# ORDINANCE 2013-15

**AN ORDINANCE OF THE CITY OF FORT MITCHELL, KENTUCKY ESTABLISHING REGULATIONS FOR UNINVITED RESIDENTIAL SOLICITATION, AND ORDERING THAT THIS ORDINANCE BE PUBLISHED BY SUMMARY**

**WHEREAS**, the city of Fort Mitchell has a significant and legitimate governmental interest in the protection of the security and privacy of the residents and residences thereof, including, without limitation, the peace and quiet enjoyment thereof; and

**WHEREAS,** there have been recent occurrences of uninvited residential solicitations in the City that have been less than reasonable, and have caused some anxiety and concern to the recipients thereof; and,

**WHEARAS,** solicitors have certain freedoms which are protected by the federal and state constitutions from governmental impairment to any extent substantially greater than that necessary to protect the legitimate interest of the government;

**NOW, THEREFORE,** in order to protect the privacy, safety and security of the residents and residences of the City, without impairing the constitutional freedoms of solicitors:

**BE IT ORDAINED BY THE CITY OF FORT MITCHELL, KENTUCKY AS FOLLOWS:**

## SECTION I

There is hereby added a new Chapter to the Fort Mitchell Code of Ordinances, Chapter 118, which shall be titled "Door to Door Solicitation."

## SECTION II

There is hereby added Section 118.1, which shall be titled "Definitions," and to read in full as follows:

**Section 118.1 – Definitions**

As used herein, the following words and phrases shall have the following meanings:

**118.1.1 Anti-Solicitation Property:** The words "anti-solicitation property" means any property in the City that has been:

**a.** Posted with signs containing the words "No Solicitors" or "No Trespassing" or other words of similar import thereon: and

**b.** Registered by an owner or occupant thereof with the City Clerk as property to which uninvited residential solicitors are prohibited.

**118.1.2 Anybody:** The word "anybody" means any human being, or organization or combination thereof in the form of an individual, corporation, limited liability company, partnership, joint venture, unincorporated association or otherwise.

**118.1.3 Commercial Solicitation:** The words "commercial solicitation" means the in person solicitation of contributions, donations or pledges, the sales, rental, or leasing of goods or service, or orders or subscriptions therefor, including, without limitations, the activities of those historically known and identified as peddlers, hawkers, canvasser, itinerant vendors and transient merchants provided they are involved in the provision of sales, rental, or leasing of goods or services.

**118.1.4 Everybody:** The word "everybody" means every human being, or organization or combination thereof in the form of an individual, corporation, limited liability company, partnership, joint venture, unincorporated association or otherwise.

**118.1.5 Nobody:** The word "nobody" means no human being, or organization or combination thereof in the form of an individual, corporation, limited liability company, partnership, joint venture, unincorporated association or otherwise.

**118.1.6 Non-commercial Solicitation:** The words "non-commercial solicitation" means all solicitation other than commercial solicitations as defined herein.

**118.1.7 Non-Profit Organization**: The words "non-profit" means a tax-exempt organization and their members, employees, or volunteers acting on their behalf, under 26 U.S.C. § 501(c).

**118.1.9 PRO:** The term "PRO," short for Permit Review Officer, shall be the Permit Review Officer, who shall be the City Administrative Officer, or, in the absence of the City Administrative Officer, the Police Chief.

**118.1.10 Registered Solicitor:** The words "registered solicitor" means a solicitor who has obtained a City occupational license, if necessary and registered with the City Clerk for and been granted a Residential Solicitation Permit or engages in solicitation under the authority of a Group Solicitation Permit, as provided in Section 118.2.1. Such application shall be

applied for by completing a Solicitor Registration Form, as provided in Section 118.2.2, or a Group Solicitation Registration Form, as provided in Section 118.2.3.

**118.1.11 Solicitor:** the word "solicitor" means anybody who engages in commercial solicitation.

**118.1.12 Uninvited Residential Solicitation:** The words "uninvited residential solicitation" means a commercial solicitation at a residence in the City, without prior appointment or other invitation therefor by an owner or occupant of the residence.

