

**Ordinance NO. 755-23**  
**AN ORDINANCE AMENDING THE PROVISIONS**  
**CHAPTER 5.16 - TRANSIENT DEALERS, PEDDLERS,**  
**CANVASSERS AND SOLICITORS**

**WHEREAS**, the Town has enacted certain ordinances as previously set forth in Chapter 5.16 of the Fowler Municipal Code; and

**WHEREAS**, the Town is desirous of updating its code provisions related to the above matters and

**BE IT THEREFORE ORDAINED AS FOLLOWS:**

**SECTION ONE:** All provisions of Chapter 5.16 of the Municipal Code are repealed in their entirety.

**SECTION TWO:** The following sections are enacted as follows:

**Section 5.16.010 - Definitions.**

- A. "Canvasser" shall mean a person who attempts to make personal contact with a resident at his or her residence, without prior specific invitation or appointment from the resident, for the primary purpose of:
1. Attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause; or
  2. Distributing a handbill or flyer advertising a noncommercial event or service.
- B. "Hawker" shall mean a person or temporary vendor who attempts to make personal contact with the resident, for the primary purpose of attempting to sell a good or service.
- C. "Peddler" means any person, whether a resident of the town or not, traveling by any means from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, and merchandise offering and exposing the same for sale, or making sales and delivering articles to purchasers or selling or offering to sell services to be furnished or performed in the future.
- D. "Person" means and includes the singular and the plural and also means and includes any firm, corporation, limited liability company, association, club, partnership, limited partnership, any society, or any other organization.

- E. "Solicitor" means a person who attempts to make personal contact with a resident without specific invitation or appointment from the resident. "Solicitor" also means any person, whether a resident of the town or not, traveling by any means from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares, and merchandise, or for services to be furnished or performed in the future, whether or not such person has carried or exposed for sale a sample of the subject of such sale or whether he is collecting advance payments for such sales or not; provided that such definition includes any person who, for himself, or for another person hires, leases, uses or occupies any room, structure, building, shop, lot or other real property, alley, street, road, right-of-way or any other place or temporary location within the town for the purpose of exhibiting any samples and taking orders for future delivery.
- F. "Temporary business" means a person who establishes a business within the town with the intention and determination to remain within the town for a short period of time only, whether such period is definite or indefinite, or until disposition of a particular stock of merchandise has occurred.
- G. "Transient dealer" means and include any person whether a resident of the town or not, who engages in the temporary business of selling or selling and delivering goods or services within the town, and who, in furtherance of such purpose, hires, leases, uses or occupies any tent, room, structure, building, shop, lot or other real property, alley, street, road, right-of-way or any other place or temporary location within the town. "Transient dealer" includes those not selling from stock but exhibiting samples for the purpose of securing orders for future delivery. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with a local dealer, trader, merchant, or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant, or auctioneer.
- H. "Yard Sale" is defined as a private sale occurring of a home owners' residence or on a vacant lot no less frequently than four (4) times in any one calendar year at the same location within the Town limits and where there is no regular business activity being conducted as in a regular course of business at that location.

#### **Section 5.16.020 – Prohibited Activities:**

1. It is unlawful for any person to engage in the business of a peddler, solicitor, canvasser, or transient dealer within the corporate limits of the town without first obtaining a current and valid license as provided for in this chapter.
2. Every person who unlawfully engages in or allows another to unlawfully engage in, on or about their property, in the business of a transient dealer, peddler, canvasser, or solicitor in

the Town of Fowler, and every person who in said town transacts any business which would make him a transient dealer, peddler, canvasser, or solicitor, without having a valid license as provided for in this chapter shall be punished by a fine of not less than one hundred dollars and not more than one thousand dollars.

