



CITY COUNCIL STAFF REPORT

DATE: APRIL 21, 2010

LEGISLATIVE

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING CHAPTER 5.20 AND 5.48 OF, AND REPEALLING CHAPTER 11.68 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO HANDBILLS, PEDDLERS, AND SOLICITORS, SOLICITATION ON PRIVATE PROPERTY, AND CHARITABLE SOLICITATION.

FROM: David H. Ready, City Manager

BY: Office of the City Attorney

SUMMARY

The City Attorney's Office is recommending certain amendments to the city's existing regulations of various forms of solicitation activity within the city based upon case law developments. The principal changes relate to regulation of distribution of handbills in public places, solicitation occurring within private commercial properties, and licensing of commercial and charitable solicitors.

RECOMMENDATION:

Waive reading and introduce "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING CHAPTER 5.20 AND 5.48 OF, AND REPEALLING CHAPTER 11.68 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO HANDBILLS, PEDDLERS, AND SOLICITORS, SOLICITATION ON PRIVATE PROPERTY, AND CHARITABLE SOLICITATION."

STAFF ANALYSIS:

The City Attorney's Office has conducted a review of the City's existing regulations governing various solicitation activities conducted by individuals and groups in light of recent and prevailing case law decisions affecting this area of municipal regulation. The review was triggered in part by complaints of residents and property managers regarding solicitation activities occurring at several shopping centers and in front of several stores.

Based upon the legal review, the City Attorney's Office is recommending several municipal code amendments as noted below:

ITEM NO. 3.A.

1. Reorganization of City's Solicitation Ordinances. Currently the City's regulations regarding solicitation are located in several places in the Code. This ordinance will consolidate all of the regulations in Chapter 5.48 of the Municipal Code. Thus all regulations relating to commercial solicitation, noncommercial or charitable solicitation, and aggressive or abusive solicitation will be found in one location in the Code.

2. Solicitation on Private Property. The ordinance would add provisions to the Municipal Code to provide that it is unlawful for any person to conduct any form of solicitation on private commercial property when the owner has posted a sign stating: "No solicitors".

Because of recent California case law decisions, shopping centers with major communal areas, such as large plazas with seating areas inviting the public to congregate without required patronization of stores, must include some limited area for persons to engage in First Amendment activity like signature petition gathering. The legal effect of this constitutional rule is that a mall owner may still prohibit solicitors on the property, provided the owner has designated a smaller area or areas where First Amendment activity may occur.

The proposed ordinance amendment conforms to this legal rule by providing that owners of such commercial properties post signs which prohibits solicitors from those areas of the center which have not been designated for expressive activity.

3. Handbill Solicitation. The ordinance would amend provisions of the City's handbill ordinance to require that the content of a sign shall state "No Solicitors" for residential homeowners who want to prohibit solicitors on their property. Case law decisions have given specific approval of this signage wording. In addition, the new ordinance would clarify that it is legal to personally distribute handbills, whether for pure speech purposes or for profit, to persons in public places.

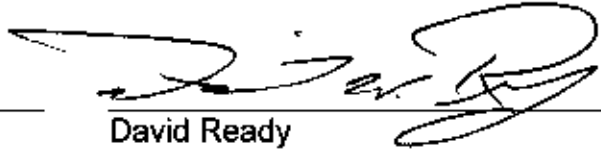
3. Licensing of Solicitors. The ordinance would amend the criteria upon which a charitable solicitor's permit may be denied. Certain outdated and constitutionally questionable provisions such as a disclosure requirement relating to an entity's total contribution receipts with a breakdown of funds used for administrative expenses, in a prior year and a requirement that a charitable organization may not spend more than 40% of collected funds have been deleted. These changes are recommended because federal constitutional cases have ruled these requirements are an overly broad impairment of First Amendment rights. A "good character" criteria used for making permit decisions for solicitors has also been deleted because case law decisions have held such a standard to be unconstitutionally vague.

