling and delivering them to prospective customers.

Person – Not only an individual, but also any organization, firm, partnership, corporation, company, association, church, religious denomination, society, class, league or other entity or group.

Solicitation or Solicit – To go in or upon the streets, roads, and semiprivate and private property in the Borough of Roseland without having been invited to do so by the owner or occupant of the property, for the purpose of advertising, promoting or selling any products, goods or services or conducting market research or a market or opinion survey regarding commercial goods or services. Solicitors shall include but shall not be limited to itinerant vendors, peddlers, hawkers and canvassers of commercial products or services. Solicitation shall include the placement upon private property of handbills or other written material advertising goods or services for sale. Solicitation shall also include the sale of goods or services which the solicitor promises to donate or deliver to a charitable or other nonprofit institution on behalf of the purchaser.

4-4.2 License required.

Except as otherwise provided in Section 4-4.3 below, it shall be unlawful for any person to solicit, sell or dispose of or to offer to sell or dispose of any goods, or to solicit orders for the performance of any service or to engage in commercial canvassing within the corporate limits of the Borough of Roseland without first obtaining a license therefor in compliance with the provisions of this article. Such license shall not be transferable from the person to whom issued to any other person. A separate license shall be obtained by each solicitor, itinerant vendor, hawker, peddler or canvasser for every agent or employee working for him/her.

4-4.3 Exemptions from requirements.

The requirements of this article shall not apply to the following:

- a. Any person honorably discharged from the military service who has a license under N.J.S.A. 45:24-9 et seq.
- b. Any person who is an exempt firefighter of a volunteer fire department, as defined by N.J.S.A. 45:24-9 and 45:24-10, possessing a license in conformity with said law.
- c. Any public utility or its employees, which said utility is subject to regulation by the State Board of Public Utility Commissioners; provided, however, that such employee shall display the identification badge or card issued by his/her employer.
- d. Any person engaged in the delivery of goods, wares or merchandise or other articles or things in the regular course of business to the premises of persons who had ordered the same or were entitled to receive the same by reason of a prior agreement.
- e. Any individual engaged in the delivery of newspapers published in the state.
- f. Commercial travelers or selling agents calling upon commercial establishments in the usual course of business.
- g. Any person to whom Article II (noncommercial solicitation) of this chapter applies.

4-4.4 Application for license.

- a. Every applicant for a license under this article shall be 18 years of age or older and shall follow the procedures set forth in Chapter 4, Licensing and Business Regulations.
- b. Each applicant for a license shall secure through a private agency a criminal history background check, conducted not more than 14 days prior to the filing of the application. Such criminal history background check must be submitted (as part of the application) directly from the private agency to the Chief of Police. The criminal history background check shall be in sufficient detail and scope to reveal any criminal history recorded with the State Bureau of Identification or

with the Federal Bureau of Investigation and to allow the Chief of Police to reach an informed decision as required by Section 4-4.5a.2. below.

4-4.5 Investigation and approval of application.

a. The investigation required under Section 4-1.3 shall be limited to that sufficient for the Chief of Police or his designee to make a determination that:

1. The issuance of a license is in accordance with the provisions of Section 4-4.3 above and N.J.S.A. 45:17A-18 et seq.; and

2. The applicant has not been convicted of any criminal offense or a violation of a municipal ordinance relating adversely to the registrant's fitness to perform activities regulated by this article, including those involving violence or the threat of violence.

b. For the purpose of this section, a plea of guilty, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a violation.

4-4.6 License fee.

The license fee payable under this article shall be provided in Section 4-2.4, Fees, for each license and shall be paid at the time the application is submitted. The license fee is nonrefundable.

4-4.7 Time restrictions.

Solicitation shall take place within the Borough only between the hours of 10:00 a.m. and 7:30 p.m. on Mondays through Saturdays.

4-4.8 Carrying and displaying of badge.

Each individual and/or member of any organization permitted to conduct solicitations shall attach and display, on the front outer layer of his/her clothing, a badge to be supplied by the Borough. The badges shall be lettered and delivered by the Clerk and shall be uniform in style and design. The following information shall be printed on the badge:

a. Name of the solicitor;

b. Name and address of the organization on whose behalf the solicitation is made. The municipal and state address of the organization shall be the most conspicuous writing on the badge and shall be at least twice as large as any other printed matter contained on the badge;

c. Expiration date of the license;

d. A statement that the Borough of Roseland has licensed the solicitation but neither approves nor disapproves of the organization and/or its activities.

