

ORDINANCE 2019-16

AN ORDINANCE AMENDING THE CITY OF FAIR OAKS RANCH CODE OF ORDINANCES CHAPTER 4 BUSINESS REGULATIONS, ARTICLE 4.02 REGULATING SOLICITORS; PROVIDING FOR NEW REGULATIONS REGARDING SOLICITORS, CANVASSERS, AND ITINERANT VENDORS; PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, it is the intent of City Council in enacting this Ordinance to recognize free speech rights for all citizens while at the same time protecting the coexistent rights for all citizens to enjoy the privacy of their homes, safe and convenient travel in public spaces free from intimidation, threats, and harassment that stem from certain types of abusive solicitation, or that may give rise to interference with other's activities if they occur in particular settings and context; and

WHEREAS, the United States Supreme Court has observed that "requests for immediate payment of money create a strong potential for fraud or undue pressure, in part because of lack of time for reflection." Intern. Soc. For *Krisna Consciousness v. Lee*, 112 S.Ct. 2722 (1992) (concurrence by Justice Kennedy); and

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference; and

WHEREAS, the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved; and

WHEREAS, City Council finds that the presence of panhandlers near banks or automatic teller machines in specified "captive audience locations" or at night can be especially threatening to person; and

WHEREAS, City Council finds that certain solicitation impedes the orderly flow of pedestrian and vehicular traffic that leads to concerns regarding traffic and public safety; and

WHEREAS, this Ordinance is not intended to impermissibly limit an individual's right to exercise free speech associated with panhandling; rather it aims to impose specific time, place, and manner restrictions on solicitation and associated conduct in certain limited circumstances; namely, aggressive panhandling, panhandling at locations or times deemed particularly threatening and dangerous, and/or panhandling in places where people are a "captive audience" and there is a wish to avoid or reduce a threat of inescapable confrontations; and

WHEREAS, this Ordinance is not intended to impermissibly limit an individual's right to exercise free speech associated with solicitation; rather it aims to impose specific time, place, and manner restrictions on solicitation and associated conduct in certain limited circumstances; and

WHEREAS, in promulgating this Ordinance, City Council seeks to impose regulations that are narrowly tailored to serve the aforementioned significant government interests.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS, AS FOLLOWS:

PART 1. That Chapter 4 Business Regulations, Article 4.02 Solicitors, of the City of Fair Oaks Ranch Code of Ordinances is hereby amended as set forth in the attached Exhibit A

PART 2. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

PART 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.

PART 4. That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 5. This ordinance shall take effect immediately from and after its second reading, passage and publication as may be required by governing law.

PART 6. The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

PART 7. The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

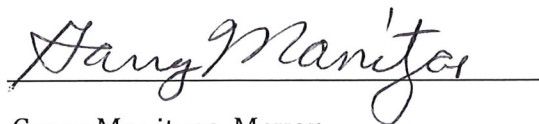
PASSED AND APPROVED on the first reading on 17th day of October, 2019.

PASSED, APPROVED, AND ADOPTED on the second reading, this 7th day of November, 2019.

ATTEST:

A blue ink signature of Christina Picioccio, written in a cursive style, positioned above a horizontal line.

Christina Picioccio, City Secretary

A black ink signature of Garry Manitzas, written in a cursive style, positioned above a horizontal line.

Garry Manitzas, Mayor

APPROVED AS TO FORM:

A black ink signature of Denton Navarro Rocha Bernal & Zech, written in a cursive style, positioned above a horizontal line.

Denton Navarro Rocha Bernal & Zech,
P.C., City Attorney

Exhibit A

The City's Code of Ordinances Chapter 4 Business Regulations, Article 4.02 is hereby repealed in its entirety and replaced as follows:

Division 1. Peddler, Solicitor, Canvasser and Itinerant Vendor Regulations

Sec. 4.02.001 Definitions

- A. "Peddler" is a person who carries actual merchandise offered for sale and attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell and deliver the merchandise at the time the sale is consummated.
- B. "Solicitor" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: obtaining orders for goods or services that will be delivered or performed at a later date.
- C. "Canvasser" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: furthering religious, social or political advocacy. Canvassing activities may include: Asking for signatures on a petition; requesting support for a political candidate or position; espousing religious beliefs or causes; seeking donations, organization memberships, or other financial support for their religious, social, or political organizations; and, taking orders for goods, to be delivered at a later time, in order to raise money for a non-profit or other charitable organization's operations
- D. "Itinerant Vendor" is a person who sets up and operates a temporary business on privately owned property in the city, whether improved or unimproved, soliciting, selling, taking orders for, or offering to sell or take orders for any goods or services. A temporary business is one that continues for forty-five days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding.

Sec. 4.02.002. Exceptions.

This ordinance shall not apply to a federal, state or local government employee or a public utility employee in the performance of his/her duty for his/her employer.

Sec. 4.02.003. License Required for Peddlers, Solicitors, and Itinerant Vendors.

No person shall act as a peddler, solicitor or itinerant vendor within the city without first obtaining a License in accordance with this ordinance. A canvasser is not required to have a License.

Sec. 4.02.004. Fees.