4. Abusive and Aggressive Solicitation. The City Council adopted a provision a few years ago that prohibited abusive solicitation in certain areas. The original prohibition was susceptible to an interpretation that it only applied in situations where persons were engaged in pandering or begging situations. This ordinance revises the

City's existing regulations prohibiting aggressive solicitation and includes them within the reorganized Chapter 5.48 of the Municipal Code to make it clear that the prohibitions on aggressive solicitation would be applicable to all forms of solicitation and not just charitable solicitation as provided in the existing Code. We have also added express findings to Chapter 5.48 to provide a rationale and justification for the City's regulatory approach to abusive and aggressive solicitation.



Douglas Holland
City Attorney



David Ready
City Manager

Attachment: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING CHAPTER 5.20 AND 5.48 OF, AND REPEALLING CHAPTER 11.68 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO HANDBILLS, PEDDLERS, AND SOLICITORS, SOLICITATION ON PRIVATE PROPERTY, AND CHARITABLE SOLICITATION.

City Attorney's Summary

The Palm Springs Municipal Code contains regulations regarding handbills, peddlers, solicitors, and charitable solicitation. This Ordinance implements revisions to these regulations relating to the distribution of handbills, solicitation on private commercial properties, and the licensing of commercial and charitable solicitors.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ORDAINS:

Section 1. Chapter 5.20 of the Palm Springs Municipal Code is amended to read:

Chapter 5.20

HANDBILLS

5.20.010 Purpose.

This Chapter is intended to protect the residents and visitors of the City of Palm Springs against the health and safety menace and the expense and visual blight incident to the littering of the streets and public places by the indiscriminate and uncontrolled distribution of handbills, and the posting of handbills on the public infrastructure, and to protect private residential property against distribution of handbills of any kind when the property has been posted with a "No Solicitors" sign or equivalent notice stating that solicitation is unwelcome.

5.20.020 Definitions.

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

"Handbill distributor" means and includes any person engaging or engaged in the distribution of handbills, and any person receiving compensation directly or indirectly for the distribution of such handbills;

"Handbill" means and includes any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet, or any other printed or otherwise reproduced original or copies of any matter or literature;

"Person" means and includes any person, firm, partnership, association, corporation, company, or organization of any kind;

"Private premises" means and includes any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purpose, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch steps, vestibule, building or other structure; and

"Public place" means and includes any and all streets, boulevards, avenues, lanes, alleys, or other public ways, and any and all public parks, squares, spaces, plazas, grounds and buildings.

5.20.030 Posting Notice, Placard or Bill Prohibited in Certain Cases.

No person shall post, stick, stamp, paint or otherwise fix, or cause the same to be done by any person, any notice, placard, bill, card, poster advertisement or other paper or device or upon any sidewalk, crosswalk, curb or curbstone, flagstone or any other portion or part of any public way or public place, or any lamp post, electric light, telegraph, telephone or trolley line pole, traffic control device, or railway structure, hydrant, tree or tree-box, or upon the piers, columns, trusses, girders, railings, gates or other parts of any public bridge or viaduct or other public structure or building, or upon any pole, box, or fixture of the fire alarm or police telegraph system, except such as may be authorized or required by the laws of the United States, or state and the ordinances of the city.

5.20.040 Throwing Handbills Broadcast in Public Places Prohibited.

It is unlawful for any person to leave by depositing, placing, throwing, scattering or casting any handbill in or upon any public place within this city; provided however, that it is not unlawful for any person to hand out or distribute handbills to members of the public, providing there is compliance with other applicable provisions of the Municipal Code.

5.20.050 Placement of Handbills in or on Vehicles Prohibited.

No person shall deposit, place, throw, scatter, or cast any handbill in or upon any automobile or other vehicle if requested by anyone in possession thereof not to do so, either orally or via a sign on that automobile or other vehicle.

5.20.060 Distribution Prohibited Where Properly Posted.

It is unlawful for any person to distribute, deposit, place, throw, scatter or cast

any handbill upon any private residential premises if there is placed on said premises in a conspicuous place or position near the entrance thereof, a sign bearing the words "NO SOLICITORS", or any similar notice indicating that the distribution of handbills is unwelcome.

5.20.070 Distribution on Private Premises—Not posted.

In the case of private premises which are not posted as provided in this Chapter, a person may place or deposit any such handbill in or upon private residential premises, if such handbill is so placed or deposited as to secure or prevent such it from being blown or drifted about such premises or elsewhere. The deposit of handbills inside of mailboxes is prohibited.