- e. Photograph of solicitor.

4-4.9 Code of conduct.

Every individual issued a license under this article shall conduct himself/herself according to the following code of conduct:

- a. He/she shall not enter or remain upon any resident's property that is on the "Do Not Solicit" List (See Article III of this chapter.) or upon which it is posted that solicitors are not permitted, or notice of similar content.
- b. He/she shall display his/her badge in a visible manner as described in Section 4-4.8.
- c. He/she shall not enter or attempt to enter any dwelling unit without express invitation from the occupant therein.
- d. He/she shall immediately leave the resident's property upon request by the resident to do so.
- e. He/she shall not leave, on or about the resident's property, any circular, samples or other matter or material unless same is handed to an occupant of the property.
- f. He/she shall not indicate that the Borough endorses or sponsors any of the views expressed or the organization for which support of contribution is sought.
- g. He/she shall not make false claims, misrepresentations or materially incorrect statements concerning the solicitation, organizations represented or the use to be made of the amount solicited.
- h. He/she shall not engage in any course of alarming conduct or conduct himself/herself so as to reasonably alarm or annoy the occupant of the dwelling.
- i. He/she shall not engage in any conduct which is prohibited by any statute, regulation or ordinance in effect in the Borough of Roseland.
- j. He/she shall present written receipts in accordance with Section 4-4.12.
- k. He/s he shall have a complete copy of this article in his/her possession at all times.
- l. He/she shall be wearing a reflective vest and carrying a functioning flashlight at dusk or later.
- m. He/she shall have in his/her possession at all times a copy of the "Do Not Solicit" List (See Article III of this chapter.) that is no more than two weeks old. A current copy of the updated "Do Not Solicit" List is accessible on the Borough's official website.

4-4.10 Prohibited practices.

a. No individual shall go upon any property or create any sound in a manner calculated to attract the attention of any occupant of a residence on which is posted a sign expressly prohibiting such activity.

b. No individual shall enter a roadway for the purpose of approaching occupants of motor vehicles using the roadway or approach such occupants; have any exclusive right to any location; operate or conduct any of his/her business from a fixed location; or be permitted to operate in any congested area where his/her operations might impede or inconvenience the public. For the purposes of this section, the judgment of a police officer, exercised in good faith, shall be deemed presumptive as to whether the area is congested or the public impeded or inconvenienced. As used herein, a licensee shall be deemed to be operating from a fixed location if he/she has been in the same location, or one within 200 feet in any direction of the location, or remains on the same lot for more than 30 consecutive minutes.

c. No individual shall solicit any goods or services, including but not limited to food, ice cream and soft drinks, within 1,000 feet of any commercial establishment or machine selling, vending or dispensing the same or substantially similar goods or services.

d. No individual shall solicit any goods or services, including but not limited to food, ice cream and soft drinks, in any municipal park or other place of recreation or cultural activity or upon any public street or right-of-way adjacent to such municipal park or place of recreational or cultural activity.

4-4.11 Solicitation at shopping centers.

Whenever any individual or organization shall be limiting its proposed solicitation activity to a particular shopping center, as defined in Section 30-202, all approvals for such proposed solicitation shall be received from the shopping center management. Such person or organization seeking to solicit shall make application to the shopping center management for permission to solicit. If the shopping center management approves of the proposed solicitation, it shall have the applicant complete an application form provided to the shopping center management by the Borough Clerk's office. The shopping center management shall then forward the completed application to the Borough Clerk, together with notification of the dates and times during which the solicitation shall take place. The duration, coordination and timing of any such solicitation(s) shall be at the discretion of the shopping center management. Upon receipt of a solicitation application approved by the shopping center management, the Borough Clerk's office shall notify the Borough's Code Enforcement Department and Police Department of the solicitation activity which has been approved at the particular center.

4-4.12 Written receipts required.

