

**TOWN OF TIMNATH, COLORADO  
ORDINANCE NO. 18, SERIES 2017**

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 10, ARTICLE 10  
OF THE TIMNATH MUNICIPAL CODE  
RELATING TO DOOR-TO-DOOR SOLICITATION**

**WHEREAS**, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the "Charter") and the Town's Municipal Code (the "Code"). Pursuant to the Charter, the Code and the authority given home rule municipalities, the Town may adopt and amend ordinances; and

**WHEREAS**, the effect of the amendments to Chapter 10, Article 10 of the Code replace the current regulation of solicitation with a permit system regulating commercial solicitation, and to continue to allow non-commercial residential solicitation without a permit except that both commercial and non-commercial solicitation would be prohibited at residences where a sign prohibiting the same is posted, and that commercial solicitation would be prohibited at residences that opt into a no-solicitation list maintained by the Town on its website; and

**WHEREAS**, Town staff has recommended that Chapter 10, Article 10 of the Code be revised to ensure it is consistent with evolving First Amendment jurisprudence, while continuing to protect residents from fraud and crime, and to preserve residents' privacy in their homes; and

**WHEREAS**, The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of public health, welfare, peace, safety, and property and that this Ordinance is necessary for the protection of public convenience and welfare.

**NOW, THEREFORE, THE COUNCIL OF THE TOWN OF TIMNATH, COLORADO, ORDAINS:**

**ARTICLE 1 – AMENDMENT**

The Town Council hereby approves the repeal and replacement of Chapter 10, Article 10 of the Code with the following Sections:

**ARTICLE 10 - Solicitations**

**Sec. 10-10-10. - Title; purpose.**

(1) This Article shall be known and cited as the "Timnath Door-to-Door Solicitation Ordinance."

(2) The provisions of this Article are intended to balance the First Amendment rights of residential solicitors in the Town with the privacy, safety, health, and welfare, of the Town's residents by:

- (a) Requiring all commercial solicitors to conduct any door-to-door residential solicitation within the Town pursuant to a permit and identification badge issued by the Town;
- (b) Reasonably limiting the hours of door-to-door solicitation activities; and
- (c) Prohibiting solicitations at residences where the owner or occupant has prohibited solicitation in a manner consistent with the provisions of this Article.

**Sec. 10-10-20. - Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

*Applicant* means any person or entity who has submitted an application for a permit.

*Commercial solicitor* means any person, whether as volunteer, owner, agent, consignee or employee, who engages in door-to-door commercial solicitation.

*Door-to-door commercial solicitation* means attempting to make personal contact with a resident at his or her residence, without prior specific invitation by or appointment with the resident, for the primary purpose of:

- (a) Attempting to sell, for present or future delivery, any goods, wares or merchandise, including newspaper or magazine subscriptions, or any services to be performed immediately or in the future, whether or not the person has, carries or exposes a sample of such goods, wares or merchandise, and whether or not he or she is collecting advance payments for such sales; or
- (b) Personally delivering to the resident a handbill or flyer advertising a commercial event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a future time.

*Door-to-door noncommercial solicitation* means attempting to make personal contact with a resident at his or her residence, without prior specific invitation by or appointment with the resident, for the primary purpose of:

- (a) Seeking or asking for a gift or donation for a public entity or nonprofit organization exempt from federal income tax under § 26 U.S.C. 501 (c)(3);
- (b) Soliciting the sale of goods, wares or merchandise for present or future delivery, or the sale of services to be performed immediately or in the future, with the entire proceeds of such sale to be paid directly to, or used exclusively for the benefit of, a public entity or nonprofit organization exempt from federal income tax under § 26 U.S.C. 501(c)(3);
- (c) Personally delivering to the resident a handbill or flyer advertising a future, not-for-profit event, activity, good or service;
- (d) Proselytizing on behalf of a religious organization; or

(e) Soliciting support for a political candidate or organization, or ballot measure or ideology; or

(f) Personally delivering to the resident a handbill, flyer, or newsletter published by an nonprofit, non-for-profit, for-profit corporation, or limited liability company organized under the Colorado Common Interest Ownership Act (§ 38-33.3-101, et seq. C.R.S.).

*Employer* means any person, company, corporation, business, partnership, organization, or any other entity on behalf of whom a person is acting.

*Noncommercial solicitor* means any person, whether as volunteer, owner, agent, consignee, or employee, who engages in door-to-door noncommercial solicitation.