Section 2. Chapter 5.48 of the Palm Springs Municipal Code is amended to read:

Chapter 5.48

**SOLICITATION
COMMERCIAL AND CHARITABLE**

5.48.005 Findings and Purpose.

A. The provisions of this Ordinance relating to the general regulation of commercial and charitable solicitation are based in part on the following findings:

1. The City Council finds that persons and organizations have been visiting and continue to visit private residential properties, as well as privately-owned businesses, for the purposes of soliciting goods, wares, merchandise, services, funds or contributions, and the distribution of literature.

2. Some residents and business owners find these activities to be intrusive upon their privacy.

3. The City Council further finds that a variety of misrepresentations and other frauds are at times employed in such activities.

4. In recent years, residents of several California cities have been attacked in their homes by persons claiming to be solicitors.

5. Unregulated door-to-door solicitation constitutes a serious concern for the city.

6. The City has received a growing number of complaints from certain merchants and business patrons that solicitors without the property owner's consent have engaged in a variety of commercial and non-commercial solicitation activity on private commercial property.

7. Solicitation activity can have the effect of impeding the free movement and privacy of citizen patrons, and otherwise cause noise and physical obstruction which detract from a conducive commercial environment.

8. The goal of protecting residents from fraud and crime and thereby promoting the safety and privacy of residences within the city is a legitimate, urgent and substantial governmental interest.

9. The City has a substantial interest in preventing fraudulent or criminal activities which may result from unregulated solicitation.

10. The City has a substantial interest in protecting individuals' safety and privacy by reasonably limiting the hours of solicitation and requiring permits in a content neutral manner.

11. The City has a substantial interest in allowing individuals to determine their level of comfort with privacy and whether or not they want to receive solicitation.

12. Noncommercial speech is entitled to broader protection under the 1st Amendment to the United States Constitution than commercial speech, affording the city a greater ability to regulate commercial speech than noncommercial speech.

13. All of these goals and interests may properly be served by this narrowly tailored regulation which requires solicitors to obtain a permit prior to soliciting within the city, reasonably limits the hours of activities and prohibits solicitation of occupants on property where residents have a posted sign prohibiting such activities.

B. The purpose of this Chapter is to balance free speech and expression with the health, safety, and welfare of the residents of the City.

C. The provisions of this Ordinance relating to aggressive and abusive solicitation are based in part on the following findings:

1. The maintenance and improvement of the quality of life and economic vitality of the City are significant government interests.

2. The protection of the City's citizens, residents, and visitors from the danger of assault, battery, theft, and disturbances of the peace, as well as other crimes, is also a significant government interest.

3. Aggressive and abusive solicitations threaten these significant government interests by diminishing access to and enjoyment of public places, threatening the commercial well being of local businesses, and creating an environment of fear, intimidation, and confrontation.

4. Solicitations in certain sensitive places also threaten these significant government interests. Such solicitations also diminish access to and enjoyment of

public places, threaten the commercial well being of local businesses, and create an environment of fear, intimidation, and confrontation.

5. The City citizens, residents, and visitors are involuntarily subjected to aggressive and abusive solicitations for monetary or other donations, causing them to feel threatened, intimidated, and coerced. Such conduct usually includes approaching and following persons, repeated requests for donations, unwanted physical contact, abusive language and threats, and obstruction of pedestrian and vehicular traffic.

6. The City's citizens, residents, and visitors are involuntarily subjected to coercion, intimidation and fear in certain places, including public parking lots, ATM's, lines of people, outdoor dining areas, and other areas where they are a "captive audience" and thus feel less able to decline a solicitor's request.

7. Aggressive and abusive solicitations increase the risk of assault, battery, theft, disturbing the peace, and other crimes. Such solicitations can provoke confrontations due to the threatening and offensive nature of the conduct of the solicitor. These situations put not only the solicited person, but also the solicitor, at risk of being the victim of assaultive and criminal conduct.

8. Solicitations in certain sensitive places also increase the risk of assault, battery, theft, disturbing the peace, and other crimes. Such solicitations can lead to confrontations due to the heightened sense of susceptibility of the person solicited. These situations put the solicited person and the solicitor at risk of being the victim of assaultive and criminal conduct.