## SECTION III

There is hereby added Section 118. 2, which shall be titled "Permits," and to read in full as follows:

**Section 118.2.1 – Permits, Generally**

(A) *Permit types.* There shall be two types of permits that may be granted, a Residential Solicitation Permit or Group Solicitation Permit. There shall be forms, which may be obtained by the City Clerk, for each permit. A Residential Solicitation Permit is a permit issued to an individual and provides a license to engage in commercial solicitation to that individual for a period of not less than seven days, nor more than one year, as determined by the City Administrative Officer, or, in the absence of a City Administrative Officer, the Police Chief, as provided in this Section. A Group Solicitation Permit is a permit issued to a Non-Profit Organization. Permits shall be applied for by submitting a Solicitor Registration Form, as provided in Section 118.2.2, or a Group Solicitation Registration Form, as provided in Section 118.2.3, with the information required by those sections.

(B) *Permit Applications, generally.* Each application for an Residential Solicitation Permit or Group Solicitation Permit required by this chapter shall be signed by the applicant or an authorized representative of the applicant, who shall attest to the truth of the statements therein, with knowledge that any false statements constitute perjury, for which the signatory may be prosecuted and punished according to law; and such signatures shall be notarized according to law.

(C) *Permit Reviews.* Each application for a Residential Solicitation Permit or Group Solicitation Permit required by this chapter that is received and accepted by the City Clerk shall be immediately referred to the PRO who shall review it according to the following standards within 14 days after the receipt and acceptance thereof by the City Clerk.

(1) When the applicant, or employees of the applicant, are required to have any license, permit, degree, certification or other similar document

pursuant to the provision of any applicable law for the conduct of or employment in the business which is the subject of the application; the license, permit, degree, certification or other similar document shall have been duly issued to the applicant or employees of the applicant prior to the issuance of the Residential Solicitation Permit or Group Solicitation Permit. Documentary evidence of the issuance satisfactory to the PRO shall be provided by the applicant.

(2) The criminal record of the persons named or identified in the application shall be considered to the extent such record includes conviction of a felony, a misdemeanor for which imprisonment or other confinement was a possible penalty, any other crime in which moral turpitude was involved; or any other crime which was directly related to a business of the type which is the subject of the application. In determining if a conviction was directly related to a business, the PRO shall consider:

(a) The nature and seriousness of the crime for which the person was convicted.

(b) The relationship of the crime to the purpose of the regulation of the business.

(c) The relationship of the crime to the ability, capacity and fitness required to perform the duties and discharge the responsibilities of the operation of the business.

(d) The extent to which the person convicted has been successfully rehabilitated.

(3) (a) The PRO shall consider whether the business is of a type that the operation, unless closely supervised, has a probability of generating or resulting in criminal activity or adversely affecting the health, safety, morals and welfare of the citizens and residents of the city, or will constitute a nuisance.

(b) In the event that the applicant, business, authorized representative of either, predecessor in interest, or prior business or operation as the business or applicant has had their occupational license revoked or suspended (with the suspension period still in effect) for any reason including any revocation or suspension under the city Chronic Nuisance Ordinance § 92.19(B), the PRO shall have sufficient cause to the application.

(c) The PRO shall consider whether the applicant, business, authorized representative of either, predecessor in interest, or prior business or operation has previously violated this Chapter on more than one occasion; the PRO shall deny the application.

(4) The PRO shall consider the business history of the applicant including:

(a) Whether the persons named and identified in the application have been denied or had suspended or revoked a similar permit by the city or any other city, county or state and the reasons therefor.

(b) Whether complaints have been received by the city about the business practices or responsibility of the persons named and identified in the application, and the disposition of those complaints.

(5) The PRO shall consider whether the persons named and identified in the application are indebted to the city for delinquent taxes, assessments, fines or similar obligations.

(6) The PRO shall consider whether the applicant complies with all applicable laws.

(7) The PRO shall deny the application if there are any false statements in the application, or if the applicant submitted an application within the past five, (5) years with any false statements.