*No-solicitation list* means a list of the addresses of Town residents who have requested that their residences be placed on a list maintained and published by the Town for the purpose of informing the general public and prospective solicitors that all door-to-door commercial solicitation at such addresses is prohibited.

*Permit* means a document issued by the Town Manager or Town Manager's designee authorizing a commercial solicitor to engage in door-to-door commercial solicitation.

*Permit holder* means any person to whom a permit has been issued under the provisions of this Article.

*Premises* means the land and the improvements on it, including a building, store, shop, apartment, Residence, or other designated structure.

*Person* means a natural person or business entity, such as, without limitation, a corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership or any group or combination thereof.

*Public entity* means the state, or any county, town, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law, and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, Town, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

*Residence* means a private residence in the Town, including, but not limited to, condominium units and apartments, including the yards, grounds and hallways thereof.

*Supervising Staff* means any person who manages or supervises commercial solicitors.

**Sec. 10-10-30. - All solicitation prohibited by posting of "No Solicitation" or "No Trespassing" sign.**

(1) No solicitor, whether commercial or noncommercial, shall enter or remain upon any private Premises in the Town if a "No Solicitation" or "No Trespassing" sign is posted at or near

the entrance(s) to such Premises. For the purposes of this provision, if an occupant of a multi-family dwelling, wishes to prohibit door-to-door solicitation by the posting of a sign, the sign prohibiting solicitation must be posted at or near the entrance(s) to the occupant's individual dwelling.

(2) This provision shall apply to all solicitation, including, without limitation, all activities that are religious, charitable, or political in nature and all solicitation of newspaper or magazine subscriptions.

**Sec. 10-10-40. - No-solicitation list for commercial solicitations.**

(1) Any owner or lawful occupant of any residence within the Town who wishes to prohibit door-to-door commercial solicitation at his or her residence may register the address of such residence with the Town by completing a form prepared by the Town Manager or Town Manager's designee, which form may be submitted to the Town either in person, by mail, or on the Town's website. Such registration shall take effect thirty (30) calendar days after the date of the Town's receipt of the registration form.

(2) The Town Manager or the Town Manager's designee shall maintain and make available a no-solicitation list consisting of all residential addresses that have been registered under Subsection (1) above by the owner or lawful occupant of the registered property. Each permit holder shall be responsible for obtaining and reviewing a copy of such list immediately upon issuance of a permit under this Article and at such intervals thereafter as may be reasonably necessary to ensure compliance with the requirements of Subsection (3) below.

(3) As of the effective date of the registration of a residential address under Subsection (1) above, all door-to-door commercial solicitation at such address shall be prohibited until such time, if at all, that the address has been removed from the no-solicitation list.

(4) Each residential address appearing on the Town's no-solicitation list will remain on the list until the resident or homeowner requests, in writing, that the residential address be removed from the Town's no-solicitation list.

(5) Neither the Town nor any of its officers, employees, agents or authorized volunteers shall be liable to any person for any injuries, damages or liabilities of any kind arising from or relating to any errors or omissions that may occur in compiling or maintaining the no-solicitation list.

**Sec. 10-10-50. - Permit and identification badge required for all commercial solicitors.**

(1) Any person seeking to engage in commercial door-to-door solicitation must obtain a permit from the Town Manager or Town Manager's designee and pay the permit fee as provided in this Article before commencing any such solicitation.

(2) All permits shall be issued in the name of the applicant. Upon issuance of each permit, the Town Manager or Town Manager's designee shall create and maintain a list of all persons authorized to engage in door-to-door commercial solicitation under the permit. It shall be the sole responsibility of the permit holder to:

(a) Provide a copy of the permit to each person authorized to engage in solicitation under the permit;

(b) Ensure that each person authorized to solicit under the permit complies with the terms and conditions of the permit and with the provisions of this Article;

(c) Notify the Town Manager or Town Manager's designee in writing of any persons to be added to or deleted from the list of authorized solicitors; and

(d) Submit to the Town Manager or Town Manager's designee, for each person to be added to such list, the information required under Sec. 10-10-60(1)(d), together with payment of the identification badge fee required under Sec. 10-10-60(3).

(3) The Town Manager or Town Manager's designee shall, within ten (10) business days of the Town's receipt, via mail or in person, of a complete application for a permit under this Article, issue such permit, together with identification badges for all persons authorized to engage in door-to-door commercial solicitation under the permit, unless the Town Manager or Town Manger's designee determines that the permit application is denied under the criteria stated in Sec. 10-10-100.