9. The content-neutral time, place and manner restrictions on aggressive and abusive solicitations as narrowly tailored in this Chapter serve these significant government interests. Such restrictions will lessen feelings of coercion, intimidation, fear, and confrontation by prohibiting that conduct most likely to create such feelings.

10. Restricting all solicitations in certain sensitive areas will enhance the feeling of security and peace of mind of persons in those areas. The restrictions in this article leave open ample alternative avenues of communication and these restrictions are not intended to diminish the freedom or liberty of speech guaranteed under the United States and California Constitutions.

11. It is not the intent or purpose of the Council in enacting this Chapter to eradicate or displace any individual or group of homeless or indigent persons, but rather to protect the public from those persons, indigent or otherwise, who engage in aggressive and abusive solicitations, and/or who solicit in certain narrowly-defined areas of heightened sensitivity.

5.48.010 Definitions.

"Charitable" means the purpose of an organization which has received a letter of

determination approving tax exempt status under Title 26 of the United States Code Section 501(c)(3) or the purpose of a school club, recognized and affiliated with a public or private school, having a program with annual campaigns to support the public or private school club. For the purpose of this Chapter, the term "charitable" also includes religious and political purposes.

"City Manager" means the City Manager of the City or the City Manager's designee.

"Commercial" means solicitation which is not charitable, as defined in this Section.

"Communal areas" means such areas set aside by the shopping center owner allowing and inviting the public to engage in such matters as discourse, relaxation, recreation or entertainment without required patronage of retail establishments within the center. Outdoor restaurant seating areas which are restricted in use to restaurant patronage do not constitute communal areas of the center.

"Corporation" means a legal entity which has a legal personality distinct from those of its members which has filed articles of incorporation with the California Secretary of State.

"Peddler" means and includes any person who travels or goes from house to house within the city and peddles, hawks, vends, or sells any goods, wares, merchandise, medicines carried or caused to be carried or conveyed by the person peddling, hawking, vending or selling the same.

"Person" means any individual, firm, partnership, joint venture, association, social club, league, fraternal organization, joint stock company, estate, trust, business trust, receiver, trustee, syndicate or any other group acting as a unit. The word person shall include the definition of corporation.

"Prohibited place" means any:

1. Bus stop;
2. Public transportation vehicle or facility;
3. Public parking lot or structure;
4. An area within fifty (50) feet of an automated teller machine (ATM);
5. A queue or line of two or more persons waiting to be admitted to a commercial establishment or waiting to purchase an item or ticket;
6. An outside dining area or motor vehicle drive-through lane of a restaurant or other dining establishment serving food for immediate consumption.

"Public place" means any place open to the general public and includes, but is not limited to, any sidewalk; alley; street; highway; bridge; driveway; parking lot; parking structure; playground; park; plaza; mall; structure; building; doorway, entrance, lobby or hallway to or in a building; the grounds around or enclosed by a building; school; or

place of amusement. Such a place is a "public place" regardless of whether it is publically or privately owned.

"Shopping Center" is a property or properties operating as an integrated retail commercial shopping center consisting of one or more retail commercial uses.

"Solicitation" and "solicit" are defined to mean any form of solicitation, including but not limited to, any request, offer, enticement, or action for the sale of goods, services, signing of petitions for social, economic, or political causes, distribution of literature, request for funds or contributions, or employment opportunities. Solicitation shall be deemed complete when initiated whether or not an actual employment relationship is created, a transaction is completed, or any other exchange has taken place.

