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MEMORANDUM

To: Mayor and City Council

From: Bill Riley, Assistant City Attorney

Date: October 25, 2021

Subject: Amendment of Chapter X Relating Specifically to Door-To-Door Salesmen

ITEM DESCRIPTION

Amendment of Chapter X to update and expand the current ordinance to comply with new existing case law and practices.

BACKGROUND

Recent challenges in court and those subsequent rulings, has changed the solicitor permitting requirements significantly since the City initially adopted them, in the direction of protecting commercial speech equally with non-commercial and non-profit speech.

Additionally, cases have ruled on curfews, required routes, permit fees, and background checks that require fingerprinting.

RELATED ACTION – PERMIT FEE REDUCTION

The permit fee is currently \$110.00. That is made up from the costs of the background check at \$50.00 and fingerprinting at \$60.00. As the fingerprinting requirement is suggested for removal, the fee should then be reduced to \$50.00.

RECOMMENDED ACTION

Place on a second calendar for passage.

AN ORDINANCE TO AMEND CHAPTER 10 - BUSINESS AND OCCUPATION TAXES, LICENSES, AND REGULATIONS, ARTICLE III. - DOOR-TO-DOOR SALESMEN OF THE CITY OF DUNWOODY CODE OF ORDINANCES TO AMEND REGULATIONS FOR PERMITS, CURFEWS AND OTHERS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the City of Dunwoody is charged with protecting the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody's Business And Occupation Taxes, Licenses and Regulations, Chapter 10, describes the imposition and levy of occupational tax to do business in the city; and

WHEREAS, based on recent court rulings around the United States, including ruling in the US Supreme Court, Article III. – Door-To-Door Salesmen, has become in conflict with established published regulations, necessitating adjustments; and

WHEREAS, the Mayor and City Council find that, adjusting the necessary sections of Article III. – Door-To-Door Salesmen is the appropriate action for the City of Dunwoody.

NOW, THEREFORE, the Mayor and City Council of the City of Dunwoody HEREBY ORDAIN that Chapter 10 – Business And Occupation Taxes, Licenses, and Regulations, Article III. – Door-To-Door Salesmen is amended as follows:

Section I: That Chapter 10 of the City Code is further amended by amending Code Section 10-88, entitled "Definitions.", to read as follows:

Sec. 10-88. Definitions.

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

Licensed solicitor means and includes any person who has obtained a valid permit as hereinafter provided, which permit is in the possession of the solicitor on his person while engaged in door-to-door solicitation requiring contact with persons at a residenceing for profit, non-profit, political or religious contact with citizens residing within the city limits.

Residence means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Soliciting means and includes any one or more of the following activities:

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- (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever;
- (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or publication; or
- (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.
- (4) Seeking to distribute information or obtain donations for any non-profit organization.

Section II: That Chapter 10 of the City Code is further amended by revising Code Section 10-89, entitled "Permit required", to read as follows:

Sec. 10-89. Permit required.

- (a) It shall be unlawful for any person to engage in the business of soliciting, calling on residences door-to-door without first having obtained a permit in accordance with the provisions contained in this chapter.
- (b) The requirement of subsection (a) of this section ~~is meant to apply to door-to-door solicitations for commercial transactions for profit only.~~
 - ~~(1) It is not meant to regulate solicitation for charitable, political, or other nonprofit purposes provided that all sales proceeds are the property of and used by the nonprofit organization.~~
 - ~~(2) It does not apply to officers or employees of the city, county, state, or federal governments, or any subdivision thereof, when on official business.~~
- (c) Each person shall at all times while soliciting in the city carry upon his person the permit so issued and the same shall be exhibited by such solicitor whenever he is requested to do so by any police officer or by any person solicited.
- (d) Each permit issued shall contain the name of the solicitor, the name and address of the person, firm or corporation or association by whom the solicitor is employed or represents, a photograph of the solicitor, and physical description. Such photograph shall be provided by the solicitor and shall be at least two inches by two inches in size.
- (e) The permit shall state the expiration date thereof. In no event shall a permit be valid for more than three months. Upon expiration of the maximum three-month period, the permit holder may receive a renewal for an additional three-month period without any additional fees and without having to comply

with section 10-90, so long as no more than one complaint has been submitted to the city concerning the permit holder.

Section III: That Chapter 10 of the City Code is further amended by revising Code Section 10-90, entitled "Permit Applications", to read as follows:

Sec. 10-90. Permit applications.

- (a) Application for a permit shall be made upon a form provided by the city. The city shall have applications available on request. The applicant shall truthfully state in full the information requested on the application, to wit:
 - (1) Name and address of present place of residence and length of residence at such address; also business or non-profit organization address if other than present address, if applicable;
 - (2) Address of place of residence during the past three years if other than present address;
 - (3) Age of applicant;
 - (4) Physical description of the applicant;
 - (5) Name and address of the person, firm, or corporation or association by whom the applicant is employed or represents; and the length of time of such employment or representation;
 - (6) Name and address of employer during the past three years if other than the present employer;
 - (7) Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage;
 - (8) Period of time for which the certificate is applied;
 - ~~(9) Proposed route, including streets to be included on each day, which applicant intends to follow;~~
 - (109) The date, or approximate date, of the latest previous application for permit under this chapter, if any;
 - (110) Whether the applicant has ever been convicted of a felony, a crime of moral turpitude, or any other violation of any state or federal law;
 - ~~(112) Names of magazines, books, or journals to be sold; Description of any written materials by title to be offered for sale, given for free or solicited for placement at residence;-~~
 - (123) Names of the three most recent communities where the applicant has solicited house to house;
 - (134) Proposed method of operation;

