

Meeting Date: 5/24/2011



Agenda Item # 6D

CITY COUNCIL AGENDA ITEM

Contact Name: Debbie Renner Department Director: _____
 Department/Contact # City Clerk City Manager: Jamie Croteau

Type of Item: Public Hearing Resolution
 Ordinance First Reading Discussion & Action
 Ordinance Second Reading Council Approval

Subject: Ordinance No. 459

BACKGROUND: Ordinance No. 459 was considered and adopted on first reading at the May 10, 2011 Council Meeting. At that meeting two amendments were also made to the ordinance: The last two sentences of Section 10.7.2(b) were stricken and a typographical error in the title of Section 10.7.11 was corrected. Those two changes have been made to the Ordinance and a revised copy is attached to this memo. This version, if adopted on second reading, will serve as the permanent record of Ordinance No. 459 and will be submitted for codification.

RECOMMENDATIONS: It is recommended that Ordinance No. 459 be approved on second and final reading.

ATTACHMENTS: Ordinance No. 459

FINANCIAL IMPACT: Not applicable

Reviewed by City Attorney _____
 Reviewed by Finance Dept. _____
 Reviewed by: _____

1st Discussion Date: date.	2nd Discussion Date: date.	Third Discussion Date: date.	Other Dates: date.
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ORDINANCE NO. 459

**AN ORDINANCE OF THE CITY OF ORANGE CITY,
FLORIDA, REPEALING CHAPTER 10.7, PEDDLERS AND
SOLICITORS, AND REPLACING REPEALED CHAPTER
10.7 BY ADOPTION OF A NEW CHAPTER 10.7,
SOLICITORS AND SOLICITING, PROVIDING FOR
CONFLICTS, SEVERABILITY, CODIFICATION AND AN
EFFECTIVE DATE.**

WHEREAS, pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the City of Orange City is authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the City Council of the City of Orange City wishes to preserve and secure the public safety, health, welfare of all the residents of the City of Orange City; and

WHEREAS, the City Council of the City of Orange City wishes to protect the residents against crime and undue annoyance; and

WHEREAS, the City Council of the City of Orange City wishes to ensure that the use of streets and sidewalks in the City do not become dangerous and that the free flow of traffic thereon is not impeded; and

WHEREAS, the City Council of the City of Orange City recognizes that types of solicitation, also known as “panhandling”, is a form of free speech which enjoys protection under the United States Constitution; and

WHEREAS, aggressive panhandling or solicitation, as that term is defined herein, has been afforded no protection and may be lawfully banned outright anywhere in the City of Orange City;

WHEREAS, this ordinance is content neutral in its regulation of soliciting; and

WHEREAS, this ordinance is narrowly tailored in its attempt to control soliciting and to promote public safety and economic vitality in the City of Orange City, the protection of which constitutes this important governmental interest; and

WHEREAS, the City of Orange City finds that aggressive panhandling or soliciting, as defined herein, should not be allowed anywhere within the corporate limits of the City as it is injurious to the public health, welfare and morals; and

WHEREAS, Chapter 10.7, Peddlers and Solicitors, is repealed in its entirety and replaced by the adoption of this new Chapter 10.7, Soliciting and Solicitors.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 10.7 of the Orange City Code of Ordinances of the City of Orange City is hereby repealed and replaced with the following, to be titled "Soliciting and Solicitors":

Sec. 10.7-1. Statement of purposes.

It is the purpose of the City to assist in the accomplishment of the following goals:

- (a) Prevention and/or reduction of crimes;
- (b) Protection of the privacy and peaceful enjoyment of the home and business; and
- (c) Making available to residents information helpful to determining their response to solicitors.

Sec. 10.7-2. Definitions.

As used in this Chapter, the following definitions shall apply:

- (a) *Peddler, solicitor, canvasser or panhandler.* Irrespective of common usage, these terms may be used interchangeably to describe any person who makes contact, directly or indirectly, by telephone, mail or in person or otherwise, with any resident of the City for the purpose of soliciting.