"Solicitation in an aggressive or abusive manner" means solicitation via any of the following acts or conduct:

1. Intentionally coming within three feet of a solicited person unless and until that person has indicated, by word or conduct, he or she wishes to make a donation;
2. Intentionally blocking the path or impeding the passage of a solicited person;
3. Intentionally following behind, beside or in front of a solicited person after that person has indicated, by word or conduct, he or she does not wish to make a donation;
4. Continuing to request a donation from a solicited person after that person has indicated, by word or conduct, he or she does not wish to make a donation;
5. Approaching a solicited person when that person is entering or exiting a motor vehicle or assisting another in doing so;
6. Rendering any service to a motor vehicle, including but not limited to any cleaning, washing, protecting, guarding or repairing of said vehicle or any portion thereof, without the consent of the owner, operator or occupant of such vehicle, and thereafter requesting payment for the performance of such service, regardless of whether such vehicle is stopped, standing or parked;
7. Threatening a solicited person, by word or conduct, with physical harm or violence;
8. Using profane or abusive language towards a solicited person;
9. Intentionally touching or attempting to touch a solicited person without that person's consent;

10. Any other words or conduct that would cause a reasonable person, in the position of the solicited person, to fear for his or her safety, the safety of his or her property or the safety of another person accompanying the solicited person.

"Solicitor" means any person, whether a resident of the city or not, engaged in solicitation. The term "solicitor" does not include any person carrying, conveying, delivering, or transporting dairy products, newspapers or other goods to regular customers on established routes or to the premises of any person who had previously ordered such products or goods and is entitled to receive the same.

"Vehicle" has the same meaning as set forth in the California Vehicle Code.

5.48.015 Permit—Required.

A. The following provisions shall apply to permits for commercial solicitation:

1. If a person is soliciting on behalf of, or is employed to solicit by, another person (as defined in Section 5.40.010(E)), both the person soliciting and the employer or other person upon whose behalf solicitation is being made must have valid solicitation permits as set forth in this Chapter and business tax certificates as set forth in Chapter 4.10, even if such persons are exempt from payment of any license fee or business tax.

2. All persons who engage in solicitation shall comply with the following:

a. Carry a photo identification and a copy of a valid permit issued pursuant to this Section, and if acting on behalf of another, including acting on behalf of another person (as defined in Section 5.40.010(E)), such person shall carry written authorization to act on behalf of such third party and a copy of the permit issued to such third party; and

b. Immediately present a solicitation permit, identification and authorization to act on behalf of a third party, if applicable, to any person approached for said solicitation and to any law enforcement official, upon their request.

3. The permit shall contain the name, permanent residence address of the solicitor, a brief description of the solicitor and the photograph of such solicitor.

4. Permits are not assignable.

5. Permits and authorizations to act on behalf of third parties are not transferable.

B. The following provisions shall apply to permits for charitable solicitation:

1. If a person is soliciting on behalf of, or is employed to solicit by, another person (as defined in Section 5.40.010(E)), only the person on whose behalf the solicitation is made shall be required to have a valid solicitation permit as set forth in this Chapter.

2. If a person is soliciting on behalf of, or is employed to solicit by, another person, the person soliciting shall carry identification and authorization to act on behalf of the employer or other person.

C. Children under the age of twelve (12) shall be accompanied by an adult.

5.48.020 Permit—Application—Generally.

A. The following provisions shall apply to the permit application for commercial solicitation:

1. The application for a permit required by Section 5.40.020(A) shall be made upon a form prescribed by the city manager, or his or her designee, available at the police department and shall include, but not be limited to, the following information:

a. The name, permanent residence address of the applicant, a brief description of the applicant and a photo taken by the police department;

b. Proof of Livescan fingerprinting. Fingerprinting must be done at the city police department. The applicant must present a valid identification card issued by a state within the United States of America prior to being printed;

c. Complete employment history for the past ten years;

d. Disclosure of any and all criminal convictions, infraction or misdemeanor citations received, including any municipal code violations and criminal or civil cases pending. This shall include any cases dismissed or expunged pursuant to California Penal Code Section 1203.4;

e. A statement that the person is not currently under investigation for any crimes related to solicitation or other criminal offense including, but not limited to, violent crimes, sexual assault, possession of controlled substances, theft, fraud or burglary;

f. Names and addresses of all affiliated persons (as defined in Section 5.40.010(E)) who will be working on behalf of or with the applicant;

g. Proof of insurance as required by the city;

h. Requested time and place to solicit within the city;

i. A copy of a completed Palm Springs Business Tax Certificate application; and

j. Such other information as the City Manager may require in order to discover the truth of the matters herein specified and as required to be set forth in the application.

2. The application, upon completion by the applicant, shall truly set forth all such information as shall be required by the City Manager.