Any person receiving money or any other thing for a value of \$1 or more from any contributor under a solicitation made pursuant to this article shall give to the contributor a written receipt signed by the solicitor showing the date and the amount received, provided that this section

shall not apply to any contribution collected by means of a closed box or receptacle used in solicitation where the use thereof has been approved by the Borough in accordance with this article where it is impractical to determine the amount of each contribution. Copies of such receipts shall be kept and available for inspection upon the request of a police officer.

4-4.13 Enforcement.

It shall be the duty of any police officer of the Borough of Roseland or the Code Enforcement Officer to enforce the provisions of this Article.

4-4.14 Violations and penalties.

In addition to license revocation as set forth in Section 4-1.9, any person, organization or agent thereof found guilty of violating any provision of this article shall, upon conviction, be subject to the penalties provided in Chapter I, Section 5, General Penalty, unless the penalty prescribed for such conduct by state statute is less, in which case the lesser penalties shall apply.

Article II Noncommercial

4-4.15 Definitions.

As used in this article, the following terms shall have the meanings indicated:

Activity – The act of engaging in noncommercial canvassing or soliciting.

Canvasser – A person who is canvassing.

Canvassing – The activity of traveling, either by foot or automobile or any other type of conveyance, from place to place, from house to house or from street to street to seek votes, support (not necessarily monetary) for any noncommercial cause or organization, to determine feelings or opinions, to conduct a survey, to discuss or debate a topic, or to explain a position.

Charitable and Philanthropic – Those persons and/or organizations with a valid and unexpired registration and/or a written exemption from the Attorney General of the State of New Jersey issued pursuant to N.J.S.A. 45:17A-18 et seq.

[Editorial Note: Charitable organizations and professional fund raisers based, operating or soliciting within New Jersey must register with the Division of Consumer Affairs Charities Registration Section unless specifically exempted under the provisions of the Charitable Registration and Investigation Act (N.J.S.A. 45:17A-18 et seq.) also known as the "CRI Act."]

Contribution – Includes the giving of alms, food, clothes, money, subscriptions, pledges or property of any nature or kind.

Person – Not only an individual, but also any organization, firm, partnership, corporation,

company, association, church, religious denomination, society, class, league or other entity or group.

Solicit and Solicitation – The traveling, either by foot or automobile or any other type of conveyance, from place to place, from house to house or from street to street to request, directly or indirectly, money, credit, property, financial assistance, and other things of value in the plea or representation that such money, credit, property, financial assistance or other thing of value will be used for a charitable or philanthropic purpose as defined in this article or for a political or other noncommercial purpose. "Solicitation" shall be deemed to be complete when made, whether or not the person making the same receives any contribution.

Solicitor – A person who solicits.

4-4.16 License exemption.

Any person may solicit political, charitable and philanthropic contributions or engage in noncommercial soliciting or canvassing, including doing so on behalf of a political, philanthropic or charitable organization within the Borough, without first obtaining any license or prior approval authorizing such activity, provided the person conducts such solicitation and/or canvassing in compliance with this article, Section 4-4.15 et seq.

4-4.17 Advance notification.

a. Before any person shall engage in any noncommercial canvassing or soliciting, including canvassing or soliciting on behalf of a political, philanthropic or charitable organization, he/she/it shall provide the following information to the Borough Police Department and to the Borough Clerk, at least three days in advance of the commencement of such canvassing or soliciting:

1. Name, address and date of birth of each canvasser or solicitor.
2. Name and address of the affiliated organization, entity or group sponsoring or conducting the soliciting or canvassing, if any.
3. If a vehicle is to be used in any portion of the activity, a description of the vehicle(s), including color, make, model, year, license plate number, including state of registration, as well as name and address of registered owner.
4. If the solicitor or canvasser is employed by another, the name and address of the employer.
5. The days of the week and hours of the day over the next 30 days during which the activity will be conducted.
6. A description of the section of the Borough in which the activity will be

carried out on each such day. Use of street boundaries of the area is the desirable manner in which to describe the section of the Borough.

7. A statement as to whether each canvasser or solicitor has ever been convicted of any crime or the violation of any municipal ordinance, other than traffic offense, and, if so, the date and place of conviction and the nature of the offense. The submission of false information hereunder shall be a violation for the person submitting such false information.