3. It is unlawful for any person to conduct business in such a manner as to attract a crowd which may cause the blockading or obstruction of any street, roadway, alley or sidewalk.
4. No person shall operate, own, or maintain a temporary food establishment without a current health department inspection from the Otero County Health Department.
5. Every person licensed as a transient dealer, peddler, canvasser, or solicitor, whenever his license is demanded of him by any police officer of the town shall forthwith exhibit his license for examination by such officer, and if he neglects or refuses so to do, he shall be subject to the same penalty as if he has no license.
6. No person shall act as a hawker, peddler or as a solicitor within the Town without first registering with the Town in accordance with this Section. A canvasser is not required to register but any canvasser may do so for the purpose of reassuring Town residents of the canvasser's good faith.
7. No more than one person shall engage in business or operate under the same transient dealer, peddler, canvasser, or solicitor's license whether as principal or agent or assistance to any principal or agent.
8. Each day that any person shall engage in business or operate as a transient dealer, peddler, canvasser, or solicitor as defined in section 5.16.010, without first obtaining a license with the town clerk, shall be deemed a separate offense, and such person may be prosecuted accordingly.
9. Persons or entities conducting yard sales that are not in compliance with the definition of authorized yard sale must obtain a peddler's license as set forth above.
10. It shall be unlawful for any non-profit organization to engage in door-to-door fund raising without registering with the town clerk.
11. Every person who unlawfully engages in door-to-door fund raising on behalf of a non-profit organization without registering with the town clerk as provided for in this chapter shall be punished by a fine of not more than three hundred dollars.
12. It shall be unlawful for any person or applicant to make any false or untrue statement in an application for a license as a transient dealer, peddler, canvasser, solicitor and no transient dealer, peddler, canvasser, or solicitor shall commit any fraud in the transaction of his business as a transient dealer, peddler, canvasser, or solicitor, or sell any manufactured goods, wares, or merchandise by any false or short weight, or measure or sell any goods,

wares, or merchandise as being composed or manufactured in whole or in part of a material different from which such manufactured goods, wares, or merchandise are actually composed or manufactured, or sell any manufactured goods, wares, or merchandise which are partly or entirely of a poisonous or injurious character or nature, for consumption of human beings, animals, or fowls, or for application to the body, hair, or skin or any human being or animal, and every person who shall be convicted of a violation of any provision of this Section shall be punished by a fine of not less than one hundred dollars and not more than one thousand dollars.

13. It is unlawful for any peddler, solicitor, canvasser or transient dealer to make an unsolicited call at a premises listed on the no visit list.

#### **Section 5.16.025 - Provisions related to on-premises “calling”.**

1. It is unlawful for any peddler, solicitor, canvasser, or transient dealer to make an unsolicited call at a premises signed "No Solicitations" or words to that effect on or adjacent to the front door of the premises.
2. Where the occupant has placed any premises on the “no visit” list.
3. The town clerk shall establish and maintain a list of addresses where the occupant or owner has requested that no peddler, solicitor, canvasser or transient dealer make an unsolicited visit at that address.
4. The owner or occupant of any premises within the Town of Fowler may request the town clerk in writing to place the address on a “no-visit” list. The town clerk shall then place the address on the no visit list. Where the requesting owner or occupant moves, the owner or occupant has a duty to notify the town clerk so the address may be removed from the no visit list.
5. The town clerk shall provide the “no-visit” list of addresses to each peddler, solicitor, canvasser or transient dealer who indicates intent to solicit, peddle or canvass on a door-to-door basis.

#### **Section 5.16.030 – Exclusions**

1. Fireworks stands are exempt from this chapter, but must comply with the specific fireworks license regulations otherwise required elsewhere in the code.
2. Yard sales conducted by any person no less frequently than four (4) times in any one calendar year at the same location within the Town limits and where there is no regular business activity being conducted as in a regular course of business at that location.
3. Any person engaged in short-term fund-raising door to door within the town on behalf of a non-profit or government related organization including but not limited to school organizations, Boy Scouts, Girl Scouts, Four-H, and church organizations does not require a license but shall register with the town clerk.

4. Transient dealer does not include persons who are manufacturers' representatives who supply wholesalers, dealers or merchants located in the town, merchants who have a permanent location within the town and who hold a current, valid Colorado sales tax license, local area farmers selling produce and persons, corporations, limited liability companies, firms, or associations who are invited into the Town of Fowler by the town.