3. The application shall be submitted under penalty of perjury and be submitted to the police department at least thirty (30) calendar days prior to the time the solicitor requests to engage in solicitation.

4. The application shall be submitted with any applicable fee. The permit application fee shall be established by resolution of the City Council and may be amended from time to time.

5. The City Manager shall issue the permit to solicit if the following requirements have been met, subject to the criminal background check in Section 5.40.040:

a. The applicant has properly completed and filed his or her application together with any applicable fee.

b. The applicant has obtained any other license or permit that may be required under this Code.

c. The applicant has provided all the information required on the application.

d. The applicant has not made any misrepresentation of any fact in the application.

6. The City Manager may issue the permit subject to conditions as may be necessary for the public health, safety, peace and welfare.

Applicants shall at all times maintain accurate application information with the city. If there is any change or modification in the information provided in the initial application, the applicant shall give written notification of such change to the City Manager within two (2) weeks of the change.

B. The following provisions shall apply to the permit application for noncommercial solicitation:

1. The application for a permit required by Section 5.40.020(B) shall be made upon a form prescribed by the city manager, or his or her designee, available at

the police department and shall include, but not be limited to, the following information:

- a. The name, address and a brief description of the applicant; and
 - b. If for charitable purposes, a letter of determination approving tax exempt status under Title 26 of the United States Code Section 501(c)(3) or a letter from a public or private school administrator acknowledging the school affiliation of the school club and its program of annual campaigns to support the public or private school club.
2. The application shall be submitted to the police department at least thirty (30) calendar days prior to the time the solicitor requests to engage in solicitation.
3. The City Manager shall issue the permit to solicit if the following requirements have been met:
- a. The applicant has properly completed and filed his or her application.
 - b. The applicant has provided all the information required on the application.
 - c. The applicant has not made any misrepresentation of any fact in the application.
4. The City Manager may issue the permit subject to conditions as may be necessary for the public health, safety, peace and welfare.
5. Applicants shall at all times maintain accurate application information with the city. If there is any change or modification in the information provided in the initial application, the applicant shall give written notification of such change to the City Manager within two (2) weeks of the change.

5.48.025 Permit—Criminal Background Check.

A. The provisions of this Section shall only apply to commercial solicitation.

B. The City Manager shall initiate criminal history record background checks of prospective solicitors, including those persons acting on behalf of an employer or other person (as defined in Section 5.40.010(E)).

C. A criminal history record background check shall not be initiated pursuant to this article without the written consent of the person. The consent required under this

Section shall be in the manner and form prescribed by the City Manager and shall include, but not be limited to, the signature, name, address and fingerprints of the person.

D. The City Manager shall not certify a person subject to the provisions of this Chapter who refuses to consent to or cooperate in the securing of a criminal history record background check.

E. A person whose criminal history record background check reveals a conviction for any criminal offense including, but not limited to, violent crimes, sexual assault, possession of controlled substances, theft, fraud or burglary shall be disqualified from receiving a permit to solicit within the city, subject to the provisions in Section 5.40.040(I) below.

F. The City Manager is authorized to receive criminal history record information from any agency or department of the State of California or the United States government, including but not limited to the California Department of Justice and the Federal Bureau of Investigation, regarding applicants for permits to solicit within the city.

G. The police department shall promptly notify a person whose criminal history record background check reveals a disqualifying criminal conviction.

H. The person shall have thirty (30) calendar days from the receipt of that notice to petition the police department for a review and to cite reasons substantiating the review.

I. If the person successfully challenges the accuracy of the criminal history record information or the person demonstrates affirmatively to the governing body clear and convincing evidence of rehabilitation, the City Manager may issue a certificate indicating the person has successfully cleared a background check.

5.48.030 Permit—Expiration—Renewal—Revocation.

A. The following provisions shall apply to permits for commercial solicitation:

1. All permits granted under the provisions of this Chapter shall be valid for up to ninety (90) days and may be renewed thereafter, unless sooner revoked.

