

**NORTH CAROLINA
WATAUGA COUNTY**

ORDINANCE TO REGULATE SOLICITATION

ARTICLE I. PURPOSE

WHEREAS, the Board of Commissioners for the County of Watauga, North Carolina wishes to prevent fraud and crime upon its citizens and those visiting and working in Watauga County;

WHEREAS, the Board of Commissioners for the County of Watauga, North Carolina finds that the in-person impromptu sale or offering for sale of goods and/or services and the in-person impromptu solicitation of funds from the public presents opportunities for fraud and crime;

WHEREAS, the Board of Commissioners for the County of Watauga, North Carolina wishes to preserve free speech for all persons;

WHEREAS, the Board of Commissioners for the County of Watauga, North Carolina wishes to narrowly tailor this Ordinance to prevent fraud and crime, and not to suppress constitutionally protected speech;

WHEREAS, the Board of Commissioners for the County of Watauga, North Carolina wishes to protect the safety of children;

WHEREAS, the Board of Commissioners for the County of Watauga, North Carolina wishes to protect domestic animals from situations that increase the risk of harm to the animals;

WHEREAS, the Board of Commissioners for the County of Watauga, North Carolina wishes to promote the health, safety, and general welfare of its citizens;

THEREFORE, the Board of Commissioners for the County of Watauga, North Carolina hereby adopts the following Ordinance:

ARTICLE II. AUTHORITY

This Ordinance is enacted pursuant to the powers granted to Watauga County by North Carolina Gen. Stat. §§ 153A-121 and 153A-123.

ARTICLE III. JURISDICTION

Pursuant to North Carolina Gen. Stat. § 153A-122, this Ordinance shall apply to all areas of unincorporated Watauga County which are not within the corporate limits of any municipality.

ARTICLE IV. DEFINITIONS

The following definitions apply:

Appeal: The process of contesting the denial or revocation of a Permit.

Application: An application for a Permit.

Applicant: A person who applies for a Permit.

Child: A minor person under sixteen (16) years of age.

Citation: A written notice issued by a law enforcement official to any person who violates this Ordinance.

County Manager: The County Manager of Watauga County, North Carolina, or his or her designee.

Domestic Animal: A domestic dog or domestic cat, as defined under the Watauga County Animal Care and Control Ordinance.

False Statement of Material Fact: An affirmative statement, written or oral, that is untrue or misleading. A False Statement of Material Fact includes, but is not limited to, statement(s) regarding the scope or quality of goods or services offered by the Solicitor, statement(s) that the Solicitor represents a group or charity, statement(s) that a Solicitor is a veteran of the United States Military, or statements regarding family or housing status. A False Statement of Material Fact also includes wearing an identification, badge, emblem, uniform, or symbol that a reasonable person would believe identifies the Solicitor as part of, or as acting on behalf of, any group or charity when the Solicitor is not in fact part of, or acting on behalf of, the identified group or charity.

Hearing: An in-person proceeding to contesting the denial or revocation of a Permit, during which the Applicant may give testimony and present evidence.

Notice of Denial: Written notice that a Permit has been denied.

Notice of Appeal Rights: A written notice of the Applicant's right to appeal the denial or revocation of a Permit, to whom the appeal should be made, and the time limit for making an appeal.

Ordinance: The Watauga County Ordinance to Regulate Solicitation.

Permit: A Written Permit issued by the Sheriff granting the Applicant the right to Solicit.

Permit Holder: A person to whom a Permit is issued.

Service Animal: An animal that that is individually trained to do work or perform tasks for the benefit of an individual with a disability, as allowed by North Carolina General Statutes § 168-4.2.

Solicit: In person use of the spoken, written, or printed word, or other acts conducted with the purpose of selling or offering for sale goods or services or collecting contributions of money or goods.

Solicited Individual: A person whom a Solicitor attempts to Solicit.

Solicitor: A person who Solicits.

Sheriff: The Sheriff of Watauga County, North Carolina, or his or her designee.

Time: In computing any period of time under this Ordinance, the day of the act shall not to be included.

Violation: A violation of this Ordinance.

Warning Citation: A citation given as a warning. A Warning Citation does not subject the Solicitor to penalties resulting from a violation of this Ordinance.