(4) Subsequent to the issuance of any permit, and upon receipt of the information and fee required under Sec. 10-10-60 below, the Town Manager or Town Manager's designee shall, within five (5) business days, issue an identification badge to any new or additional person to be authorized to solicit under the permit as long as such person is not prohibited under Sec. 10-10-90. The Town Manager or Town Manager's designee shall also, within five (5) business days, issue a replacement identification badge to any solicitor who, by affidavit, notifies the Town Manager or Town Manager's designee that his or her identification badge has been lost or stolen, and who pays an additional identification badge fee as established under Sec. 10-10-60(3).

(5) If an employer applies for and is granted a permit under this Article, the employer shall be entitled to obtain identification badges from the Town Manager or Town Manager's designee for each employee or agent authorized to solicit under the permit. The identification badges shall contain a photograph of the solicitor, bear the words "Permitted Solicitor," include the names of the employer and solicitor, and the expiration date of the permit.

**Sec. 10-10-60. - Application contents; fees.**

(1) Each person applying for a door-to-door commercial solicitation permit shall file with the Town Manager or Town Manager's designee an affidavit on a form supplied by the Town Manager or Town Manager's designee stating:

(a) The full name, business address and business telephone number of the applicant;

(b) Information regarding the business as required by the Town Manager or Town Manager's designee, including, without limitation, the business's legal status and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State;

(c) A complete list of all persons to be authorized to solicit under the permit and all Supervising Staff;

(d) For each person authorized to solicit under a permit and all Supervising Staff, the following information:

(i) Names, address, telephone number, and date of birth;

(ii) A background check to be completed by the Town's background service provider and paid for by the Applicant;

(iii) A description of the individual including height, weight, color of eyes and color of hair;

(iv) The number and state of issuance of the individual's motor vehicle operator's license or chauffeur's license, if any, or other state-issued photo identification;

(v) A photograph of the individual that must be in color, printed on photo quality paper, 2 x 2 inches in size, sized such that the head is between 1 inch and 1 3/8 inches from the bottom of the chin to the top of the head, taken within the last 6 months to reflect their current appearance, taken in front of a plain white or off-white background, taken in full-face view directly facing the camera, with a neutral facial expression and both eyes open, and taken in clothing that the individual normally wears.

(e) A brief explanation of the nature of the solicitation activity that requires a permit under this Article;

(f) If the applicant is a foreign corporation or an employee of such corporation, the name, address and telephone number of an agent for process residing in the state;

(g) Proof that the applicant has obtained a valid Town sales and use tax license;

(h) Any other information determined to be relevant by the Town Manager or Town Manager's designee.

(2) At the time of application, each applicant shall pay a fee in an amount determined by the Town Manager or Town Manager's designee to be sufficient to defray the costs incurred by the Town in processing the application, plus an additional fee to defray the costs of preparing and issuing an identification badge for each person to be authorized to solicit under the permit, including the applicant. Said fees shall be nonrefundable.

(3) At the time of application, the applicant shall pay a fifty-dollar (\$50) deposit for each badge, to be refunded to the permit holder at the expiration of the term of the badge or upon revocation or voluntary relinquishment.

**Sec. 10-10-70. - Duration of permit; renewal.**

(1) Each permit shall be valid for two (2) years, effective from the date of issuance.

(2) Any permittee wishing to renew a permit issued under this Article must apply for the renewal of the permit no less than thirty (30) days prior to the expiration of its term. Said application shall be accompanied by a criminal background check as required under Sec. 10-10-60 for each person who is to be authorized to solicit under the permit during the renewal term of the permit. If a permittee fails to apply for such renewal within said thirty-day period of time, the permit will expire. The renewal fee for each permittee shall be determined by the Town Manager or Town Manager's designee in an amount sufficient to defray the costs incurred by the Town in processing the renewal application. Said fee shall be nonrefundable.

**Sec. 10-10-80. –Public Entity or Nonprofit Organization Proof of Tax-Exempt Status.**

(1) For persons or group engaged in door-to-door noncommercial solicitation on behalf of a public entity or nonprofit organization exempt from federal income tax under § 26 U.S.C. 501 (c)(3), the Town Manager or the Town Manager's designee, may request a copy of the organization's Internal Revenue Service tax-exempt entity determination letter or other proof of the organization's tax -exempt status.