The fee for the issuance of each License shall be that fee as adopted by City Council pursuant to the then existing and current fee schedule.

Sec. 4.02.005. Application for License.

Any person or organization (formal or informal) may apply for one or more licenses by completing an application form at the office of the issuing officer, during regular office hours. The license shall be issued promptly after application but in all cases within forty business hours of completion of an application and submittal of background check to third party vendor, unless it is determined within that time that:

- A. the applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years;
- B. with respect to a particular license, the individual for whom a card is requested has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven years; or
- C. any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

Sec. 4.02.006. Contents of Application.

To obtain a License, each applicant shall provide the following information on a City application and submit in person.

- 1. Name of applicant.
- 2. Photograph and physical description to include height, weight, and hair color (State ID card, passport, or other US government-issued ID card acceptable.)
- 3. Phone number.
- 4. E-mail address.
- 5. Background check through City's third party vendor. (Form to be provided).
- 6. The permanent and (if any) local address of the applicant and organization.
- 7. A brief description of the proposed activity related to this license. (Copies of literature to be distributed may be substituted for this description at the option of the applicant).
- 8. Date and place of birth.
- 9. A list of all infraction, offense, misdemeanor and felony convictions of each person for whom a license is requested for the seven years immediately prior to the application.
- 10. The motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used by each person for whom a license is requested.
- 11. Proof of motor vehicle insurance; in which applicant is named on the policy.

12. If license is sought pursuant to employment, the name, address and telephone number of the employer; or, if acting as an agent, the name, address and telephone number of the principal who is being represented, with credentials in written form on company letterhead establishing the relationship and authority of the employee or agent to act for the employer or principal, as the case may be.
13. Last 5 cities/towns where applicant has conducted business.
14. A copy of the principal's sales tax license as issued by the State of Texas (as applicable).

Sec. 4.02.007. Investigation.

During the time following the application for one or more licenses and its issuance, the city shall investigate as to the truth and accuracy of the information contained in the application. If the city has not completed this investigation within the forty business hours provided in section 4.02.005, the license will nonetheless be issued, subject, however, to administrative revocation upon completion of the investigation.

Sec. 4.02.008. Revocation of license.

A. Grounds.

1. Any license issued hereunder may be revoked if the license holder is convicted of a violation of any provisions of this Ordinance or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a license under the terms of this Ordinance.
2. If more than one complaint of misconduct by a licensee or group of licensees working for the same company is received, the license(s) may be immediately revoked by the city.

B. Notice. If the issuing officer denies (or upon completion of an investigation revokes) the license to one or more persons he shall immediately convey the decision to the applicant orally and shall within twenty-four working hours after the denial prepare a written report of the reason for the denial which shall be immediately made available to the applicant.

C. Appeal. The licensee shall have ten (10) business days from the date of revocation or denial in which to file notice of his appeal to the city council from the date of the order denying or revoking the license. The applicant shall have at his option an appeal of the denial of his application before the city council, at its next regular meeting, if filed before 5 business days of posting the agenda. In the event of the filing of an appeal from a revocation issued under the provisions of this Ordinance, then, until such appeal has been determined by the city council such revocation order shall be stayed.

D. Hearing. The hearing will be held in accordance with city council rules and procedures. After holding the hearing on the revocation or denial, the city council shall by majority vote either sustain the action or issue an order reinstating the license.

Sec. 4.02.09. Display of License.

Each city issued license shall be worn on the outer clothing of the individual or otherwise displayed, as so to be reasonably visible to any person who might be approached by said person.

Sec. 4.02.010. Validity of License.

A license shall be valid within the meaning of this ordinance for a period of no more than 90 days from its date of issuance or the term requested, whichever is less.

Sec. 4.02.011. Distribution of Handbills and Commercial Flyers.

In addition to the other regulations contained herein, the following regulations shall apply to the leaving of handbills or commercial flyers about the community:

- A. No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way. The police and/or City's authorized personnel are authorized to remove any handbill or flyer found within the right-of-way.
- B. No handbill or flyer shall be left at, or attached to any privately-owned property in a manner that causes damage to such privately-owned property.
- C. No handbill or flyer shall be left at, or attached to any of the property having a "No Solicitor" sign posted.

Sec. 4.02.012. General Prohibitions.

No person issued a license shall:

- A. Enter upon any private property where the property has clearly posted in the front yard a sign visible from the right of way (public or private) indicating a prohibition against peddling, soliciting and/or canvassing. Such sign need not exceed one square foot in size and may contain words such as "no soliciting" or "no solicitors".
- B. Remain upon any private property where a notice in the form of a sign or sticker is placed upon any door or entrance way leading into the residence or dwelling at which guests would normally enter, which sign contains the words "no soliciting" or "no solicitors" and which is clearly visible.
- C. Use or attempt to use any entrance other than the front or main entrance to the dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.
- D. Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.
- E. Engage in activities other than those set out in the application upon which the license was issued.

F. Engage in activities authorized by this chapter between the hours of 8:00 PM and 9:00 AM.

Sec. 4.02.013. Penalties.

Any person violating any part of this Article or failing to observe any provision of this Article shall be subject to the penalties as set forth in Sec. 1.01.009 of this code or the administrative penalties as stated herein.