ARTICLE V. ADMINISTRATION

The Watauga County Sheriff's Office is responsible for the administration of the provisions of this Ordinance.

ARTICLE VI. SCOPE OF PERMITTED ACTIVITY

A. Permit Required.

It shall be a Violation of this Ordinance for any person to Solicit for personal gain upon the streets or any other public property, or upon private property without the permission of the owner, proprietor, or person in control of said private property without first obtaining a Permit from the Watauga County Sheriff's Office. The issuance of a permit shall not affect the obligation of the Permittee to obtain permission of an owner of private property to be upon the premises if otherwise required.

B. False Statements.

It shall be a Violation of this Ordinance for any Solicitor to make a False Statement of Material Fact for the purpose of Solicitation.

C. Exempt Activity.

This Ordinance shall not apply to transactions between family members or mutual acquaintances; or any matter that is not Soliciting, as defined herein.

D. Possession of Permit.

A Permit Holder shall keep his or her Permit in his or her possession when Soliciting and shall exhibit his or her Permit when requested to do so by any Solicited Individual or any law enforcement officer.

E. Permit Not Transferrable.

Permits are not transferrable. It shall be a Violation to give a Permit to another person, or to possess a Permit issued to another person unless the person receiving or possessing the Permit of another is the parent, step-parent, or guardian of the Permit Holder, or is acting at the request of a parent, step-parent, or guardian of the Permit Holder.

ARTICLE VII. PERMIT ISSUANCE

A. Sheriff Shall Issue Permit.

The Sheriff shall issue a Permit, or a Temporary Permit, as appropriate, to each Applicant who meets the requirements of this Ordinance.

B. Permit Application Procedure.

The Application shall be on a form issued by the Sheriff, signed by the Applicant and witnessed by the Sheriff, and shall set forth the following information:

1. The Applicant's first and last names and middle initial;
2. The Applicant's date of birth;
3. The Applicant's contact information;
4. The Applicant's emergency contact information;
5. A brief description of the activity to be conducted, including, if applicable, any items or services to be sold or offered for sale; and
6. If the Applicant is soliciting on behalf of a group or charity, the name and address of the group or charity;

The Applicant's contact information may include any of the following:

1. An address serviced by the United States Postal System;
2. An email address;
3. A telephone number(s); or
4. Any information that the Sheriff may reasonably use to contact the Applicant.

The Applicant's emergency contact information may include any of the following:

1. An address serviced by the United States Postal System;
2. An email address;
3. A telephone number(s); or
4. Any information that the Sheriff may reasonably use to contact the emergency contact person(s) specified by the Applicant.

C. Identification Required.

The Applicant shall present identification. Any valid government-issued photo identification shall be deemed sufficient. If the Applicant does not possess valid

government-issued photo identification, the Applicant may present other documentation that reasonably establishes his or her identity.

D. Sheriff to Keep Record of Identification.

The Sheriff shall make a black and white copy of the Applicant's identification and keep the same on file. If the Applicant does not possess valid government-issued photo identification, the Applicant shall allow himself or herself to be photographed by the Sheriff. The Sheriff shall keep the photograph on file.

E. Identification if the Applicant is a Minor.

If the Applicant is a minor and does not possess valid government-issued photo identification, he or she may present a valid photo identification, non-photo identification, or other documentation from any public or private school, including a home school, recognized by any state in the United States of America that reasonably establishes his or her identity.

F. Criminal Background Check.

The Sheriff shall perform a criminal background check on all Applicants.

G. Applicant Shall Provide Sufficient Information.

The Applicant shall provide his or her first and last name, middle initial, and date of birth. If this information is deemed insufficient by the Sheriff, the Applicant shall provide additional information sufficient to allow the Sheriff to conduct a criminal background check. If the Applicant does not provide sufficient information to allow the Sheriff to conduct a criminal background check, the Sheriff shall deny a Permit or a Temporary Permit.

H. Applicant May Provide Social Security Number.

To reduce the potential for confusion when running a criminal background check, the Applicant may choose to provide his or her Social Security Number. The Applicant's provision of his or her Social Security Number is optional, and shall not be required. However, if the Applicant cannot provide sufficient information other than his or her Social Security Number to allow the Sheriff to conduct a criminal background check, and the Applicant elects not to provide his or her Social Security Number, then the Sheriff shall deny a Permit or a Temporary Permit.