**Section 5.16.040 - Application for license.**

- A. Every person desiring a transient dealer's license or peddler's license shall first make written application with the town clerk and shall submit the written application to the town clerk together with a non-refundable application fee in the amount of twenty-five dollars. The application fee will be applied to the license fee where the town grants the license.
- B. The written application shall include at a minimum the following information:
  1. Applicant's name, residential address and telephone number;
  2. Whether the applicant transacts business on his own behalf or on the behalf of another person and, if so, the name, business address, residence address and telephone number of such other person;
  3. The kind, class or nature of the goods, wares and merchandise that the applicant proposes to sell under the license;
  4. The names, residential addresses, business addresses and telephone numbers of the suppliers of goods, wares and merchandise that the applicant proposes to sell under the license where the applicant does not own the goods, wares and merchandise the applicant intends to sell.
  5. The application shall contain such other and further information and/or request for information as deemed appropriate by the town.
- C. Where appropriate, the application shall be accompanied by the following:
  1. Written verification from the landowner of the property from which sales are to be made authorizing said use of the property and said sales;
  2. Written verification of a sales tax license, branch sales tax license, or special events license as the case may be certifying and verifying that sales tax will be collected and remitted to the town.
- D. Each person shall complete the same form as required for a license as set forth in this chapter but no fee shall be required. The registration for a non-profit fund-raising event shall be effective for a limited period of time not to exceed ninety days. Where the registration is for a youth organization and the youths participating in the fund raising are all less than eighteen years of age, an adult representing the organization may register on behalf of the organization in lieu of individual registration.
- E. Following submission of a complete application including all attachments and payment of the correct application fee the town clerk shall refer the application to the Fowler Police Department for further investigation. The Fowler Police Department shall verify the information contained in the application and shall check all other references and/or

information deemed appropriate under the circumstances. The Fowler Police Department shall give written findings of its investigation to the town clerk.

- F. After the town clerk has received the completed application, appropriate application fee and a positive report from the Fowler Police Department, the town clerk shall issue to the applicant a written license authorizing the applicant to engage in business within the Town of Fowler.
- G. In the event the town clerk fails or refuses to issue a license hereunder, or believes that the applicant is not required to have a license, the applicant shall be entitled to an immediate appeal to the town manager. Where the town manager affirms the decision of the town clerk, the applicant shall have ten days to file a written appeal to the board of trustees. The appeal shall be heard at the next regular board of trustees meeting that occurs at least ten days subsequent to the filing of the appeal with the town clerk at which time the applicant may present evidence and testimony as to why the license should be issued. The decision of the board of trustees shall be final.
- H. Provided there have been no violations of this chapter, and the proper amount of sales tax has been collected and remitted to the town, a transient dealer, peddler or solicitor's license may be renewed for an additional term of the same length as the original license so long as the request for renewal is made prior to or within thirty days after the existing license expiration date. Where the correct license fee is remitted with the request for renewal, the town shall waive the application fee.
- I. As part of the registration, the organization shall provide the town clerk with written documentation demonstrating the non-profit status of the organization. Acceptable documentation shall include but not be limited to a copy of an I.R.S. determination of non-profit status or a letter from a government administrator such as a school superintendent stating that the organization is approved by and operates under the umbrella of that government organization.
- J. The town clerk shall keep on file each application made for a license, a duplicate copy of each license issued and all papers filed in connection with any license issued, and shall keep a record of all license fees paid and shall keep a record of all licenses issued that may be canceled, and all such files and records shall at all times be open to public inspection.

**BE IT THEREFORE ORDAINED AS FOLLOWS:**

**SECTION 3:** Effective date of this ordinance shall be December 1, 2023.

INTRODUCED, PASSED on first reading and ordered published on this 16th day of October, 2023.

ADOPTED AND APPROVED on second and final reading as amended on the 20<sup>th</sup> day of November, 2023.

TOWN OF FOWLER

  
Lucas Flanscha, Mayor

ATTEST:

  
Kelly Lotrich, Town Clerk

CERTIFICATE OF PUBLICATION AND ADOPTION

I HEREBY CERTIFY that the foregoing Ordinance No.755-23 was introduced, read and ordered published on the 13<sup>th</sup> day of October, 2023, and was published in the Rocky Ford Daily Gazette, a newspaper of general circulation published in Otero County, on 27<sup>th</sup> day of October, 2023, which dates were at least ten (10) days before adoption of Ordinance No.755-23 by the Board of Trustees.

I FURTHER CERTIFY that on the 20<sup>th</sup> day of November, 2023, the foregoing Ordinance No. 755-23 was adopted on second and final reading.

TOWN OF FOWLER

  
Lucas Flanscha, Mayor

ATTEST:

  
Kelly Lotrich, Town Clerk