(8) After review of the application in conformity with this chapter, the PRO shall notify the City Clerk, or any designee thereof, of either:

(a) The approval of the application, and the duration of the permit, not to last less than seven days nor more than one year, depending on the nature of the application, products, and similar grounds; or

(b) The approval of the application conditionally; but if the application is approved conditionally, the PRO shall determine and require those conditions that are reasonably necessary to accomplish the intent of this chapter, including, without limitation:

1. A requirement that the applicant post bond with surety acceptable to the PRO in a reasonable amount determined by the PRO to ensure compliance.

2. A requirement that any outstanding indebtedness owed to the city be paid before a specified date.

3. A requirement that the applicant permit periodic record inspection of sales within the city and such other requirements as deemed necessary by the PRO to ensure compliance with this Section.

(c) The disapproval the application.

(D) *Notice to the applicant.* Unless the City Clerk receives a written notice from the PRO within 14 days after an application for a Residential

Solicitation Permit or Group Solicitation Permit required by this chapter has been referred to the PRO for review pursuant to this chapter, that the application was either conditionally approved or disapproved, the City Clerk, or the designee thereof shall issue the Residential Solicitation Permit or Group Solicitation Permit that is the subject of the application and mail it to the applicant at the address indicated in the application; and, thereafter, the applicant may engage in solicitation until that permit expires or is suspended or revoked according to the provisions of this chapter.

(E) *Conditional approval of application.* In the event that the City Clerk receives a written notice from the PRO within 14 days after an application for a Residential Solicitation Permit or Group Solicitation Permit required by this chapter has been referred to the PRO for review pursuant to this chapter, that the application was conditionally approved, the City Clerk shall notify the applicant thereof and the reasons therefor identified by the PRO by certified mail, return receipt requested, to the address of the applicant indicated in the application, along with a notice that the permit will be issued by the City Clerk only upon receipt by the City Clerk of a written signed acceptance by the applicant of the conditions to be performed prior to the issuance of the permit. The notice shall also state that if the acceptance is not received by the City Clerk within such time, the application will thereby be disapproved.

(F) *Disapproval of application.* In the event that the City Clerk receives a written notice from the PRO within 14 days after an application for a Residential Solicitation Permit or Group Solicitation Permit required by this chapter has been referred to the PRO for review pursuant to this chapter, that the application was disapproved by the PRO, the City Clerk shall notify the applicant of that denial and the reasons therefor identified by the PRO, by certified mail, return receipt requested, to the address of the applicant indicated in the application, and a notice of the procedure established in this chapter for an appeal from the denial of that application.

(G) *Permit revocation or suspension.*

(1) Any Residential Solicitation Permit or Group Solicitation Permit required by this chapter may be revoked or suspended by the PRO for any period of time determined by the PRO to be reasonable and appropriate for any of the following reasons; but only after a due process evidentiary hearing in regard thereto, for which a notice has been sent to the permittee at the address indicated in the permittee's application, by certified mail, return receipt requested, at least ten days prior to the hearing:

(a) Any false or intentionally misleading statement or information provided in the permit application.

(b) Any failure or refusal to perform or abide by any of the conditions of a conditional permit or this Chapter, by the permittee or any person operating under a permittee's permit.

(c) The criminal conviction of any person named or identified in the permit application, or operating under a permittee's permit of a felony, a misdemeanor for which imprisonment or any other confinement is a possible penalty, any other crime in which moral turpitude is involved, or any other crime which directly relates to a business of the type for which the permit was issued. However, the consideration of such a criminal conviction shall include:

(1) The nature and seriousness of the crime for which the person was convicted.

(2) The relationship of the crime to the purposes of the regulation of the business.

(3) The relationship of the crime to the ability, capacity and fitness required to perform the duties and discharge the responsibilities of the operation of the business.

(4) The extent to which the person has been successfully rehabilitated.

(d) The revocation, suspension or expiration without renewal of any license, permit, degree, certification or similar document which is required by any applicable law for the conduct of or employment in the business for which the permit was issued.

(e) The violation of any applicable law in the conduct of the business by any person engaged therein.

(f) Violations of applicable laws by any person acting in concert or connection with the permittee or under the control thereof.