8. The general nature of the solicitation and canvassing.

9. The name, address and cellular telephone number of the person who will be in direct charge of supervising the solicitation or canvassing.

10. A brief outline of the method to be used in conducting the solicitation or canvassing.

b. The notification provided to the Borough pursuant to this section shall be effective for a thirty-day period. Re-notification shall be given every 30 days if the activity extends beyond 30 days.

4-4.18 Calendar of solicitations.

It shall be the duty of the Borough Clerk to keep a calendar of solicitations and canvassing for which advance notice has been given to the Borough. Such calendar shall be posted on the official Borough website to allow access to and for the information of Borough residents.

4-4.19 Written receipts requested.

Any person receiving money or any other thing for a value of \$1 or more from any contributor under a solicitation made pursuant to this article shall give to the contributor a written receipt signed by the solicitor showing the date and the amount received, provided that this section shall not apply to any contribution collected by means of a closed box or receptacle used in solicitation where the use thereof has been approved by the Mayor and Council, where it is impractical to determine the amount of each contribution. Copies of such receipts shall be kept available for inspection upon request of a police officer.

4-4.20 Hours of solicitation and canvassing.

All solicitations and canvassing shall take place between the hours of 10:00 a.m. and 9:00 p.m.

4-4.21 Display of badge.

a. Every solicitor or canvasser shall attach and display, on the front outer layer of his/her clothing, a badge not smaller than two inches by 3 1/2 inches with letters and figures at

least 1/4 inch high on contrasting background and displayed so that the information thereon is easily discernible from a distance of seven feet. The following information shall be printed on the badge:

1. Name of the solicitor.
2. Picture of the solicitor.
3. If the solicitation or canvassing is conducted on behalf of an organization, entity or group, the name of such organization, entity or group shall be printed on the badge.

b. The badge requirement may be satisfied by utilizing a photo identification card issued by any governmental agency, school or employer.

4-4.22 Code of conduct.

Every solicitor or canvasser under this article shall conduct himself/herself according to and shall observe the following code of conduct:

a. He/she shall not enter or remain upon any resident's property that is on the "Do Not Solicit" List (See Article III of this chapter.) or upon which it is posted that solicitors are not permitted, or notice of similar content.

b. He/she shall display his/her badge in a visible manner as described in Section 4-4.21.

c. He/she shall not enter or attempt to enter any dwelling unit without express invitation from the occupant therein.

d. He/s he shall immediately leave the resident's property upon request by the resident to do so.

e. He/s he shall not leave, on or about the resident's property, any circular, samples or other matters or material unless same is handed to an occupant of the property or is securely attached at an entrance door.

f. He/she shall not indicate that the Borough endorses or sponsors any of the views expressed or the organization for which support of contributions are sought.

g. He/she shall not make false claims, representations or materially incorrect statements concerning the solicitation, organizations represented or the use to be made of the amount solicited.

h. He/she shall not engage in any course of alarming conduct or conduct himself/herself so as to reasonably alarm or annoy the occupant of the dwelling.

- i. He/she shall not engage in any conduct which is prohibited by any statute, regulation or ordinance in effect in the Borough.
- j. He/she shall present written receipts as required by Section 4-4.19 hereof.
- k. He/s he shall have a complete copy of this article in his/her possession at all times.
- l. He/she shall wear a reflective vest and carry a functioning flashlight at dusk or later.
- m. If he/she is 15years of age or younger, adult supervision shall be immediately available within reasonable sight distance.
- n. He/she shall have in his/her possession at all times a copy of the "Do Not Solicit" List (See Article III of this chapter.) that is no more than two weeks old. A current copy of the updated "Do Not Solicit" List is accessible on the Borough's official website.

4-4.23 Use of streets.

No solicitor or canvasser shall have an exclusive right to any location; enter a roadway for the purpose of approaching occupants of motor vehicles using the roadway or approach such occupants; or operate or conduct any of his/her activity from a fixed location in any congested area where his/her activity might unreasonably impede or inconvenience the public or impose a threat to public safety. For purposes of this section, the judgment of a Police Officer, exercised in good faith, shall be used to determine whether the area is congested, the public unreasonably impeded or inconvenienced or that the activity poses a threat to public safety. As used herein, a solicitor or canvasser shall be deemed to be operating from a fixed location if he/she has been in the same location, or within 200 feet in any direction of the location, for more than 15 consecutive minutes.

