

ORDINANCE # 03-11

AN ORDINANCE OF THE CITY OF DeBARY, FLORIDA, AMENDING ARTICLE II, CHAPTER 42 “STREETS”, SECTION 42-36 OF THE CODE OF ORDINANCES; CREATING ARTICLE VI OF CHAPTER 18 OF THE CODE OF ORDINANCES, “SOLICITORS”; PROVIDING FOR DEFINITION; PROVIDING FOR HOURS OF SOLICITATION; PROVIDING FOR UNLAWFUL ACTIVITIES; PROVIDING FOR REGISTRATION WHEN HOME SOLICITATION PERMIT IS NOT REQUIRED; PROVIDING FOR EXEMPTIONS; PROVIDING FOR SOLICITATION ALONG RIGHTS-OF-WAY; 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 DeBary 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 wishes to preserve and secure the public safety, health, welfare of all the residents of the City of DeBary; and

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

WHEREAS, the City Council 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.

IT IS HEREBY RESOLVED BY THE CITY OF DeBARY AS FOLLOWS:

SECTION 1. AUTHORITY. The City of DeBary 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 2. Chapter 42, Article II, Section 42-36 of the Code of Ordinances of the City of DeBary, Florida is hereby amended to read as follows (words that are underlined are additions, words that are ~~stricken~~ through are deletions.):

ARTICLE II. STREETS

Sec. 42-36. Use of rights-of-way.

(a) *Consent required.* Pursuant to the police power of the city, the city council hereby determines, in the interest of the health, safety and welfare of its citizens, that the use of any city right-of-way, including appendages thereto, and the use of any public lands under the authority of the city council, except for their intended purpose, without prior written consent of the city shall be prohibited.

(b) *Commercial use.* The prohibition set out in subsection (a) of this section includes any commercial use, including but not limited to the sale of and display for sale of any merchandise, the servicing or repair of any vehicles except the rendering of emergency service, the storage or parking of vehicles and the display of advertising of any sort.

(c) *Recreational use.* Unless specifically designed for such purpose, the prohibition set out in subsection (a) of this section shall also include camping, sleeping, parking (except for emergency reasons), and any other use that would tend to obstruct traffic along the city rights-of-way, including appendages thereto, and to any other public lands under the authority of the city council, without prior written approval by the city.

~~(d) *Sales by licensed peddlers.* Persons holding valid peddler licenses issued by appropriate governmental agencies may make sales from vehicles standing on the right of way to occupants of abutting property only.~~

(e) (d) *Penalty.* Violations of this section are punishable as provided in section 1-15.

SECTION 3. Chapter 18, “Businesses” of the Code of Ordinances of the City of DeBary is hereby amended by adopting Article VI, to read in full, as follows:

ARTICLE VI. SOLICITORS

Section 18-281. Definitions.

- (1) “Home solicitation sale” is defined pursuant to F.S. 501.021-501.055.
- (2) *Person* means an individual, organization, group, association, partnership, corporation, trust, business entity or any combination of the above.
- (3) *Soliciting* means the act of approaching or petitioning a person in a motor vehicle, at a person’s home or business, or otherwise on a street for the purpose of receiving monetary donation or contribution, or for the purpose of remuneration for goods or services, of any kind, or as advance payment or contemporaneous payment for goods or services, of any kind, to be furnished or performed, or delivered contemporaneously or in the future.
- (4) *Solicitor* means any person actively engaged in the act of soliciting.
- (5) *Street* means a road, roadway, or other way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, or place, or however otherwise designated, and shall include the full are of the right-of-way so designated including, but, not limited to sidewalks.

Section 18-282. 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. Prior to the issuance of a local business tax receipt, the applicant must submit 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 may issue a home solicitation sale 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 chief executive or administrative officer of the particular government entity must be provided at the time than an application is submitted and attached to each copy of the permit and shall constitute a part of the permit document.

Section 18-283. Hours of home solicitation.

Persons issued home solicitation sale 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 pursuant to § 18-286 of this Article or F.S. 501.022 shall be allowed to engage in soliciting on the streets, sidewalks, and public places within the city only between the hours of 9:00 a.m. and 8:00 p.m., Monday through Saturday.

Section 18-284. Unlawful activities by home solicitors:

It is unlawful for any individual engaged in home solicitation sales, including persons engaged in home solicitation sales who are otherwise exempt from the effect of this Article pursuant to § 18-286 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 the true identity of the organization the solicitor represents and, if requested by the person being solicited, fail to produce identification for the organization which the solicitor represents, including, if applicable, the City business tax receipt.

Section 18-285. 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, a statutory exemption from the home solicitation sales permit requirements, or any other reason, a local business tax receipt must still be issued by the city prior to engaging in home solicitation sales.

(1) As a condition of issuance of a local business tax receipt when there is no home solicitation sales permit from the clerk of the court, 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 that home solicitation sales are conducted by minors, such minors 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)).

Section 18-286. Exemption; claim of exemption for home solicitation.

(1) Unless otherwise expressly specified, §§ 18-281 through 18-285 of this Article concerning home solicitation sales shall not apply to vendors of newspapers; bona fide elementary, middle or high school groups engaged in fundraising; charitable, religious, fraternal, youth, civic, service or other such 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 who desires to engage in home solicitation sales and claims 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 the statute or other legal authority under which exemption is claimed and shall present to the City Manager proof of qualification for such exemption.

Section 18-287. 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 or 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 to 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 a person to raise funds, or seek financial assistance of any kind or nature, or to otherwise solicit on any street or right-of-way within the City without first acquiring a local business tax receipt from the City.

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

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

(c) 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.

(3) 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 for the annual maximum number of permits.

(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.

Section 18-288. Revocation.

(1) Permits issued under the provisions of this Chapter may be revoked at any time by the city manager or his/her designee for 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 Council.

Section 18-289. Appeals.

Any person wishing to appeal the decision of the city manager may file a written appeal to the city council within sixty (60) days of the ruling. The city manager or designee shall schedule a hearing for the appeal at the next regularly scheduled council meeting or special council meeting and shall provide written notice by U.S. mail upon the appellant at the address provided by the appellant, informing him/her thereof. At the hearing, the appellant shall have the right to hear the evidence relied upon by the city manager and the right to present evidence and witnesses on his/her behalf. Upon conclusion of the hearing, the action of the city council shall be final. All decisions of the city council shall be issued in writing.

SECTION 4 SEVERABILITY. If any section or portion of a section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to impair the validity, force, or effect of any other section or portion of this Ordinance.

SECTION 5 CONFLICTS. This Ordinance shall control over any Ordinances or parts of Ordinances in conflict herewith to the extent that such conflict exists.

SECTION 6 CODIFICATION. It is the intention of the City Council of the City of DeBary, Florida, and it is hereby ordained that Sections 2 and 3 of this Ordinance shall become and be made a part of the Code of Ordinances of the City of DeBary, Florida.

SECTION 7 EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and adoption.

ADOPTED on first reading the 6th day of April, 2011.

ADOPTED on second reading the 20th day of April 2011 .

**CITY COUNCIL
CITY OF DeBARY, FLORIDA**

Bob Garcia, Mayor

ATTEST:

Stacy Tebo, City Clerk