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- (145) Description and license plate number of vehicles intended to be operated by applicant;
- (156) Signature of applicant; and
- (176) Social security number of applicant.
- (b) All statements made by the applicant upon the application or in connection therewith shall be under oath.
- ~~(c) The applicant shall submit to fingerprint-based background check in connection with the application for the permit, pursuant to the requirements of section 2-62 of this Code.~~
- (c) The applicant shall submit to a background check in connection with the application for the permit.
- ~~(dd)~~ The city manager shall cause to be kept in his office or designee office an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all permits issued under the provisions of this chapter, and of the denial of applications. Applications for permits shall be numbered in consecutive order as filed, and every permit issued shall be identified with the duplicate number of the application upon which it was issued.
- ~~(ee)~~ No permit shall be issued to any person who has been convicted of a felony or crime of moral turpitude within five (5) years of the date of the application; nor to any person who has been convicted of a violation of any of the provisions of this chapter; nor to any person whose permit issued hereunder has previously been revoked as herein provided.
- (f) The fee for a permit shall be valid for a six-month period.

Section IV: That Chapter 10 of the City Code is further amended by revising Code Section 10-91, entitled "Permit revocation", to read as follows:

Sec. 10-91. Permit revocation.

- (a) Any permit issued hereunder shall be revoked by the city manager or designee if the holder of the permit is convicted of a violation of any of the provisions of this chapter or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a permit under the terms of this chapter.
- (b) The permit may be revoked by the city manager or designee after a hearing in front of the city manager or designee if the city receives at least two (2) complaints against the permit holder alleging any violations of this article. Written notice of ~~t~~The hearing shall be given noticed to the holder of the permit in person or in writing, by certified mail, return receipt requested

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~~by the United States Postal Service addressed to the address set forth in the application to the permit holder~~ and shall not be ~~held~~ less than ten (10) days following the receipt of the notice by the permit holder. The notice shall state in specificity the time and place of the hearing and the reason(s) for the intended revocation. At the hearing, the city shall present evidence of the permit holder's violation of this article either through documents or affirmative testimony of the complaining parties and the permit holder shall be given an opportunity to rebut same and present his own evidence that no such violations have occurred. The burden of proof shall be on the city by preponderance of the evidence. If the city meets its burden, the city manager ~~or designee~~ shall revoke the permit no later than five (5) days following the date of the hearing.

- (c) Immediately upon such revocation, written notice thereof shall be given to the holder of the permit in person or by certified ~~mail, return receipt requested, by the United States Postal Service mail~~ addressed to ~~his residence~~ the address set forth in the application.
- (d) Immediately upon the giving of such notice the permit shall become null and void and must be turned in to the city manager's office.
- (e) A permit holder whose permit has been revoked in accordance with subsection (b) shall have the right to appeal said revocation to the city ~~council or~~ designated hearing officer by giving notice to the city manager no later than ten (10) days following receipt of the revocation notice by the permit holder. The appeal hearing shall be scheduled no later than thirty (30) days following the receipt of said appeal request and written notice of same ~~shall be given to holder of the permit holder in person or by certified mail, return receipt requested mail~~ no later than ten (10) days prior to the hearing. At the hearing, the permit holder shall have the right to present evidence as to why the decision of the city manager or designee should be overturned and permit holder shall have the burden to show same by the preponderance of the evidence. The ~~city council or~~ designated hearing officer shall make a decision to sustain or reverse the city manager's ~~or designee's~~ decision within five (5) days of the hearing and shall notify the permit holder of same in writing delivered in person or certified mail, return receipt requested.
- (f) Any permit holder aggrieved by the final decision of the ~~city council or~~ designated hearing officer may appeal same by petition for writ of certiorari to the Superior Court of DeKalb County in accordance with the law.

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Section V: That Chapter 10 of the City Code is further amended by removing Code Section 10-92, entitled "Routes" in its entirety and leaving that section "Reserved."

Section VI: That Chapter 10 of the City Code is further amended by revising Code Section 10-93, entitled "Prohibitions", to read as follows:

Sec. 10-93. Prohibitions.

- (a) Any licensed solicitor who shall be guilty of any fraud, cheating, or misrepresentation, whether himself or through an employee, while acting as a solicitor in the city, shall be deemed guilty of a violation of this chapter.
- (b) It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined if the occupant of said residence has made it clear, by written sign or otherwise, that solicitors are not invited.
- (c) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.
- (d) Times allowed.
 - (1) It is hereby declared to be unlawful and shall constitute a nuisance for any person, whether licensed under this chapter or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined, prior to 10:00 a.m. or after ~~6:30 p.m., sunset~~, Eastern Standard Time, or before 10:00 a.m. or after ~~7:00 p.m. sunset~~ Eastern Daylight Saving Time, ~~Monday through Saturday, or at any time on Sunday, or on a state or national holiday.~~
 - ~~(2) Solicitations for political purposes shall not occur prior to 10:00 a.m. or after 7:00 p.m., Eastern Standard Time, or before 10:00 a.m. or after 7:00 p.m. Eastern Daylight Saving Time.~~

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Section VII: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this _____ day of _____, 2021.

Approved:

Lynn Deutsch, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk (Seal)

City Attorney