2. Prior to the expiration of a permit, and upon application for renewal of the permit, the City Manager shall determine if the applicant or solicitor has acted in compliance with the applicable provisions of this Chapter and conditions of the permit.

a. If determined to have been in substantial compliance, the permit shall be renewed upon payment of any applicable renewal fee.

b. If the applicant or solicitor is found not to be in substantial

compliance, the permit shall not be renewed, and no other permit shall be issued under the provisions of this Chapter to the same applicant within one (1) year of the date of cancellation or expiration of the permit.

3. Renewal fees shall be established by resolution of the City Council and may be amended from time to time.

4. The City Manager may revoke any permit granted under the provisions of this Chapter for any of the following reasons:

- a. The applicant provided false, misleading or misrepresented information in procuring said permit;
- b. The applicant or any person (as defined in Section 5.40.010(E)) who worked on behalf of or with the applicant failed to comply with the requirements, regulations, laws and conditions of approval applicable to the permit;
- c. The applicant or any person (as defined in Section 5.40.010(E)) who worked on behalf of or with the applicant is convicted of violating any federal, state or local law while in the course of operating under the permit; or
- d. The activities for which the permit was granted were or are being conducted in a manner that is detrimental to the public health, safety, peace or welfare.

5. When a permit has been revoked, no other permit shall be issued under the provisions of this Chapter to the same applicant within one (1) year of the date of revocation.

B. The following provisions shall apply to permits for noncommercial solicitation:

1. All permits granted under the provisions of this Chapter shall be valid for up to one (1) year and may be renewed thereafter.

2. Upon application for renewal of the permit, an applicant claiming nonreligious, nonpolitical, charitable status shall resubmit the materials described in Section 5.48.020 B.

5.48.035 Permit—Denial—Revocation—Appeal—Hearing Officer.

A. Any applicant aggrieved by any decision by the City Manager on an application for, renewal of or revocation of a permit, may appeal such decision within ten (10) calendar days after the notice is given of the decision pursuant to Chapter 5.20.

B. The appeal shall be filed on forms provided by the city together with any applicable fee established by resolution of the City Council, which may be amended from time to time.

C. The appeal request shall set forth the appellant's reasons for asserting the decision was in error or in violation of this Code or other applicable law.

D. The appeal shall be referred to the City Manager who may appoint a hearing officer or body to conduct a hearing on the matter pursuant to Chapter 5.20.

E. The hearing officer or body may affirm, dismiss or modify the decision as set forth in Chapter 5.20.

F. Any action by the hearing officer or body may be appealed to the City Council pursuant to Chapter 5.20.

5.48.050 Solicitation Operating Requirements.

A. It is unlawful for any person to engage in solicitation within the City without a valid solicitation permit issued by the City Manager.

B. It is unlawful for any person to engage in commercial solicitation within the City without both a valid solicitation permit and a valid business license issued pursuant to Chapter 4.10.

C. A permit granted under this Chapter is not an endorsement by the City of the solicitor or of any goods, wares, merchandise, services, or information that may be sold or distributed by the solicitor and it is unlawful for any person to represent that such an endorsement has been made.

D. It is unlawful for any person to go upon, ring the bell, knock on the door of or attempt to gain admission to the premises of any residence, dwelling or apartment in the City where the owner, adult occupant, or other person in control thereof has expressed his or her objection to such activity either by explicit instructions, oral or written, or by posting a sign or decal bearing the words "NO SOLICITORS" or words of similar import, in a conspicuous place near the front door of the premises, unless prior to such entry, bell ringing or knocking, such person has been requested or invited by the owner or adult occupant or other person in control of the premises to be thereupon for such purpose.

1. Activities related to a service requested by the owner or occupant of the property and undertaken in the ordinary course of business, including but not limited to deliveries of utility notices, telephone directory deliveries, regular newspaper deliveries, work order notices and service inquiries, are presumed to be requested or invited for the purpose of this Section.

2. It is unlawful for any person, while soliciting, to go upon, ring the bell, knock on the door of or attempt to gain admission to the premises of any residence, dwelling or apartment in the City thirty (30) minutes after sunset or earlier than 8 a.m., unless such person has been requested or invited by the owner or adult occupant of the premises to be thereupon for such purposes.

E. It is unlawful for any person to solicit in or upon any commercial property within the City when such property is affixed with signing stating "NO SOLICITORS", or similar statement to the effect that solicitation is not permitted on the property.