4-4.24 Exemption from regulations.

Soliciting or canvassing by visiting a property where the owner or resident of such property has directly or implicitly indicated to the solicitor or canvasser, through prior interaction, that his/her visit would be welcomed is exempt from the provisions of this article. The burden of persuasion shall be on the person claiming this exemption.

4-4.25 Violations and penalties.

Any person found guilty of violating any provision of this article shall, upon conviction, be subject to a penalty not to exceed a fine of \$150 for a first offense. A second conviction under this article, within a two- year period, shall result in a penalty not to exceed a fine of \$500, five days in jail and/or 10 days of community service. A third or subsequent conviction under this article, within a two-year period, shall result in a penalty not to exceed a fine of \$2,000, 90 days in jail and/or 90 days of community service.

Article III
"Do Not Solicit" List

4-4.26 Definitions.

All definitions as set out in Articles I and II of this chapter shall apply to this article.

4-4.27 Registration of property.

Any person or entity who owns or rents property within the Borough may register such property to be included on the "Do Not Solicit" List by registering through the Borough Clerk's office.

4-4.28 Maintenance of list.

Maintenance of the "Do Not Solicit" List shall be as follows:

- a. The "Do Not Solicit" List shall be maintained by the Borough Clerk. The list shall be available through the official Borough website.
- b. The "Do Not Solicit" List shall consist solely of property addresses and shall include no further identifying information concerning the ownership of each property.
- c. The Tax Assessor shall notify the Borough Clerk of any change in ownership of property within the Borough. The Borough Clerk shall remove from the "Do Not Solicit" List any property which has changed ownership.
- d. Other than by sale of property, a property, once listed, may only be removed from the list by submitting a written, sworn and notarized request, sent to the Borough Clerk.

4-4.29 Duties of Borough Clerk's office.

The Borough Clerk's office shall:

- a. Post a copy of the "Do Not Solicit" List on the official Borough website.
- b. Provide a copy of the "Do Not Solicit" List to every applicant to whom a license is issued pursuant to Chapter 4.
- c. Provide a copy of the "Do Not Solicit" List to any person notifying the Borough Clerk's office pursuant to Section 4-4.17 of his/her intention to engage in noncommercial soliciting or canvassing. The failure of the Borough Clerk to provide the "Do Not Solicit" List to such person or the failure of such person to have received a copy of the "Do Not Solicit" List from the Borough Clerk shall not provide a defense to the requirement of having in his/her possession a copy of the updated "Do Not Solicit" List as required by Section 4-4.9m..

4-4.30 Solicitation prohibited.

It is prohibited for any person to conduct any commercial or noncommercial solicitation or canvassing at any property listed on the "Do Not Solicit" List.

4-4.31 Exclusion to prohibition.

The prohibition in this article shall not apply to the visiting of a property where the owner or occupant of such property has directly or implicitly indicated to the solicitor or canvasser, through prior interaction, that his/her visit would be welcomed. The burden of persuasion shall be on the person claiming this exemption.

4-4.32 Severability.

Every section or provision of this article shall be deemed a separate provision to the extent that if any portion shall be declared invalid, such determination shall not affect the remaining parts of this ordinance, which shall remain in force and effect to the extent severable.

SECTION II

If any section or provision of this ordinance shall be invalid in any court the same shall not affect the other sections or provisions of this ordinance except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

SECTION III

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION IV

This ordinance shall take effect upon publication as provided by law.

DATE OF INTRODUCTION: _____

Motion to Introduce by: _____

Motion Seconded by: _____

Introduction Approved: _____ (Voice Vote)

DATE OF ADOPTION: _____

Motion to Adopt by: _____

Motion Seconded by: _____

Record of Council Vote on Final Passage		Aye	Nay	Abstain	Absent
JACOBS, D.					
LEONARD, R					
SMITH, P.					
TOLLI, M.					
TSILIONIS, T.					
VIDOVICH, M.					
DUTHIE, J. (In case of tie)					

 John Duthie, Mayor

 Jock H. Watkins, Borough Clerk