

ORDINANCE NO. 2022-12

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, CREATING § 11-23 OF THE TOWN CODE CONCERNING SOLICITATION ACTIVITIES AT RESIDENTIAL PROPERTY; PROVIDING FOR CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, the courts, such as in *Jacobs v. City of Jacksonville*, 762 F.Supp. 327 (M.D. Fla. 1991) (the court found that a city ordinance prohibiting a youth organization from door-to-door peddling and solicitation was an invalid exercise of police power under Florida law), have long held that the history of how the front door of a home is used affords certain First Amendment protections to non-owners, and that it has historically been acceptable for a non-owner to go to a front door and knock to seek to engage in some speech with the resident; and

WHEREAS, the court, in *New York Public Interest Research Group, Inc. v. Village of Roslyn Estates*, 498 F. Supp. 922 (E.D. N.Y. 1979), ruled that a village ordinance prohibiting, among other acts, “peddling or soliciting an order for any. . . book, periodical or printed matter whatsoever. . . [or] for the purpose of soliciting alms or a subscription or a contribution to any. . . charitable or public institution,” constituted an unconstitutional restriction of First Amendment rights as applied to groups seeking to circulate petitions on current issues, recruiting volunteers, and offering memberships; and

WHEREAS, ordinances which outlaw all types of door-to-door solicitation will be unconstitutional, such as when the Supreme Court, in *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002), ruled that a village’s ordinance unquestionably demonstrated that it applied to a significant number of non-commercial solicitors, canvassers and peddlers who wanted or might want to promote a wide variety of causes or convey various messages, and that the ordinance was therefore overly broad and a First Amendment violation; and

WHEREAS, in *Fane v. Edenfield*, 945 F.2d 1514, 1517 (11th Cir. 1991), the court ruled, with respect to the regulation of commercial solicitation and peddling, that blanket prohibitions on commercial speech are disfavored, and the mere possibility that isolated abuses or mistakes may occur will not likely justify a total ban on a certain mode of protected commercial speech; and

WHEREAS, in light of these and many other judicial decisions, the Town could not adopt an ordinance totally banning door-to-door solicitations; and

WHEREAS, Pinellas County had, for decades, maintained Chapter 42 of the Pinellas County Code, concerning Consumer Protection and addressing, in part, solicitations, various elements of which law have been challenged in the federal courts over time; and

WHEREAS, in *Public Citizen, Inc. v. Pinellas County*, 321 F.Supp.2d 1275 (M.D. Fla. 2004), the federal court found certain elements of the County’s code to be unconstitutional, but upheld more limited provisions focused on certain registration aspects applicable to charitable solicitors; and

WHEREAS, in reaction to this decision, Pinellas County repealed all the unconstitutional elements of its solicitation code in 2007, leaving those which the court had upheld as codified in Article VII of Chapter 42 of the Pinellas County Code, entitled Charitable Solicitations; and

WHEREAS, these County code sections include § 42-269, entitled “territory embraced”, which specifies that the ordinance applies to and can be enforced in “all territory within the legal boundaries of the county, including all incorporated and unincorporated areas”, meaning there already are certain requirements for charitable solicitors applicable in the Town since the County’s code already applies within the Town; and

WHEREAS, Florida’s “Solicitation of Contributions Act” (Florida Statutes § 496.401 – § 496-415), also regulates charitable solicitation of funds and provides detailed registration requirements, but in general if charitable solicitors follow the requirements, they are allowed to solicit; and

WHEREAS, in *Sciarrino v. City of Key West, Fla.*, 83 F.3d 364, 367 (11th Cir. 1996), the court found that a regulation of commercial speech must serve a legitimate, substantial interest and “[t]o find a ‘substantial interest,’ a court must conclude both that the interest advanced by the state is legitimate in theory, and that that interest is in remedying a problem that exists in fact (or probably would exist, but for the challenged legislation)”; and

WHEREAS, as it did with charitable solicitations, the Legislature has adopted regulations on commercial home solicitations (Florida Statutes § 501.021- § 501.055); and

WHEREAS, Florida Statutes § 501.022 provides that it is unlawful for any person to conduct any home solicitation sale, or to supervise minors conducting such sales, without first obtaining a valid home solicitation sale permit; and

WHEREAS, the statute provides that this permit is to be issued by the Clerk of the Circuit Court, who has the power to revoke, suspend, or deny a permit; and

WHEREAS, the statute also provides that “[e]very permitholder shall carry the permit and certificate required by this section at all times while engaged in home solicitation sales and shall display the same to all prospective buyers before initiating the solicitation of a sale, lease, or rental”; and

WHEREAS, Florida Statutes § 501.046 requires any business conducting home solicitation sales to ensure all employees engaged in such sales obtain a permit, to obey the applicable statutes, and to leave a business card which must include the name, address, and phone of the parent company and the name, address, and phone of the employee making the home solicitation; and

WHEREAS, Florida Statutes § 501.052 authorizes the Attorney General or a State Attorney to enforce the home solicitation statutes; and

WHEREAS, Florida Statutes § 501.055 provides the following criminal enforcement:

- (1) Violation of any of the provisions of ss. 501.025-501.047 is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

- (2) Any person who conducts or attempts to conduct a home solicitation sale without first obtaining and having in her or his possession a valid, current permit as required by s. 501.022 or who uses or attempts to use an expired, suspended, or revoked home solicitation sale permit in a home solicitation sale is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon second or subsequent conviction for violation of this subsection, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) Any person who uses a false or fictitious name in any application for a home solicitation sale permit or certificate as provided for in s. 501.022 or who makes a false statement, conceals a material fact, or otherwise commits a fraud in any such application is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second or subsequent conviction for violation of this subsection, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The obtaining of two or more permits which are in different names or the possession of two or more such permits shall be *prima facie* evidence that this subsection has been violated