- (b) *Solicit, solicitation, soliciting or panhandling*: These terms describe the act occurring in Orange City of requesting, directly or indirectly, expressly or by implication, money, credit, property, financial assistance, information or any other thing of value either in return for goods or services, or as a contribution or donation, whether or not such contribution or donation results in receipt of any goods, merchandise or service or any similar exchange of something of value, whether such things of value be tangible or intangible.
- (c) *Portable sign*: Any sign not permanently affixed to the ground or the structure on the site it occupies.
- (d) *Sign*: Any device for visual communication which is used to or intended to attract the attention of the public for business or professional purposes, when the display of this device is visible beyond the boundaries of the property upon which the display is located. The term "sign" shall not include any flag or badge or insignia of any government or governmental agency. The term "sign" shall not include the displays or advertising devices in a merchant's window or within the interior of a building.
- (e) *Structure*: Any object, constructed or installed by a person, having a permanent location on the ground.
- (f) *Seasonal sales*: Sales and delivery of goods and merchandise on a seasonal basis for no longer than 30 consecutive days in a 12-month calendar year, provided the location is confined to a privately owned place.
- (g) *Seasonal sales merchant*: A vendor that provides a product related to the yearly season, i.e. Christmas trees at Christmas time.
- (h) *Aggressive Panhandling* means:
 - (1) To approach or speak to a person while panhandling in such a manner as would cause a reasonable person to believe that the person is being threatened with:
 - (a) Imminent bodily injury; or
 - (b) The commission of a criminal act upon the person or another person, or upon property in the person's immediate possession.
 - (2) To persist in panhandling after the person solicited has given a negative response;
 - (3) To block, either individually or as part of a group of persons, the passage of a solicited person;
 - (4) To touch a solicited person; or

- (5) To engage in conduct that would reasonably be construed as intended to intimidate, compel, or force a solicited person to accede to demands.
- (k) *Roadway* means that portion of a street or highway improved, designated, or ordinarily used for vehicular travel. Roadway includes the area used for vehicular parking within the paved area of travel.
- (l) *Vehicular panhandling*. Any activity which is conducted in the furtherance of obtaining money, employment, business, or any other thing of value from an occupant of a motor vehicle, most commonly accomplished by giving a hard-luck story, holding a cap, bucket, or other container for receipt of money or other donation, or displaying a sign asking directly or indirectly for money or donations, when such activity(ies) results in the panhandler approaching a motor vehicle being operated on a roadway, to collect or receive the money or other thing of value.
- (m) *Home solicitation sale* is defined pursuant to F.S. 501.021-501.055.

Sec. 10.7-3. Registration required.

Except as otherwise provided herein, it shall be unlawful for any person to engage in soliciting within the City without being first registered for that purpose as provided in this Chapter.

Sec. 10.7-4. Home solicitation sales.

(1) Prior to engaging in any home solicitation sales activity, as that term is defined under state law without reference to the minimum dollar amount limitation, a local business tax receipt must be obtained from the City if appropriate. Prior to the issuance of a local business tax receipt, the applicant must obtain a home solicitation sales permit issued by the Clerk of the Court pursuant to F.S. 501.021-501.055, as amended.

(2) Notwithstanding the provisions of this section, the City Manager or his/her designee may issue a permit for any publicly sponsored event by a government entity such as, by way of illustration only and without limitation, a public school. The written permission of the City Manager or designee must be provided at the time that an application is submitted and attached to each copy of the permit and shall constitute a part of the permit document.

Sec. 10.7.5. Hours of home solicitation.

Persons issued home solicitation permits, and other persons whose speech is fully protected under the state and federal constitutions or who are not otherwise required to obtain a permit under F.S. 501.022 herein shall be allowed to solicit on

the streets, sidewalks, and public places within the City between the hours of 9:00 a.m. and 6:00 p.m., Monday through Saturday.

Sec. 10.7.6. Unlawful activities by home solicitors:

It is unlawful for any individual home solicitor, including individuals whose speech is protected by the federal and state constitutions to:

- (1). Enter the premises of a private residence when a “no solicitors” sign is posted;
- (2). Remain upon any residential premises after the owner/occupant requests the solicitor depart;
- (3). Approach rear or side doors of residential premises;
- (4). Intentionally make any physical contact with the person solicited without the person’s consent.
- (5). Block the free passage of the person being solicited;
- (6). Fail to inform the person being solicited of the true identity of the organization the home solicitor represents and, if requested by the person being solicited, fail to produce identification for the organization which the home solicitor represents, including, if applicable, the City permit.
- (7). Blow, ring a bell, or use any sound device, including any loud speaking radio or sound amplifying system, upon any of the city streets, alleys, parks or other public places or upon any private premises in the City.

Sec. 10.7.7. Registration when home solicitation permit not required.

In the event a home solicitation sales permit is not required under state law due to the minimum dollar amount requirement under the statutory definition, found in F.S. 501.021, the statutory exemption from the permit requirements, or any other reason, a local business tax receipt must still be issued by the City where the business is headquartered, prior to engaging in home solicitation sales.

