

PROPOSED BY: Staff

BILL NO. 21-2927

INTRODUCED BY: Alderman Osherow

ORDINANCE NO. 2912

**AN ORDINANCE OF THE CITY OF DES PERES AMENDING CHAPTER 13,
ARTICLE II, DIVISION 3 AND SECTION 14-388 REGULATING SOLICITATION**

WHEREAS, Chapter 13, Article II, Division 3 of the City's Municipal Code regulates solicitation within the City; and

WHEREAS, the City of Des Peres (the "City") has undertaken a review of its regulations regarding solicitation due to the May 11, 2021 opinion by Judge Stephen N. Limbaugh Jr. of the United States District Court for the Eastern District of Missouri in the case of Robert Fernandez v. St. Louis County, Missouri, which, in part, struck down certain sections of St. Louis County's Code regarding solicitors; and

WHEREAS, the Board of Aldermen desires to amend the Municipal Code to reflect the changes in the state of the case law;

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DES PERES, MISSOURI, AS FOLLOWS:

SECTION ONE: Division 3, Section 13-106 of the Municipal Code of the City of Des Peres shall be amended as follows with language to be added underlined and language to be deleted stricken:

DIVISION 3. - ITINERANT MERCHANTS, HAWKERS, PEDDLERS, BROKERS AND SOLICITORS

Sec. 13-106. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Charitable organization shall mean any organization that is qualified to receive charitable contributions as such contributions are defined in section 170(c) of the Internal Revenue Code.~~

~~Itinerant merchant shall include all persons who deal in the selling of goods, wares or merchandise from a stock of merchandise carried with them, by going about from place to place in the city limits to sell the same by direct personal contact.~~ shall mean a person who attempts to make personal contact with a resident at his/her residence or business with or without prior specific invitation or appointment for the primary purpose of selling or attempting to sell or delivering a previously sold good or service for profit. This contact may result in an agreement or order for which payment would occur at the time of the visit or arrangements for payment at a later date and the good or service may be delivered at a later date. A "itinerant merchant" does not include a person who distributes handbills or flyers for a commercial purpose advertising an event, activity, good or service that is offered to the resident for purchase at a location away from the residence or business. Such a person is a Solicitor.

~~Solicitors shall mean all persons who go from place to place without appointment or who position themselves on or near streets, roadways or places of public assembly within the city limits any individual, for the purposes of communicating or presenting a message, regardless of the topic discussed or the idea or message expressed:~~

- ~~(1) Soliciting property or financial assistance of any kind for commercial or charitable purposes;~~
- ~~(2) Selling or offering for sale any article, tag, service, emblem, publication or ticket for commercial or charitable purposes; or~~
- ~~(3) Taking or attempting to take orders for the sale of goods, wares, books, charts, maps, magazines or other merchandise for future delivery or for services to be furnished or performed then or in the future, whether or not such individual carries a sample of the subject of such sales or collects advance payments on such sales.~~

~~(1) traveling by foot, wagon, automobile, motor truck, or any type of conveyance from place to place, uninvited or without appointment; or~~

~~(2) positioned on or near street corners, public ways or paces of public assembly or congregation; or~~

~~(3) located in or near the roadway or right-of-way of a roadway~~

~~Provided, however, that the provisions of this division shall not apply to salesmen soliciting orders from or selling to retail dealers for resale, wholesalers and manufacturers for manufacturing purposes or to bidders for public works or supplies.~~

SECTION TWO: Section 13-107 of the Municipal Code of the City of Des Peres shall be amended as follows with language to be added underlined and language to be deleted stricken:

Sec. 13-107. – License requirements; limitation of rights.

- (a) ~~No person, firm, partnership, association or corporation or any combination of the same shall engage in any business or other activity in the city as an itinerant merchant or solicitor without first obtaining a license to conduct such business or activity from the city clerk and paying the necessary license fee therefor. Itinerant merchants must obtain a license from the city clerk and pay the necessary license fee before conducting business within the city. Solicitors that are not itinerant merchant are not required to obtain a license from the City before soliciting.~~
- (b) Neither the application for nor the issuance of a license or permit to conduct the business of an itinerant merchant or solicitor as provided in this division shall be construed as a license, permit or privilege to enter into or upon any real property or premises or other location within the city. The license or permit provided by this division shall not entitle the holder thereof to any greater right to enter into or upon such premises than that enjoyed by the general public.