I. No Permit Fee.

No Applicant shall be charged a fee for a Permit.

J. Lost Permit.

If an Applicant loses a Permit, he or she may apply for a new Permit.

K. Assistance with Application.

The Sheriff shall provide reasonable assistance completing the Application to any

person who requests the same.

L. List of Volunteers.

The Sheriff shall maintain a list of organizations and/or volunteers, along with their contact information, who have asked the Sheriff to be put on a list of organizations and/or volunteers willing to assist Applicants free of charge. If the Sheriff is unable to provide the assistance needed by the Applicant, the Sheriff shall give a copy of the list to the Applicant.

M. Temporary Permit.

All Applicants who present a properly completed Application shall be issued a Temporary Permit. A Temporary Permit shall be good for fourteen (14) calendar days. A Temporary Permit shall state the date upon which it is granted, and the date upon which it expires.

N. Extension of Temporary Permit.

If the Sheriff has neither issued a Permit nor denied a Permit Application by the time a Temporary Permit expires, the Sheriff shall issue another Temporary Permit.

O. Permit Expiration.

A Permit shall be valid for one (1) year from the date of issuance. A Permit shall state the date upon which it is granted, and the date upon which it expires.

P. Protective Vest.

All individuals engaged in Solicitation under this Ordinance shall wear a reflective vest which meets the standards set by the North Carolina Department of Transportation at all times while engaged in Solicitation activities. Upon the issuance of a Permit, the Sheriff shall have available to Permittee's a vest which complies with these requirements which shall be available to Permittee without charge.

Q. Protective Vest for Minor Accompanying a Solicitor.

All children accompanying or being supervised by individuals engaged in Solicitation under this Ordinance shall wear a reflective vest which meets the standards set by the North Carolina Department of Transportation at all times while the person they are accompanying or being supervised by is engaged in Solicitation activities. Upon the issuance of a Permit, the Sheriff shall have available to all such minor children a vest which complies with these requirements, which shall be available to the minor child(ren) without charge so long as said minor child(ren) appear in person at the office of the Sheriff with the Permittee.

R. Solicitor May Not Be Accompanied By Domestic Animals.

No individual engaged in Solicitation under this Ordinance may be accompanied by any domestic animal if the individual is soliciting within fifteen (15) feet of a

road, street, or highway. Service Animals are exempt from this requirement.

ARTICLE VIII. PERMIT DENIAL AND REVOCATION

A. Permit Denial.

A Permit shall be denied if the Applicant has:

1. Failed to properly complete an Application;
2. Made a False Statement of Material Fact on his or her Application; or
3. Been convicted or has entered a plea of guilty or no contest upon which final judgment has been entered by a court of competent jurisdiction in this State, or any other state, involving a crime of violence, fraud, false pretenses, or a sexual offense; and (b) within ten (10) years if the offense was a felony, or within three (3) years if the offense was a misdemeanor.
4. An outstanding warrant for arrest or is a fugitive from justice

B. Permit Revocation.

If a Permit Holder commits a Violation, the Sheriff shall revoke the Permit Holder's Permit. Upon notice of revocation, the Permit Holder shall immediately surrender the Permit to the Sheriff.

If a Permit is revoked for any reason, the Permit Holder shall not be eligible for a Permit for the following time periods:

1. Upon the first revocation, for one (1) month;
2. Upon the second revocation, for six (6) months; and
3. Upon the third revocation, for one (1) year.

C. False Statements.

Any Applicant who makes a False Statement of Material Fact on an Application shall be guilty of violating this Ordinance, shall not be issued a Permit, and shall not be eligible for a Permit for a period of one (1) year from the initial date of application.

D. Notice of Denial.

If a Permit is denied, the Sheriff shall issue a Notice of Denial to the Applicant, which shall contain the following:

1. The reason(s) for the denial;
2. The applicable section of this Ordinance used as a basis for the denial;
3. A Notice of Appeal Rights; and
4. How to obtain a copy of this Ordinance, including that the Applicant may obtain a free copy of this Ordinance from the Sheriff.