(2) Any persons or groups who are unable to provide proof of their organization's tax-exempt status must apply for and receive a Permit to engage in door-to-door commercial solicitation.

(3) After being provided verbal or written notice under subsection (2) above, any persons or groups that continue to engage in door-to-door noncommercial solicitation individually or on behalf of an organization without providing proof of tax-exempt status under § 26 U.S.C. 501(c)(3) shall be guilty of a misdemeanor punishable in accordance with Sec. 1-4-20 and may be fined in accordance with this Article.

**Sec. 10-10-90. - Persons prohibited.**

A person shall not be eligible for issuance of a permit or identification badge under this Article if:

(1) Such person has been released within the ten (10) years immediately preceding the application from any form of incarceration or court-ordered supervision, including a deferred sentence, resulting from a conviction of any felony or Class 1 misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law;

(2) Such person has been found to be a sexually violent predator pursuant to § 18-3-414.5, C.R.S., or any person required to register under § 16-22-101, et seq., C.R.S. (the Colorado Sex Offender Registration Act) who has been convicted of a felony for an offense requiring registration, or has multiple convictions for offenses requiring registration, or whose offenses requiring registration involved multiple victims; or

(3) A permit or an identification badge previously issued to such person by the Town Manager or Town Manager's designee under Sec. 10-10-50 has been revoked by the Town Manager or Town Manager's designee under Sec. 10-10-150 or Sec. 10-10-160 below.

**Sec. 10-10-100. - Denial of permit.**

The Town Manager or Town Manager's designee shall deny an application for a permit or any renewal of a permit under this Article if the Town Manager or Town Manager's designee determines that the applicant has:

- (1) Made any material misrepresentation or false statement in the application for the permit; or
- (2) Failed to obtain a sales and use tax license as required by the Town or to remit any sales tax due the Town; or
- (3) Been convicted of a felony or Class 1 misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law; or
- (4) Been found to be a sexually violent predator pursuant to § 18-3-414.5, C.R.S.; or
- (5) Otherwise been required to register under the Colorado Sex Offender Registration Act; or
- (6) Been convicted of a felony for an offense requiring sex offender registration under any federal, state, county or municipal law.

**Sec. 10-10-110. - False or deceptive representation prohibited.**

No person shall attempt to obtain, by telephone or otherwise, an invitation to visit any private residence for the purpose of soliciting the purchase or sale of goods, services or any other thing of value, by knowingly making a false or deceptive representation or statement.

**Sec. 10-10-120. - Duty to display identification badge and to exhibit permit.**

- (1) Any commercial solicitor engaging in door-to-door commercial solicitation under a permit issued pursuant to this Article shall conspicuously display his or her identification badge.
- (2) Whenever requested by any police officer, Town representative, resident, or by any customer, or prospective customer, any commercial solicitor engaged in door-to-door commercial solicitation under a permit issued pursuant to this Article shall exhibit his or her identification badge and permit.

**Sec. 10-10-130. - Permissible times.**

All door-to-door commercial solicitation and all door-to-door noncommercial solicitation shall be undertaken and completed between the hours of 9:00 a.m. and 5:00 p.m.

**Sec. 10-10-140. - Transfer of permits prohibited.**

No permit issued pursuant to this Article shall be transferred or assigned to any person.

**Sec. 10-10-150. - Suspension or revocation of identification badge.**



The Town Manager or the Town Manager's designee may suspend or revoke the identification badge of any solicitor that has engaged in unlawful solicitation after giving the solicitor ten (10) days prior written notice. The solicitor may request a hearing in front of the Town Clerk by providing written notice of such request within twenty (20) days of the mailing of the notice from the Town.

The grounds for such suspension or revocation may include, but shall not be limited to, the following:

- (1) Failure to solicit in a manner that is in compliance with the permit and the provisions of this Article;
- (2) Soliciting in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

In the event the alleged conduct that is the basis for the suspension or revocation of the identification badge is the subject of a pending criminal or non-traffic civil citation, the Town Manager or Town Manager's designee may either defer his or her decision regarding suspension or revocation until such citation has been resolved or immediately proceed with the foregoing administrative action prior to the resolution of such citation.