SECTION THREE: Section 13-108 of the Municipal Code of the City of Des Peres shall be amended as follows with language to be added underlined and language to be deleted stricken:

Sec. 13-108. - Application for license—Contents; filing.

- (a) Application for the license required by this division shall be made upon a written application blank furnished by the city clerk. Such applications shall, at a minimum, contain:
- (1) The name and address of the employer, firm or association represented - "the applicant".
 - (2) A description of the merchandise to be sold or offered for sale or of services to be provided.
 - (3) Where the solicitation involves the sale of goods or services, a copy of the Sales Tax License issued by the State of Missouri together with an affidavit or statement that the licensee owes no taxes due under Sections 144.010—144.510 or Sections 143.191—143.261, RSMO.
 - (4) The date on which the applicant desires to commence selling or soliciting and the length of time for which the permit is desired.
 - (5) ~~The name~~ The name and address of each person that will be soliciting ~~on behalf of the applicant together with two (2) passport sized photo's and the applicants permanent home address and local address.~~
 - (6) Whether the applicant or any individual who will be soliciting for the applicant has ever been convicted of a violation of this division.
 - (7) Whether the applicant or any individual who will be soliciting for the applicant has ever been convicted of any felony and, if so, the nature of the offense and the penalty imposed. A felony conviction may be sufficient grounds to deny a permit to any applicant or person working on behalf of the applicant.
 - (8) Motor vehicle makes, models, years, colors and registration numbers and license plate numbers, if vehicles are to be used in the proposed solicitation.
- (b) All applications ~~other than those filled by charitable organizations~~ shall also be accompanied by:
- (1) A letter or other written statement from the individual, firm or corporation employing the applicant certifying that the applicant is authorized to act as the employer's or the corporation's representative;
 - (2) ~~The names, addresses and telephone numbers of two (2) references.~~

- (c) No application shall be filed more than three (3) months prior to the time such selling or soliciting is to commence.

SECTION FOUR: Section 13-109 of the Municipal Code of the City of Des Peres shall be amended as follows with language to be added underlined and language to be deleted ~~stricken~~:

Sec. 13-109. - Application—Investigation by city clerk.

- (a) The city clerk will examine the application required in this division and the application will be granted unless:
- (1) ~~Determine if~~ The business or activity proposed to be conducted is unlawful under the laws of the state;

- (2) ~~Where applicant is not a charitable organization, contact the applicant's references and, to the extent possible, verify the accuracy of the information contained in the applicant's application;~~
 - (3) ~~Require the applicant to give evidence of the applicant's identity; All the requirements of the application are not met;~~
 - (4) ~~If upon contact of companies or organizations, which the applicant represents, where applicable, the city clerk determines that the applicant is not a bona fide representative of those companies or organizations.~~
- (b) The city clerk shall make such investigation within a period of ~~three~~ (3) five (5) business days from the date of application. If the proposed business or activity is lawful and the information provided by the applicant appears truthful, the city clerk shall issue the license to do business in the city to the applicant; provided however, that, subject to the requirements of section 314.200 of the Revised Statutes of Missouri, no convicted felon shall be issued a license and no charitable organization shall be allowed to use any convicted felon as a solicitor.

SECTION FIVE: Section 13-110 of the Municipal Code of the City of Des Peres shall be amended as follows with language to be added underlined and language to be deleted ~~stricken~~:

- (a) ~~If the applicant is soliciting for other than a charitable purpose, If an Itinerant Merchant intends to do business in the city, he or she shall fill out the application described in this division and, at the time of making the initial application, shall pay to the city clerk an application fee of fifty dollars (\$50.00). If the individual, firm or corporation employing the applicant is to have more than one (1) employee or agent operating in the city, each such employee or agent shall be deemed an applicant and shall fill out the requisite application and pay an additional fee of ten dollars (\$10.00) per solicitor. The license fee shall be used to defray the cost of the city's investigation of the proposed applicant. Provided, however, the fee shall be doubled for any person, firm or corporation who has been soliciting without a valid license.~~
- (b) ~~If the applicant is soliciting for a charitable purpose, the organization which the applicant represents shall not be required to pay a license fee. The organization shall, however, be deemed an applicant and shall fill out the application described in this division.~~
- (c) Each person who obtains a license under this division shall obtain an identification card from the city clerk. ~~Each charitable organization that obtains a license under this division shall obtain identification cards for its solicitors. Each itinerant merchant or solicitor~~ Itinerant Merchant shall display his/her identification card upon his/her person in a manner to be readily visible to the general public while engaged in the activity for which the license was obtained. The identification card shall contain:
 - (1) The name of the business the Itinerant Merchant ~~or charitable association the itinerant merchant or solicitor represents;~~
 - (2) The name and signature of the Itinerant Merchant ~~itinerant merchant or solicitor;~~
 - (3) The expiration date of the identification card; and
 - (4) The license number.