1. For commercial property that does not include or contain communal areas, the property owner may post a "No Solicitors" sign of a size not less than 22 inches by 17 inches, with lettering of a least one inch in height, at each vehicular entry point to the property.

2. For commercial property containing communal areas, including, for example, seating areas, plazas, large walk areas, the property owner shall post signs stating that:

"Solicitation of any type is permitted only in designated area (or areas) of this shopping center. Violators are subject to prosecution pursuant to Palm Springs Municipal Code Section 5.50.020. Please contact the property manager for the permissible solicitation location."

3. The signing shall be located at all major entry points of the property, and at such other locations designated by the property owner as permissible solicitation areas. The signing may contain a similar statement to the same effect. The size of the signing shall be not less than 22 inches by 17 inches with lettering of at least one inch in height.

F. It is unlawful for any person to engage in solicitation in an aggressive or abusive manner in any public place.

G. It is unlawful for any person to engage in solicitation while the solicited person is in a prohibited place.

H. It is unlawful for any person, while soliciting, to shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound-amplifying system upon any public streets, alleys, parks or public places of the City or upon any private property where such sound exceeds the City's noise standards as set forth in this Code. No person who uses an automobile or other vehicle for purposes of soliciting shall operate or permit the operation of any sound amplification system which can be heard outside the automobile or other vehicle to advertise, to draw attention to the presence of the automobile or other vehicle or to communicate commercial information to the general public when such automobile or other vehicle is moving, stopped, standing or parked upon any public or private street, except to request emergency assistance or warn of a hazardous situation. This

Subsection shall not apply to authorized emergency vehicles or vehicles operated by public utilities or to vehicles participating in a special event authorized by the City.

5.48.060 No Soliciting From Vehicles.

A. No person shall stand or park any vehicle equipped or used for solicitation on any street or public right-of-way for purposes of such solicitation without obtaining a written permit to do so from the City Engineer or as otherwise permitted pursuant to this Code.

B. Any operator of a vehicle equipped or used for soliciting on any public or private property shall comply with the following regulations:

i. Each operator at all times shall possess and display in conspicuous view upon each such vehicle a valid permit issued pursuant to this Chapter and a business tax certificate issued pursuant to Chapter 4.10.

ii. Each operator shall display in conspicuous view the name, address and telephone number of the holder of the permit issued pursuant to this Chapter and shall permanently affix the permit on both the left and right sides of the vehicle. Such information shall be in letters and numerals not less than four inches in height and shall be in contrast to the color of the background upon which the letters are placed.

iii. Each operator causing the sale or offering for sale any produce or other food item for which a food handling permit or other health permit is required by law shall possess and at all times display such permit in conspicuous view upon each such vehicle.

iv. No vehicle shall be parked, stopped or left standing in any manner which blocks or impedes vehicular access to any driveway or restricts the free and safe movement of other vehicles or pedestrians upon a right-of-way.

iv. No soliciting from a vehicle shall be permitted except after the vehicle has been brought to a complete stop and parked in a lawful way.

5.48.070 Enforcement.

A. The applicant or solicitor shall be responsible for the conduct of all persons (as defined in Section 5.40.010(E)) acting with or on the behalf of the applicant or solicitor while in the course of operating under the permit. All persons found working, helping, volunteering or in any way assisting in the activities for which the permit was granted shall be considered employees of the applicant or solicitor. Any act or omission of any person acting with or on the behalf of the applicant or solicitor constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the applicant or solicitor for purposes of determining whether the applicant's or solicitor's permit shall be granted, denied, renewed or revoked.

B. Every act prohibited and every failure to perform an act made mandatory by this Chapter shall be punishable as provided for in Chapter 1.12 of the Code and be subject to revocation of a solicitation permit and be ineligible to receive a new solicitation permit for a period of one (1) year.

Section 3. Chapter 11.68 of the Palm Springs Municipal Code is repealed.

PASSED, APPROVED, AND ADOPTED THIS _____ DAY OF _____, 2010.

Stephen P. Pougnet
Mayor

ATTEST:

James Thompson, City Clerk

APPROVED AS TO FORM:


Douglas Holland, City Attorney