**Sec. 10-10-160. - Suspension, revocation or nonrenewal of permit.**

The Town Manager or the Town Manager's designee may suspend or revoke the permit of any solicitor, permit holder, or Supervising Staff, that has engaged in unlawful solicitation by giving the solicitor, permit holder, or Supervising Staff ten (10) days prior written notice. The solicitor, permit holder, or Supervising Staff, may request a hearing in front of the Town Clerk by providing written notice of such request within twenty (20) days of the mailing of the notice from the Town.

The grounds for such suspension or revocation may include, but shall not be limited to, the following:

- (1) Fraud, misrepresentation or false statement in the application for the permit or any renewal application, including, without limitation, representations made as to the criminal history of any person to be authorized to solicit under the permit;
- (2) Failure to obtain a sales and use tax license as required by the Town or to remit any sales tax due the Town;
- (3) Failure to supervise solicitation conducted under the permit so as to reasonably ensure that such solicitation is in compliance with the terms of the permit and with the provisions of this Article; or
- (4) Authorizing, condoning, or knowingly tolerating any unlawful solicitation or any solicitation conducted in such a manner as to constitute a menace to the health, safety, or general welfare of the public.

In the event the alleged conduct that is the basis for the suspension or revocation of the identification badge is the subject of a pending criminal or non-traffic civil citation, the Town Manager or the Town Manager's designee may either defer his or her decision regarding suspension or revocation until such citation has been resolved or immediately proceed with the foregoing administrative action prior to the resolution of such citation.

**Sec. 10-10-170. - Emergency summary suspension of identification badge or permit.**

(1) If reasonable grounds exist to believe that a permittee and/or badge holder has engaged in illegal activity such that emergency action is required to preserve public health, safety or welfare, the Town Manager or Town Manager's designee may summarily suspend the permit and/or badge pending the outcome of the proceedings set forth in Sec. 10-10-150 and 10-10-160 above, as applicable.

(2) The temporary suspension of a permit or badge without notice pending a hearing shall be for a period not to exceed fifteen (15) days.

**Sec. 10-10-180. - Displaying a badge after suspension, revocation or nonrenewal.**

No person shall display an identification badge after it has been invalidated by suspension, revocation or nonrenewal.

**Sec. 10-10-190. - Promulgation of rules and regulations.**

The Town Manager or the Town Manager's designee may promulgate administrative rules and regulations to effectuate the implementation, administration, enforcement, and the purposes of this Article.

**Sec. 10-10-200. - Records.**

The Town Manager or the Town Manager's designee shall maintain records showing each permit issued and any alleged violations of this Article.

**Sec. 10-10-210. - Appeal.**

An applicant may appeal any decision relating to his or her permit by the Town Manager or the Town Manager's designee to the Town Council, the Town Council's decision shall be final.

**Sec. 10-10-220. - Violations and penalties.**

In addition to the revocation, suspension or denial of a permit or identification badge issued under this Article, any applicant, permittee or solicitor who violates any of the provisions of this Article, and any person who violates Sec. 10-10-30, 10-10-40, 10-10-80, 10-10-100, or 10-10-120 shall be guilty of a misdemeanor punishable in accordance with Sec. 1-4-20 and may be fined in accordance with this Article.

**Sec. 10-10-230. – Fees and Fines.**

Section	Activity	Fee or Fine
Sec. 10-10-60(2)	Application Fee	\$50
Sec. 10-10-60(2)	ID Badge Fee	\$10
Sec. 10-10-60(3)	ID Badge Refundable Deposit	\$50
Sec. 10-10-30	Solicitation prohibited where sign posted	\$750
Sec. 10-10-40	Solicitation at residence on no-solicitation list	\$750
Sec. 10-10-80	Continuing to engage in noncommercial solicitation after failure to provide proof of tax-exempt status	\$750
Sec. 10-10-120	Failure to display permit or ID badge	\$750
Sec. 10-10-110	False/deceptive representation while soliciting	\$750
Sec. 10-10-130	Solicitation outside of permitted hours	\$750
Sec. 10-10-140	Impermissible transfer or permit or ID badge	\$750

**ARTICLE 2 – SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 3 – REPEALER**

All ordinances or resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

**ARTICLE 4 – EFFECTIVE DATE**

This Ordinance shall take effect on September 1, 2017.

**INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON JULY 25, 2017, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON AUGUST 8, 2017, AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 25TH DAY OF JULY, 2017.**

**MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON AUGUST 8, 2017.**