

ORDINANCE 19-31

2019045530 ORDINANCE \$25.00
09/20/2019 01:23:41P 9 PGS
Jennifer Hayden
HAMILTON County Recorder IN
Recorded as Presented



**ORDINANCE OF THE CITY OF WESTFIELD TO REPLACE THE
WESTFIELD SOLICITATION ORDINANCE ATTACHMENT**

WHEREAS, The City of Westfield, ("City") is a duly formed municipal corporation within the State of Indiana, governed by its duly elected Mayor and Common Council ("Council"); and,

WHEREAS, the Council from time to time may find it necessary to amend previously adopted ordinances to assure that the desired purposes are carried out as contemplated by the Council; and,

NOW, THEREFORE, BE IT ORDAINED by the Westfield City Common Council meeting in session as follows:

- Section 1.** The Council now finds that Westfield Solicitation Ordinance 18-09 should be amended by replacing its Exhibit "A".
- Section 2.** The Westfield Code of Ordinances shall be updated by the provisions adopted herein by Exhibit "A", attached hereto and incorporated by reference herein.
- Section 3.** The Clerk-Treasurer shall be responsible for the duties outlined in this Ordinance and shall collect all fees, fines and issue all licenses pursuant to this Ordinance and establish appropriate documents necessary to carry out the intent of this Ordinance.
- Section 4.** This Ordinance shall be in full force and effect in accordance with Indiana Law, upon its passage by the City Council, its publication in accordance with law and upon the passage of any applicable waiting period, all as provided by the laws of the State of Indiana. All ordinances or parts thereof in conflict herewith are hereby ordered amended or repealed. All acts undertaken or taken pursuant to the adoption of this Ordinance are hereby authorized and/or ratified.

COPY

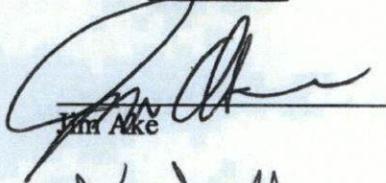
ALL OF WHICH IS ORDAINED THIS 9th DAY OF Sept 2019.

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain


Jim Ake

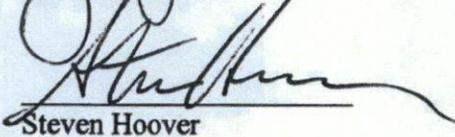
Jim Ake

Jim Ake


James J. Edwards

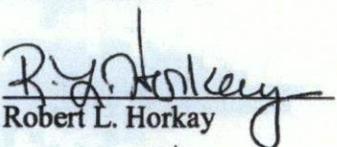
James J. Edwards

James J. Edwards


Steven Hoover

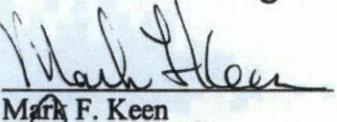
Steven Hoover

Steven Hoover


Robert L. Horkay

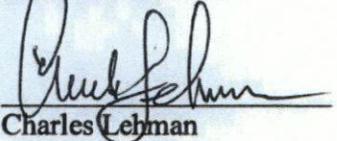
Robert L. Horkay

Robert L. Horkay


Mark F. Keen

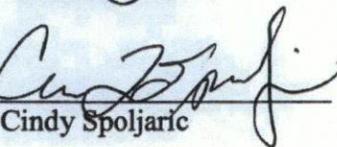
Mark F. Keen

Mark F. Keen


Charles Lehman

Charles Lehman

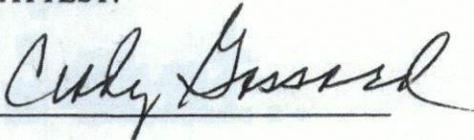
Charles Lehman


Cindy Spoljaric

Cindy Spoljaric

Cindy Spoljaric

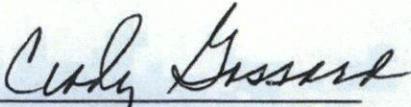
ATTEST:


Cindy Gussard

Cindy Gossard, Clerk Treasurer

I hereby certify that ORDINANCE 19-31 was delivered to the Mayor of Westfield

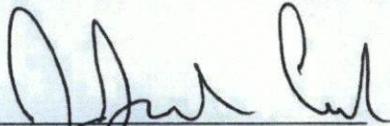
on the 11th day of Sept, 2019, at 10:00 A m.


Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 19-31

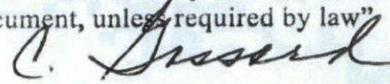
I hereby VETO ORDINANCE 19-31

this 11th day of September, 2019. this _____ day of _____, 2019.


J. Andrew Cook, Mayor

J. Andrew Cook, Mayor

"I affirm, under the penalties of perjury,
that I have taken reasonable care to redact
each Social Security Number in this
document, unless required by law"


Signed

This document prepared by
Brian J. Zaiger, Esq.
KRIEG DEVAULT, LLP
(317) 238-6266

Ordinance 19-31

Chapter 46 – DOOR-TO-DOOR SOLICITATION

General Provisions

No Soliciting Signs and Stickers

Westfield City Services hereby authorized and directed to maintain a supply of “No Soliciting” sticker, decals, signs, or other means of notification for free distribution to any resident of the city upon the request of such citizen. Additionally, signs may be downloaded from the City’s website at <https://www.westfield.in.gov/> or picked up at City Services.

Enforcement

This chapter shall be enforced by the Westfield Police Department and shall provide prompt response to any call for assistance to a resident upon whose private property a trespass has occurred after warning by sign or other notification reasonably intended to advise a person or persons to remove themselves from such private property.

Sec. 46-1. Definitions. Whenever used in this Chapter, the following words and phrases shall be defined as herein stated below:

Door-to-door Solicitation. Shall include all methods and means of soliciting funds and/or of selling commercial products, services or property within the corporate limits of the city of Westfield, Indiana (“City”), by and through the uninvited in-person solicitation of City residents on private property.

Exempt Persons. Shall include the following:

- (1) An individual while and to the extent he or she is engaged in protected political speech or activity;
- (2) An individual while and to the extent he or she is engaged in protected religious speech or activity;
- (3) An individual engaged in the solicitation of funds and/or the sale of cookies, candies, paper products or similar sundries for and on behalf of a not-for-profit organization or association that is exempt from the Indiana Gross Retail Tax;
- (4) An individual who, due to applicable federal or state law, is exempt from local licensing requirements. These individuals shall follow the established hours, manner, and restrictions, in which door-to-door soliciting may be conducted within the city.

Vendor. A person, partnership, corporation, company, organization or entity who is not an exempt person and who is engaged in the selling, peddling, marketing for future sales, merchandising or brokering of products, services or property to the general public for a commercial purpose and/or who is engaged in the solicitation of funds.

Sec. 46-2. Licensing required. It shall be unlawful for any vendor, and vendor's employees and agents to engage in door-to-door soliciting within the city until that person complies with the provisions of this chapter.

Sec. 46-3. Licensing.

- (1) Any vendor who desires to engage in door-to-door solicitation shall first obtain from the Westfield Clerk Treasurer's Office a non-transferable door-to-door solicitation license ("License") permitting such activity by vendor and/or by vendor's employees and agents.
- (2) The Westfield Clerk Treasurer's Office shall provide to any person, upon request, a door-to-door vendor application form ("Application") to be completed by a vendor and processed by the Westfield Clerk Treasurer's Office. The application shall seek general information about the vendor, vendor's business and the nature of vendor's proposed door-to-door solicitation. The application shall also require a vendor to list the name of every employee and agent who will be involved in door-to-door solicitation pursuant to a license issued to the vendor under this section, and to obtain from the Indiana State Police Department and attach to the application a copy of the limited criminal history of the vendor and of each employee and agent of same who will be involved in door-to-door solicitation. All completed applications shall be submitted to the Westfield Clerk Treasurer's Office for review.
- (3) A license and a non-transferable identification card shall be issued to each employee by the Westfield Clerk Treasurer's Office upon such vendor's completion of an application, confirmation that such vendor and employees have no felony or misdemeanor conviction within 15 years of the application date for a crime of dishonesty, fraud, theft and/or moral turpitude, and such vendor has paid the following license fees for each employee who will be involved in door-to-door soliciting:

1 day license	\$15.00
1 week license	\$25.00
1 month license	\$125.00
1 year license	\$300

Upon receipt of a license, a vendor must also purchase from the Westfield Clerk Treasurer's Office, at the cost of \$1 each, non-transferable identification cards for each employee and agent of vendor listed on vendor's application and for whom the Westfield Clerk Treasurer's Office has confirmed has no felony or misdemeanor conviction within 15 years of vendor's application date for a crime of dishonesty, fraud, theft and/or moral turpitude.

- (4) The decision as to whether an application is approved or denied shall be made by the Westfield Clerk Treasurer's Office within 10 business days from the date the application is submitted to the Westfield Clerk Treasurer's Office for processing.

- (5) Vendor, and each of vendor's employees and agents, shall openly display upon his or her person an identification card issued by the Westfield Clerk Treasurer's Office whenever engaging in door-to-door solicitation. When requested, identification cards shall be presented to a police officer of the city or any person.
- (6) Subject to earlier revocation, pursuant to this section, a license, as well as any identification card(s) issued therewith, shall be valid for exactly one day, exactly one week, exactly one month, or exactly one year as applicable, from the date the license or identification card was issued, and shall thereafter immediately expire and become null and void.

Sec. 46-4. Restrictions on license/door-to-door solicitation.

- (1) Vendor, and vendor's employees and agents, shall comply with all applicable federal, state and local laws and regulations while engaging in door-to-door solicitation.
- (2) Vendor, and vendor's employees and agents shall not approach any home displaying a No Soliciting sticker, decal, sign, or other means of notification. Vendor may not approach any home that has registered with the City of Westfield's No Solicitation List maintained by the City at <https://www.westfield.in.gov/>
- (3) Vendors are responsible for reviewing said list and treating each home listed as if a fully visible "No Solicitation" sign is located on the home.
- (4) Door-to-door solicitation by vendors may be conducted between the hours of 10:00 a.m. and Dusk local time only.
- (5) The holder shall not trespass or enter into or on any house, building, or other structure of any land or property, without the prior consent of the owner or occupant thereof.
- (6) The holder of a license shall make no false statement or misrepresentation of fact in the course of carrying on the activity for which the license is granted and shall conduct business at all times in an orderly and lawful manner.
- (7) The holder of a license who takes orders for the future delivery of any type of goods or service shall be required to deliver such goods or service before any payment is made. It is unlawful to require "deposit" money for the expectation of future delivery of goods and services.
- (8) The City reserves the right to restrict the location of operation.

Sec. 46-5 License revocation or denial.

- (1) If the Westfield Clerk Treasurer's Office determines that one or more of the following apply to a vendor and/or to any employee or agent of vendor who applies for a license or who is involved in door-to-door solicitation, then the Westfield Clerk Treasurer's Office shall deny the application and/or revoke an issued license and/or identification card(s) relating thereto, whichever action is applicable under the circumstances:

- (a) Vendor submitted an application that contains materially false or misleading information;
 - (b) Vendor or any of vendor's employees or agents was, within 15 years prior the date of vendor's application, convicted of a felony or misdemeanor crime of dishonesty, fraud, theft and/or moral turpitude;
 - (c) Vendor or any of vendor's employees or agents has violated this section or has been charged with or convicted of a felony or misdemeanor crime of dishonesty, fraud, theft and/or moral turpitude after the issuance of but prior to the expiration date of such person's license and/or identification card;
 - (d) Vendor or any of vendor's employees or agents has failed to properly display his/her identification card while engaged in door-to-door solicitation;
 - (e) Two or more written and sworn complaints have been delivered to the Westfield Clerk Treasurer's Office regarding allegedly untruthful or illegal conduct concerning vendor or vendor's employees or agents during his/her door-to-door solicitation, including but not limited to violating any No Solicitation sign or the Westfield No Solicitation List ;
- (2) All license and/or identification card denials/revocations shall be in writing, shall state thereon the effective date of the denial/revocation and the reason for same, and shall be served by U.S. certified mail or by personal service on vendor at vendor's address as contained in the application.
 - (3) Any vendor, within 20 days from the date on which notice of such license and/or identification card denial or revocation notice is served thereon, may by written request made and delivered to the Westfield Clerk Treasurer's Office within such time period, appeal such action to the Westfield Board of Public Works and Safety ("Board"). If a timely appeal is not made, the decision of the Westfield Clerk Treasurer's Office is final. If a timely appeal is made, the Board shall hear the appeal at a public hearing which shall begin no more than 30 days from the date of the receipt of the appeal request by the Westfield Clerk Treasurer's Office. The Board shall issue its written decision on the appeal no more than 10 days from the ending date of the hearing thereon, which Board decision shall be final.
 - (4) No application, license or identification card fees shall be returned or refunded upon the revocation of a license and/or identification card issued pursuant to this section, all such monies being deemed forfeited.

Sec. 46-6 Penalties.

- (1) Any vendor and/or any employee or agent or vendor who engages in door-to-door solicitation in violation of this section shall be subject to a fine of \$100 for each separate offense during which the same engages in such conduct, with a maximum penalty of \$500.00 for each day during which the same engages in such conduct.
- (2) A vendor and/or any employee or agent of vendor who commits a violation under this chapter is subject to the enforcement procedures provided in I.C. 34-28-5, et

- al. Violations may be filed in any court of competent jurisdiction in Hamilton County Indiana.
- (3) The City may seek a temporary and/or permanent restraining order against any vendor and/or employee or agent thereof in any court of competent jurisdiction.
 - (4) The City's remedies hereunder shall be cumulative and pursuit of one remedy shall not preclude the pursuit of others under this section or otherwise.
 - (5) Willful or intentional disregard of this section shall, to the full extent permitted by law, entitle the City to collect from the violator the City's attorney fees, court costs, litigation expenses, and all other reasonable costs and expenses incurred in obtaining a restraining order and/or any other enforcement remedies against same.

Sec. 46-7.1 Administrative Appeal of License Revocation.

- (1) A vendor whose license has been revoked as outlined by this Ordinance shall have the right to appeal to the Westfield Solicitation Review Board within 3 days of being notified that the license has been revoked.
- (2) Any appeal must be presented to the Clerk-Treasurer Office. The Meeting of the Board will then be set within 3 business days from the request.
- (3) The appeal to the Westfield Solicitation Review Board is a condition precedent to seeking any further civil remedy.
- (4) The Westfield Solicitation Review Board shall consist of the following persons:
 - (a) The Clerk-Treasurer or designee thereof.
 - (b) The Westfield Police Chief or designee thereof.
 - (c) The Westfield Economic and Development Director or designee thereof.

Sec. 46-7 Severability clause. If any paragraph, sentence or other part of this chapter shall, for any reason, be adjudged invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder of this chapter, but shall be confined in its operation to the paragraph, sentence or other part thereof which is directly involved in the controversy in which such judgment is rendered.

Sec. 46-8 Effect and scope. The adoption of this chapter by the City, and the license of any vendor hereunder, shall not constitute an endorsement of approval of the cause, goods, property and/or services represented or provided by, nor the product of any person while engaged in door-to-door solicitation.

I have read and will comply by Ordinance 19-31, including the No Solicitation List maintained at www.westfield.in.gov and I am aware that non-compliance may result in penalties and possible revocation of my solicitation permit.

Name

Date