(g) The revocation or suspension of a Residential Solicitation Permit or Group Solicitation Permit pursuant to this chapter shall be in addition to the imposition of any other penalty prescribed by ordinance or any other applicable law.

(H) *Appeals.* (1) Any conditional approval or disapproval of an application for a Residential Solicitation Permit or Group Solicitation Permit required by this chapter, or any suspension or revocation of any such permit may be appealed to the Mayor of the city, by filing with the City Clerk, within 7 days after the conditional approval, disapproval, revocation or suspension the following:

(a) A written notice of the appeal; and

(b) A copy of the conditional approval, disapproval, revocation or suspension that is the subject of the appeal; and

(c) A statement why there should be an approval without conditions, or no disapproval, revocation or suspension; and

(d) An appeal fee in the sum of $200, to provide for the expenses of conducting a due process hearing in regard thereto.

(2) In such an appeal, a de novo due process hearing in regard to the conditional approval or disapproval, suspension or revocation shall be conducted by the Mayor, or by a hearing officer appointed by the Mayor, who shall file a record with the Mayor, with a written recommendation regarding findings of fact, conclusions of law and a decision based thereon. Within 90 days after the date the appeal was filed, the Mayor shall issue a written decision in regard thereto, including findings of fact, conclusions of law and a decision based upon a record of the due process hearing; and the appellant shall be notified thereof by certified mail, return receipt requested, at the address thereof indicated in the application for the license. Unless an appeal from the decision of the Mayor is filed in the court having jurisdiction thereof within 14 days after the decision of the Mayor, the decision of the Mayor shall become final.

**Section 118.2.2 –Residential Solicitation Permit/Permit Fee**

(A) A Residential Solicitation Form shall be created by the PRO and approved by the Mayor. Such form shall include information related to the applicant that is reasonably calculated to provide adequate personal and business background information to assure that the applicant is a responsible person engaging in a lawful activity. Such form may include but not be limited to the name, address, telephone number, social security number and date and place of birth of the applicant. Additionally the form may require such information such as a picture identification, and a vehicle description of any vehicle used by the applicant. The form shall be obtained in the Office of the City Clerk.

(B) A Residential Solicitation Permit shall be issued to a single individual, is non-transferable, shall bear the signature of the PRO, photo of the applicant, a permit number, the issuance date, and the expiration date. The PRO may have the Fort Mitchell Police Department run a criminal background check of the applicant prior to making a decision on any application.

(C) The form shall be signed by the applicant and contain a certification by the applicant that the applicant has not been convicted of any felony or any other crime involving theft, burglary, fraud or moral turpitude within the last three (3) years.

(D) There is established a fee of $25 for an each application lasting between 7 and 90 days; and a fee of $100 for each application lasting longer than 90 days, up to one year; provided that the fee shall be waived if the applicant is soliciting on behalf of a Non-Profit Organization, and provides sufficient proof of that fact, including a copy of non-profit determination by the Internal Revenue Service, as well as an authorization letter on behalf of the Non-Profit Organization identifying the applicant as soliciting on behalf of the Non-Profit Organization, with the date of such letter to be within 14 days of the date of the application.

**Section 118.2.3 – Permits, Group Solicitation Permit**

(A) A Group Solicitation Form shall be created by the PRO and approved by the Mayor. Such form shall include information related to the applicant that is reasonably calculated to provide adequate personal and background information to assure that the applicant is a responsible person engaging in a lawful activity. Such form may include but not be limited to the name, address, telephone number, tax identification number of the applicant, and the person who will oversee the solicitation activity in the City. Additionally the form may require such information such as corporate and tax information relative to the applicant and a vehicle description of any vehicle used by the applicant. The form shall be obtained in the Office of the City Clerk.

(B) A Group Solicitation Permit shall be issued to a Non-Profit Organization, shall bear the signature of the PRO, a permit number, the issuance date, and the expiration date.

C) The form shall be signed by the applicant and contain a certification by the applicant that the applicant has not been convicted of any felony or any other crime involving theft, burglary, fraud or moral turpitude within the last three (3) years.