It shall be the duty of the Applicant to maintain a valid address with the Watauga County Sheriff's Office for purpose of receiving notice pursuant to this ordinance. Notice of Denial shall be sufficient if given to the Applicant in one (1) of the following manners:

1. By U.S. Mail, at the address shown on the Application;
2. If the Applicant does not provide an address serviced by the United States Postal Service; then by electronic mail, at the electronic mail address shown on the Application;
3. If the Applicant does not provide an address serviced by the United States Postal Service or an electronic mail address, service may be effectuated at the address listed by the applicant in his paperwork by any reasonable method.

ARTICLE IX. APPEAL OF DENIAL OR REVOCATION

A. Appeal to Sheriff.

Any Applicant may appeal the denial or revocation of a Permit to the Sheriff within ten (10) business days after the denial or revocation by notifying the Sheriff in writing or in person at the office of the Sheriff. The Sheriff shall schedule a Hearing with the Applicant, which hearing shall take place within two (2) business days. The Applicant may give testimony and present evidence at the hearing. The Sheriff shall issue a written decision within two (2) business days of the hearing.

If the Sheriff designates a person to hear the Appeal, the Sheriff shall appoint a person to hear the Appeal who is not the same person who initially denied or revoked the license, and who is not supervised by the person who initially denied or revoked the license.

B. Appeal to County Manager.

Any Applicant may appeal a Decision of the Sheriff to the County Manager within ten (10) business days after the Sheriff's Decision is issued by delivering a written notice of appeal to the County Manager. The County Manager shall schedule a Hearing with the Applicant, which hearing shall take place within five (5) business days. The Applicant may give testimony and present evidence at the hearing. The County Manager shall issue a Final Decision within five (5) business days.

C. Appeal to District Court.

Any Applicant may appeal a Final Decision of the County Manager by filing an appeal in District Court within thirty (30) calendar days after the Final Decision of the County Manager.

D. Providing Copy of Ordinance.

The Sheriff shall provide to each Applicant one (1) copy of this Ordinance without charge upon the Applicant's written or verbal request.

ARTICLE X. PROHIBITED CONDUCT.

A. No person shall engage in Solicitation as defined herein without first having obtained a permit as set forth herein.

B. It shall be unlawful for any person within the jurisdiction set forth in

this Ordinance to engage in any of the following activities:

1. Engage in Solicitation after a permit has been revoked or denied;
2. Use any words or language of a profane, vulgar, lewd, lascivious or indecent character, nature, or connotation;
3. Use any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent or physical injury to the property of any person;
4. To follow or request repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person for financial gain;
5. To knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, criminal conduct, veteran status or housing status for financial gain;
6. Solicit during the period from sunset to sunrise;
7. Solicit while impaired by an intoxicating substance, including but not limited to alcohol, drugs, or prescription medications for which the Solicitator does not have a prescription; or
8. Solicit in violation of the terms of this Ordinance.
9. Fail to wear a protective safety vest at all times while engaged in Solicitation which meets the North Carolina Department of Transportation Standards for safety vests.

ARTICLE XI. ENFORCEMENT

A. Warning Citation.

The Sheriff shall issue one (1) Warning Citation to any person Soliciting without a Permit in violation of Section X.A of this Ordinance. If, after receiving one (1) Warning Citation, the Sheriff again finds the person Soliciting without a Permit, the Sheriff may proceed with penalties as set forth herein. Nothing contained in this section shall limit the sheriff from enforcement of an action in violation of the requirements of the permit or other conduct as set forth herein.

B. Penalties.

Violation of this Ordinance shall be a Class 3 Misdemeanor. In addition, a violation of this ordinance may be enforced by any one or more of the remedies authorized by North Carolina Gen. Stat. § 153A-123.

ARTICLE XII. MISCELLANEOUS

A. Severability.

Should any portion of this Ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

This Ordinance shall become effective thirty (30) days after its adoption.

This the 18th day of October, 2016.

BY: 
Jimmy Hodges, Chairman
Watauga County Board of Commissioners

I, Anita Fogle, Clerk of the Watauga County Board of Commissioners, do hereby attest that the foregoing ordinance was duly adopted by the governing body of Watauga County after lawful public notice and at a regular meeting thereof, a quorum being present.

This the 18th day of October, 2016.

 (SEAL)
Anita Fogle,
Clerk to the Board