The identification card shall be shown, upon request, to any police officer or person solicited.

SECTION SIX: Section 13-111 of the Municipal Code of the City of Des Peres shall be amended as follows with language to be added underlined and language to be deleted ~~stricken~~:

Sec. 13-111. – Time period for license; extension.

The city clerk shall issue the license for the period of time sought by the applicant as long as such time period does not exceed six ~~one (6 4)~~ months. The clerk may extend the time period upon the request of the applicant for a period not exceeding ~~fifteen (15) days~~ six (6) months. Each licensee shall pay an additional fee of twenty-five ~~ten~~ dollars (~~\$25.00~~ ~~\$10.00~~) per solicitor for an extension. The clerk shall indicate the expiration date of such extension upon the face of the license

SECTION SEVEN: Section 13-112 of the Municipal Code of the City of Des Peres is hereby deleted.

SECTION EIGHT: Section 13-113 of the Municipal Code of the City of Des Peres shall be repealed in its entirety and replaced as follows:

Sec. 13-114 – Duty to Observe Notice.

- (a) Any individual, business, or organization may place a sign which substantially states “NO TRESPASSING OR SOLICITING ALLOWED” on or directly adjacent to any entrance to the individual, business, or organization’s residence, place of work, or other non-public or semi-public place.
- (b) It shall be the duty of every Itinerant Merchant and Solicitor upon going onto a premises in the City to first examine any notice which substantially states “NO TRESPASSING OR SOLICITING ALLOWED” which may have been placed on such premises.
- (c) A violation of this Section may be prosecuted as a trespass under Sec. 16-123.

SECTION NINE: Section 14-388 of the Municipal Code of the City of Des Peres shall be amended as follows with language to be added underlined and language to be deleted ~~stricken~~:

Sec. 14-388. - Pedestrians prohibited from soliciting in roadways.

- (a) *Definitions.* For purposes of this section only, the following terms shall be defined, as follows:
 - (1) *Roadway* shall mean the portion of a street or highway improved, designed, or ordinarily used for vehicular travel and extending from one (1) curb or edge of pavement to the opposite curb or edge of pavement, including lanes commonly used for parking and including center medians and lane dividers.
 - (2) *Sidewalk* shall mean that portion of a public right-of-way between the curb lines, or the lateral lines of a roadway and the adjacent property lines, intended for use by pedestrians.
- (b) *[Prohibited.]* No person shall stand in or enter upon a roadway for the purpose of soliciting rides, employment, business or charitable contributions from the occupant of any vehicle, except from the occupants of parked motor vehicles located in the roadway adjacent to a sidewalk if the solicitor is on a sidewalk.

SECTION TEN: The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered by the codification company servicing the City’s Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations, the editor

may also change other designations and numerical assignments of code sections to accommodate such changes.

SECTION ELEVEN: All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION TWELVE: This ordinance shall be in full force and effect from and after its passage and approval.

Voting in Favor: Barrett, Concagh, Fitzpatrick, Osherow, Pound, Kleinschmidt

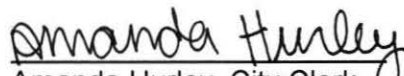
Voting Against:

Absent:

This Ordinance passed this 27th day of September 2021


Presiding Officer

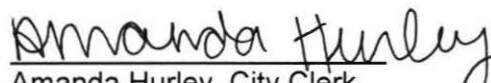
ATTEST:


Amanda Hurley, City Clerk

This Ordinance approved this 27th day of September 2021


Presiding Officer

ATTEST:


Amanda Hurley, City Clerk

First Reading 9/13/2021
Second Reading 9/27/2021