

**ORDINANCE NO. 8159-10**

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, RELATING TO SOLICITING ON PUBLICLY-OWNED STREETS, GARAGES, AND PARKING LOTS; AMENDING SECTION 28.041(3), CODE OF ORDINANCES, TO EXEMPT SOLICITORS FROM OBTAINING LIABILITY INSURANCE UNDER SPECIFIED CONDITIONS AND TO CLARIFY THE CONDITIONS UNDER WHICH SOLICITATIONS SHALL BE PERMITTED; AMENDING SECTION 28.041(4), CODE OF ORDINANCES, TO PROVIDE AN AGGRIEVED APPLICANT A RIGHT TO APPEAL THE DENIAL OF A PERMIT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Department of Highway Safety and Motor Vehicles of the State of Florida, as of February 1, 2010, has provided 884,803 currently valid decals for motor vehicles in Pinellas County; and

WHEREAS, Pinellas County is the most densely populated county in the State of Florida; and

WHEREAS, the Tampa Bay area has the second highest incident of pedestrian fatalities in the State of Florida, and City of Clearwater has the third highest among local governments with the Tampa Bay area; and

WHEREAS, the orderly flow of motorized traffic is a major concern in congested urban areas, particularly because an obstruction or delay in traffic at one point along a traffic artery results in delays and backups far down the roadway; and

WHEREAS, a public safety hazard has been identified with persons approaching motor vehicles to solicit charitable contributions, business, or employment from the occupants of motor vehicles being operated on public streets in Clearwater; and

WHEREAS, unlike the oral advocacy of ideas, or even the distribution of free literature, successful solicitation from drivers distracts them from their primary duty to watch the traffic and potential hazards in the road, observe all traffic control signals or warnings, and prepare to move through the intersection because the individual is required to respond to the solicitor by, for example, searching for currency, passing it along to the solicitor, securing any change returned, replacing a wallet or closing a purse, and then returning proper attention to the full responsibilities of operating a motor vehicle; and

WHEREAS, there are numerous and diverse methods of soliciting available in the city that provide ample alternatives for solicitation, including

soliciting pedestrians on the sidewalk, canvassing door-to-door, telephoning individuals, or direct mailing; and

WHEREAS, the Ordinance is narrowly aimed at the disruptive nature of soliciting the occupants of motor vehicles being operated on public streets and is not intended to restrict the communication of ideas, including the distribution of free literature to occupants of motor vehicles or even the solicitation of the occupants of motor vehicles that are lawfully parked; and

WHEREAS, failure to restrict solicitations of the occupants of motor vehicles being operated on public streets will endanger the health, safety, and general welfare of the public by permitting unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing, turns, and other dangerous traffic movement, increased vehicular accidents, and motorist injuries and fatalities; and

WHEREAS, although the City Council has a substantial governmental interest in enhancing traffic safety and ensuring the free flow of traffic, the Council also seeks not to sweep too broadly in its prohibitions so as not to burden more speech than is necessary to promote its governmental interest; and

WHEREAS, the City Council has determined that a balance can be reached between its governmental interest in enhancing traffic safety and ensuring the free flow of traffic and a solicitor's First Amendment right to solicit by authorizing street solicitations when the solicitors comply with the conditions set forth below; and

WHEREAS, the City Council recognizes that some solicitors may not be able to comply with the insurance requirements contained in Section 28.041(3); and

WHEREAS, the City Council wants to ensure that any party denied a solicitor's permit is afforded prompt judicial review; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA:

Section 1. Section 28.041, Clearwater Code of Ordinances, is amended to read as follows:

**Section 28.041 Soliciting, collecting, etc., upon streets.**

\* \* \* \* \*

(3) A ~~Any~~ person, an organization, or person acting on behalf of the organization shall be exempt from subsection (1) under the following conditions:

(a) The person, organization, or person acting on behalf of the organization must provide the following to the chief of police, who shall approve the request within 5 business days from the date that all of the following information is provided:

1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the person or organization that will receive funds from the solicitation.

~~2. A plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will take place.~~

~~2.3.~~ Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.

~~3.4.~~ Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than \$1 million per occurrence for the general aggregate. The certificate of insurance shall name the City of Clearwater as an additional insured and shall be filed with the Office of the Chief of Police no fewer later than 14 days ~~72 hours~~ prior to before the date of the solicitation.

4. The requirements of insurance contained in subparagraph (a)3. shall be waived where the applicant presents evidence of financial disability or inability to obtain an insurance company that will provide the insurance. Financial disability shall mean lack of present funds with which to pay the premium associated with the policy of insurance described in this section.

(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-4. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.

(c) All solicitations shall occur during daylight hours only.

(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.

(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding or harassing manner, or use any sound or voice-amplifying apparatus or device.

(f) All persons participating in the solicitation shall be at least 18 years of age ~~and shall possess picture identification.~~

(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

(4) Any applicant who has been denied an exemption by the chief of police shall have the right of appeal to the city manager. The applicant shall file with the city clerk a written request for a hearing, which should include the grounds for such appeal and the complete name, address, and telephone number of the applicant. Upon the filing of a written request for a hearing, the city clerk shall notify the city manager or city manager's designee, who shall conduct a hearing within 20 calendar days from the date of the filing of the request. At least 10 calendar days prior to the hearing, the city clerk shall send the applicant notice of the date and place of the hearing by regular U.S. Mail to any address included on the written request for a hearing and shall also attempt to contact the applicant at any telephone number included on the written request for a hearing to inform the applicant of the date and place of the hearing. If the applicant did not include an address or a telephone number on the written request for a hearing or if the applicant wants to know the status of the appeal, the applicant can obtain information about the date and place of the hearing by contacting the city clerk at (727) 562-4091 or in person at 112 South Osceola Avenue, 2nd floor, Clearwater, Florida. At the hearing, the applicant shall have an opportunity to present evidence, to cross-examine witnesses, and to be represented by counsel. The City shall have the burden of proof by clear and convincing evidence and the decision of the city manager or city manager's designee shall be based solely on the evidence presented at the hearing. The city manager or designee shall file a written decision with the city clerk's office within 5 calendar days from the date of the hearing. The written decision shall contain the findings of fact upon which the decision was based and the legal basis for the decision. The city clerk shall send the applicant a copy of the decision by regular U.S. Mail to any address included on the written request for a hearing and shall also attempt to contact the applicant at any telephone number included on the written request for a hearing to inform the applicant that the decision has been filed. If the applicant did not include an address or telephone number on the written request for a hearing or if the applicant wants to know the status of the appeal, the applicant can obtain information about whether a decision was filed, as well as a copy of the decision, by contacting the city clerk at (727) 562-4091 or in person at 112 South Osceola Avenue, 2nd floor, Clearwater, Florida. The decision by the city manager or city manager's designee shall be final and conclusive, subject to judicial review by common-law certiorari in the Circuit Court for Pinellas County.

~~(4)~~ (5) If any provision of this section is declared invalid for any reason, such invalidity shall not affect any of the remaining provisions of this section.

Section 2. This ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING

May 20, 2010

PASSED ON SECOND AND FINAL  
READING AND ADOPTED

June 17, 2010

*Frank V. Hibbard*

Frank V. Hibbard  
Mayor

Approved as to form:

*Robert J. Surette*

Robert J. Surette  
Assistant City Attorney

Attest:

*Cynthia E. Goudeau*

Cynthia E. Goudeau  
City Clerk