**SECTION IV**

There is hereby added Section 118.3, which shall be titled "Prohibitions," and to read in full as follows:

**Section 118.3 – Prohibitions**

(A) Nobody shall cause, permit, promote, suffer, allow, aid, assist, encourage, or engage in any of the following described uninvited residential solicitations:

(1) Commercial solicitation at or on any anti-solicitation property; or

(2) Commercial solicitation by anybody other than a registered solicitor; or

(3) Commercial solicitation on any day before 9:00 A.M. or after 7:00 P.M., prevailing time Monday through Friday and before 10:00 AM or after 5:00 PM prevailing time on Saturday and Sunday;

(B) No holder of a Residential Solicitation Permit shall engage in any commercial solicitation without a copy of a Residential Solicitation Permit on his or her person, and no representative of a holder of a Group Solicitation permit, age 18 years or older, shall engage in any commercial solicitation without a copy of a Group Solicitation Permit on his or her person.

## SECTION V

There is hereby added Section 118.99, which shall be titled "Penalties," and to read in full as follows:

**118.99 – Penalties**

(A) A violation of Section 118.3(A)(2) of this ordinance shall be a Class A misdemeanor for which any person convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of $500.00 as set forth in K.R.S. 534.040(2)(a) or a term of imprisonment not to exceed the maximum period of twelve (12) months as set forth in K.R.S. 532.090(1), or both for a first offence, and to pay a criminal fine of not less than $250.00 but not to exceed $500.00 for a second or greater offence and a term of imprisonment of not less than two days, but not to exceed the maximum period of twelve (12) months as set forth in K.R.S. 532.090(1); any corporation convicted of a violation of Section 118.3(A)(2) of this ordinance shall be fined not more than $10,000 as set forth in K.R.S. 534.050(1)(b) for a first offence, and to pay a fine of at least $3,000, but not more than $10,000 for a second or greater offence.

(B) Each violation of this ordinance, except a violation of Section 118.3(A)(2) shall be a Class B misdemeanor for which any person convicted thereof in a court of competent jurisdiction shall be sentenced to pay a criminal fine not to exceed the maximum amount of $250.00 as set forth in K.R.S. 534.040(2)(a) or a term of imprisonment not to exceed the maximum period of ninety days as set forth in K.R.S. 532.090(1), or both any corporation convicted of a violation of Section 118.3(A)(2) of this ordinance shall be fined not more than $5,000 as set forth in K.R.S. 534.050(1)(c).

(C) In addition to the criminal penalties set forth herein, any violation of this chapter is hereby also classified as a civil offense, pursuant to Chapter 41 and

KRS 65.8808, and such classification is intended, and shall be construed, to provide an additional or supplemental means of obtaining compliance with the applicable code sections, and nothing contained herein or in Chapter 41 shall prohibit the enforcement of this chapter by any other means authorized by law.

(1) If a citation for a violation of this chapter is not contested by the person charged with the violation, the civil fine to be imposed for each offense shall be $50 for the first offense, $250 for the second offense, and $500 for the third, and thereafter, offense.

(2) If a citation is contested and a hearing before the Code Enforcement Board is required, the maximum civil fine which may be imposed at the discretion of the Board shall be from $20 to $200 for the first offense, from $60 to $600 for the second offense, and from $180 to $1,800 for the third, and thereafter, offense.

(D) Each section of the ordinance violated shall be considered a separate fineable offense. If two or more sections of the ordinance are violated, the fines shall be cumulative and be enforced under the same citation. Each day a violation exists shall be considered a separate offense upon issuance of a separate citation.

**SECTION VI - Severability**

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provisions thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

**SECTION VII - Repealer**

All ordinances or parts thereof in conflict herewith are to the extent of such conflict hereby repealed.

**SECTION VIII – Summary Publication**

This ordinance is hereby ordered to be published by Summary.

CITY OF FORT MITCHELL,
KENTUCKY

BY: _____
Christopher Wiest, Mayor

ATTEST:

_____
Martha Allen, City Clerk

DATE OF FIRST READING: Aug. 5, 2013

DATE OF SECOND READING AND
ENACTMENT: Aug. 19, 2013

DATE OF PUBLICATION: Aug 23, 2013