; and

WHEREAS, § 11-1 of the Town Code makes any action which would be a misdemeanor also a code violation subject to local code enforcement action; and

WHEREAS, the sum of the foregoing statutory provisions is that Florida law does permit individuals to go door-to-door soliciting either for charitable purposes, or for commercial purposes, so long as those persons and the companies or entities who hire them follow all of the licensing and conduct rules; and

WHEREAS, while the Town cannot outright ban door-to-door solicitations, its residents have the power to utilize the State's trespass statutes to prohibit door-to-door solicitors from entering their property, so long as they follow the statutory requirements; and

WHEREAS, Florida Statutes § 810.09(1) provides that a person who, without being authorized, licensed, or invited, willfully enters upon or remains in where notice against entering or remaining is given, either by actual communication to the offender or by posting the land, commits a misdemeanor of the first degree; and

WHEREAS, Florida Statutes § 810.12(1) provides that unauthorized entry by any person into or upon any enclosed and posted land shall be *prima facie* evidence of the intention of such person to commit an act of trespass; and

WHEREAS, Florida Statutes § 810.011(5)(a) provides that "posted land" is land, including a residential dwelling:

- upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land,

- upon which signs there appears prominently, in letters of not less than 2 inches in height, the words “no trespassing” and
- in addition thereto the name of the owner, lessee, or occupant of said land, and
- where such signs are placed along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line.

; and

WHEREAS, Deputy Sheriffs have full authority to enforce the trespass statutes and camera footage of violators would be usable as evidence to support an arrest and prosecution for door-to-door solicitors who violate the trespass statutes by breaching properties where the proper no-trespassing signs have been posted; and

WHEREAS, § 11-21(a) of the Town Code adopts the statutory trespass rules and allows for violations of the trespass statutes to also be enforced by local code violation proceedings; and

WHEREAS, the court in *State v. Catalano*, 60 So.3d 1139 (Fla. 2d DCA 2011) has noted that, although the First Amendment protects the right to certain forms of speech, the government may, nevertheless, impose reasonable restrictions on the time, place and manner in which persons exercise these rights, subject to the provisos that such restrictions: 1) are content-neutral; 2) are narrowly tailored to serve a significant governmental interest, and 3) leave open ample alternative channels of communication”; and

WHEREAS, while the Legislature has occupied a lot of this field, the Town Commission has determined that residents are receiving increasingly frequent and unwanted contacts at their homes from door-to-door solicitors; and

WHEREAS, the Commission also wishes to reduce the risk of crime which can occur when persons use door-to-door residential solicitation activities as a ruse to perpetrate criminal activities; and

WHEREAS, the Commission finds that placing reasonable time, place and manner limitations on residential solicitation activities will enhance the ability of residents to peacefully enjoy their homes while also allowing for ample times for solicitors to exercise their First Amendment rights related to engaging in residential door-to-door solicitation; and

WHEREAS, the Commission therefore determines that the Town should adopt such additional local regulations as the statutes and court opinions will allow such that residents’ inconvenience and the potential for crime related to door-to-door solicitations create; and

WHEREAS, the Board of Commissioners has determined that it is in the interest of the Town’s residents to adopt the amendments to the Town Code set forth in this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

Section 1. Section 11-23 of the Town Code of the Town of Redington Beach is hereby created to read as follows:

Sec. 11-23. – Residential solicitation activities regulated.

- (a) Residential solicitation times. All attempts to conduct non-commercial solicitations, as defined by Florida Statutes § 496.404 and all attempts to perform home solicitation sales, as defined by Florida Statutes § 501.021, shall be conducted only between Monday through Friday, and only between the hours of 9 a.m. and 5 p.m.
- (b) Residential solicitor registration. It shall be a violation for any person engaged in non-commercial solicitations, as defined in Florida Statutes § 496.404, to fail to comply with the registration requirements contained in Florida Statutes § 496.405.
- (c) Residential solicitor licenses. It shall be a violation for any person to conduct non-commercial solicitations, as defined in Florida Statutes § 496.404, to fail to maintain a solicitor license as required by Florida Statutes §496.4101. Such persons shall, when requested by a resident or a town code enforcement officer, show the resident or officer a copy of the license.
- (d) Commercial sales efforts. It shall be a violation for any business or agent or employee of a business, to fail to provide a resident a business card containing the name, address, and phone of the parent company and the name, address, and phone of the employee making the home solicitation.
- (e) Commercial sales permit. It shall be a violation for any person to solicit for a home solicitation sale, or to supervise minors conducting such sales as provided for in Florida Statutes § 501.022 (b)5, without first obtaining a valid home solicitation sale permit from the clerk of the circuit court, as required by Florida Statutes § 501.022. Such persons shall, when requested by a resident or a town code enforcement officer, show the resident or officer a copy of the permit.

Section 2. For purposes of codification of any existing section of the Redington Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of

the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.


Section 4. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.


Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the 3rd day of August, 2022, by the Board of Commissioners of the Town of Redington Beach, Florida.

ADOPTED ON SECOND AND FINAL READING on the 7th day of September, 2022, by the Board of Commissioners of the Town of Redington Beach, Florida.

Attest:


Adriana Nieves, CMC, Town Clerk


David Will, Mayor