(1) As a condition of issuance of a local business tax receipt from the City Clerk when there is no home solicitation sales permit, the applicant must provide a list of each person engaging in the home solicitation activity, including the name, address and phone number of each person, and the name address, phone number of the organization conducting or sponsoring the sales activity.

(2) In the event the home solicitation sales are conducted by minors, they must carry personal identification which includes their full name, date of birth,

residence address, and employer and the name and permit number of their adult supervisor (F.S. 501.022(1)(b)(5)).

Sec. 10.7-8. Exemption; claim of exemption for home solicitation.

(1) Nothing herein contained shall apply to vendors of bona fide newspapers, to bona fide elementary, middle or high school groups engaged in fundraising or to charitable organizations, any person(s) soliciting or accepting contributions for any local, county, state or federal candidate's campaign, provided the candidate has filed the appropriate paperwork pursuant to local, state and federal regulations, or any person(s) canvassing for any local, county, state or federal candidate or issue.

(2) Any person claiming to be legally exempt from the regulations set forth in this chapter, or from the payment of the permit fee, shall cite to the City Manager or designee the statute or other legal authority under which exemption is claimed and shall present to the City Manager proof of qualification for such exemption.

Sec. 10.7-9. Solicitation along rights-of-way.

(1) A permit for solicitation on city, county, or state rights-of-way, as defined herein, within the boundaries of the City may be obtained from the city manager or his/her designee under the following conditions:

(a) The applicant shall be an organization qualified under section 501(c)(3) of the Internal Revenue Code and registered pursuant to F.S., chapter 496, or persons or organizations acting on behalf of and with the written authority of such an organization.

(b) The applicant shall provide the specific location(s), date(s) and time(s) of the planned solicitation.

(c) The applicant shall take measures to assure the safety of the solicitors as well as the motorists. Such measures shall include, but not be limited to, providing a Florida Department of Transportation approved safety vest which must be worn by each solicitor.

(d) The applicant shall provide indemnification satisfactory to the City for defense and liability for any judgments, claims and costs arising out of the applicants' activities relative to the solicitation. This indemnification shall be in the form of an insurance policy that names the city as an additional insured and is endorsed to provide a separate aggregate of \$1,000,000.00 for the event for which the person or organization is making application.

(2) It is unlawful for any person to obstruct any street, road, highway, lane, alley, sidewalk or driveway in the course of soliciting.

(3) It is unlawful for any person to engage in soliciting in a manner that impedes pedestrian or vehicular traffic.

(4) It is unlawful for a solicitor to remain in a traffic lane when a traffic control signal, such as a green ball/green arrow indication, allows traffic to flow in that lane.

(5) Upon receipt of an application, plan, and indemnification acceptable to the city, a permit will be issued subject to the following conditions:

(a) No person or organization or person acting on the organizations behalf, may receive a permit or permits allowing solicitation for more than three days in any calendar year.

(b) To avoid solicitation during the hours that experience the highest numbers of traffic accidents, no permit shall be given for solicitation outside the hours 9:00 a.m. to 6:00 p.m.

(c) No more than four solicitors may solicit at any one intersection.

(d) Soliciting will only be allowed at a limited number of intersections pre-approved for the safe conduct of such activities, in consultation with law enforcement and FDOT staff as appropriate, and each intersection shall count as a separate permit for a person or organization and shall count toward the limitation set forth in this division in this division for the annual maximum number of permits. (See Section (5)(a) hereinabove).

(e) Each solicitor must carry a copy of the permit.

(f) Solicitors must be 18 years of age or older.

(g) If multiple applications are received for the same intersection at the same time, the first complete and otherwise acceptable application will be given the permit.

Sec. 10.7.10. Revocation.

(1) Permits issued under the provisions of this Chapter may be revoked at any time by the city manager or his/her designee upon certification that:

(a) A solicitor has provided false information on an application; or

(b) A solicitor has engaged in conduct in violation of this Chapter, or any state and/or federal laws.

(2) A solicitor shall be given written notice of the cause and terms of the revocation and of the right to have such a revocation reversed, modified or affirmed following a hearing to be conducted by the City Manager.

Sec. 10.7-10.5. General provisions seasonal sales.

(a) An application for seasonal sales must be submitted to the building department on forms supplied by that department. The completed application must be approved by the Department and associated fees paid before issuance of a temporary 30-day seasonal permit. This permit may not be renewed.

(b) Seasonal sales merchants must have written approval of the property owner to place the business on the selected property. The property must be properly zoned for the use and all regulations for the Zoning district met.

(c) No business shall be located within a public street or encroach upon space needed for customer parking or pedestrian or vehicular traffic flow. Site plans specifying the limits of the sales area, pedestrian access, traffic patterns, location of merchandise, barricades, signage and other requirements necessary to maintain public safety shall be submitted with the permit application and reviewed by the affected departments. The permit shall be based upon written application, subject to compliance with the requirements of this section and upon payment of the prescribed fee, as may be established by the City Manager.

(d) Each seasonal merchant shall be permitted to have no more than one sign, which may be a banner, but in no case exceed 15 square feet. A permit for this sign must be issued by the building department.

(e) The seasonal merchant shall have sufficient property available to provide adequate parking for its customers. Parking requirements will be reviewed at time of application.

(f) The fee for a seasonal merchant will be \$45.00 for each season a business is operated.

(g) Products not related to the season will not be allowed by this section.

(h) Any applicant may apply for up to a maximum of four (4) seasonal sales during any twelve (12) month period.

Sec. 10.7.11. Aggressive Solicitation or Panhandling.

It shall be unlawful for any person to engage in aggressive panhandling or solicitation in the City of Orange City.

Sec. 10.7.12. Unlawful Soliciting.

It shall be unlawful for any person to solicit or panhandle when the person solicited is in any of the following places within the City limits of Orange City, Florida:

- (a) On public property in the area more particularly described as City parks or at locations where the City is hosting or conducting an event.
- (b) In any public transportation vehicle or facility, including loading and unloading areas;
- (c) Inside or within twenty (20) feet of any public restroom;
- (d) Within fifty (50) feet of the site of any automated teller machine (ATM), unless the area within fifty (50) feet of any such ATM is located completely on private property and the panhandler has the permission of the property owner of the property on which the ATM is located;
- (e) On private property, unless the panhandler has permission from the owner or occupant; or
- (f) On any of the following Roadways: Saxon Boulevard, Enterprise Road, Veterans Memorial Parkway, Harley Strickland Boulevard and Threadgill Place, Graves Avenue, and State Road 17-92.

Sec. 10.7-13. Illegal Manners of Soliciting or Panhandling:

It shall be unlawful for any person to solicit or panhandle in any of the following manners:

- (i) By using profane or abusive language, either during the solicitation or following a refusal;
- (ii) In a group of more than two (2) persons;
- (iii) By making a false or misleading solicitation. False or misleading representations include, but not limited to, the following:
 - (a) Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet the need and does not disclose that fact;
 - (b) Stating that the donation is needed to meet a need which does not exist;
 - (c) Stating that the solicitor is from out of town and/or stranded when that is not true;

- (d) Wearing a military uniform or other indication of military service, when the solicitor is neither a present nor former member of the service indicated;
- (e) Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;
- (f) Use of any makeup or device to simulate any deformity;
- (g) Stating that the solicitor is homeless, when he is not;
- (h) Stating that the donation is for food, but in reality it is not needed for food; or
- (i) Using and exposing minors to hazardous conditions to include but not limited to cold, heat, animals, adverse weather, and strangers to solicit funds.

Sec. 10.714. Penalty.

Any person violating the provisions of this Chapter shall, upon conviction, be subject to the penalties in Section 1-10 of the Code of Ordinances of the City of Orange City. Each separate day of violation constitutes a separate offense.

SECTION 2. AUTHORITY. The City of Orange City has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 163 and 166, Florida Statutes.

SECTION 3: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion of application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 5: EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

First Reading this 10th **day of** May, 2011.

Gary A. Blair	<u>Absent</u>	Jeff H. Allebach	<u>yes</u>
Tom Laputka	<u>yes</u>	Tom Abraham	<u>yes</u>
Anthony Pupello	<u>yes</u>	O. William Crippen, Vice Mayor	<u>yes</u>
Harley Strickland, Mayor	<u>yes</u>		

Second Reading this _____ **day of** _____, 2011.

Gary A. Blair	_____	Jeff H. Allebach	_____
Tom Laputka	_____	Tom Abraham	_____
Anthony Pupello	_____	O. William Crippen, Vice Mayor	_____
Harley Strickland, Mayor	_____		

PASSED and ADOPTED this ____ **day of** _____, 2011.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

W.E. Reischmann, City Attorney

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