

ORDINANCE 16-O-58 amending the Murfreesboro City Code, Chapter 21—Offenses and Miscellaneous Provisions, Section 21-5.3, and Chapter 28 – Streets and Sidewalks, Section 28-9, regarding unlawful solicitations.

WHEREAS, the City Council believes that people have a right to move freely in public areas without being subject to harassment, intimidation, blocked passage, aggressive behavior, battery, and other forms of aggressive solicitation; and,

WHEREAS, the City Council finds that the regulation of solicitation is in the best interest of the health, safety and welfare of the citizens of the City of Murfreesboro.

WHEREAS, the City of Murfreesboro has a significant governmental interest in providing its citizens, visitors, and tourists with a pleasant, enjoyable, and safe environment free of nuisance activity; and,

WHEREAS, the City of Murfreesboro has substantial governmental interests in promoting and protecting tourism, encouraging the expansion of the City's economic base by attracting and maintaining new investments, creating an attractive infrastructure that encourages quality development, and protecting the City's economy; and,

WHEREAS, solicitors unaffiliated with a legitimate tax exempt organization often disturb the daily activities that occur at outdoor cafes, shops, restaurants, nightclubs, and entertainment venues, and outdoor events by disrupting business and physically approaching, harassing, or intimidating residents, visitors, and tourists in places where it is difficult to exercise the right to decline to listen to them or avoid their requests; and,

WHEREAS, the City Council finds that solicitation in the roadway and from public property adjacent to the roadway causes distraction for drivers and is a safety hazard, and has determined that it is in the public interest to regulate solicitation in or near the roadway for the purpose of protecting the interest of the health, safety and welfare of the citizens; and,

WHEREAS, solicitors unaffiliated with a legitimate tax exempt organization also obstruct the sidewalks located within the City, causing safety concerns for pedestrians, motorists and the safety of others; and,

WHEREAS, solicitors unaffiliated with a legitimate tax exempt organization threaten the City's lifestyle and economic vitality by disrupting the existence of a pleasant, safe, and enjoyable environment; and,

WHEREAS, the City recognizes that certain forms of solicitation are entitled to First Amendment protection and its regulation must be content-neutral and narrowly tailored to serve a significant government interest while leaving open ample alternative channels of communication; and,

WHEREAS, the regulations set forth in this Ordinance are content neutral and narrowly tailored to address and curb the problems unique to the subject areas and do not unreasonably interfere with constitutionally protected rights, and there are ample alternative public areas throughout the City where solicitation is permitted; and,

WHEREAS, the City Council finds that the passage of this Ordinance regulating solicitation on City-owned property or public areas within the City limits is in the best interest of the health, safety and welfare of the City's residents, business owners,

visitors, and others, and is necessary for the effective administration and operation of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Section 21-5.3, Reserved, of the Murfreesboro City Code is hereby amended by inserting a new Section 21-5.3, Unlawful Solicitations, as follows:

Section 21-5.3 Unlawful Solicitations.

(A) *Definitions.* Except where the context clearly indicates otherwise, the following terms as used in this chapter shall have the following meanings:

"Aggressive manner" means and includes:

- (1) Intentionally or negligently making any physical contact with or touching another person in the course of a solicitation without the person's consent;
- (2) Approaching or following a person being solicited in a manner that is intended to or likely to cause a person to fear imminent bodily harm, fear the commission of a criminal act, or intimidate the person being solicited into an affirmative response;
- (3) Continuing to solicit within 25 feet of the person being solicited after the person has made negative response if that conduct is intended to or likely to cause a person to fear imminent bodily harm, fear the commission of a criminal act, or intimidate the person being solicited into an affirmative response;
- (4) Intentionally or negligently blocking the safe or free passage of the person being solicited or requiring the person, or the driver of any vehicle, to take evasive action to avoid physical contact with the person making the solicitation or a person stopping in response to a solicitation;
- (5) Using obscene or abusive language or gestures intended to or likely to cause a person to fear imminent bodily harm, fear the commission of a criminal act, or intimidate the person being solicited into an affirmative response; and/or,
- (6) Acts authorized as an exercise of a constitutional right to picket or legally protest, shall not constitute obstruction of pedestrian or vehicular traffic.

"Solicit" or "solicitation" means any communication that reasonably appears to be a request made directly to another person in a public area for an immediate donation of money or other thing of value, including the purchase of an item or service for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is a donation. As used in this section, solicit and solicitation does not include fundraising by an organization that has obtained from the Internal Revenue Service an exemption from taxation under I.R.C. 501(c).

- (B) *Aggressive solicitation.* It shall be unlawful for any person to solicit in an aggressive manner in any an area to which the public or a substantial group of persons has access, and includes but is not limited to alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, streets open to the general public and the doorways and entrances to buildings and dwellings and the grounds enclosing them.
- (C) *General solicitation restrictions.* It shall be unlawful for any person to solicit:
- (1) After sunset and before sunrise, the time of which shall be those published by the United States Naval Observatory;
 - (2) Within 25 feet of any ATM, business window used for the exchange of cash or credit, or parking lot pay box;
 - (3) Within 25 feet of a sidewalk cafe or outdoor dining area;
 - (4) Within 25 feet of a person standing in line waiting to be admitted to a commercial establishment;
 - (5) In any public transportation vehicle, or within 25 feet of any bus station or stop or any taxi stand;
 - (6) Within 25 feet of any crosswalk or on or within 25 feet of the entrance or exit to any confined pedestrian walkway;
 - (7) Within 25 feet of any entrance or exit of any home at any time or business during hour of the business' operations without the consent of the owner or person legally in possession of such property; and/or,
 - (8) From any operator or occupant of a motor vehicle, from any person entering or exiting a motor vehicle, from any operator or operator of a motor vehicle that is in traffic on a public street, or from any operator of a motor vehicle in exchange for unrequested service to any vehicle or allowing for or directing the parking of any vehicle not owned or under a right of control of the owner of the parking area.
- (D) *False, misleading, or harmful solicitation.*
- (1) It is unlawful for any person to make a false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to the following:
 - (a) Stating that the donation is needed to meet a specific need, when the person soliciting already has sufficient funds to meet that need and does not disclose that fact;
 - (b) Stating that the donation is needed to meet a need that does not exist;
 - (c) Stating that the person soliciting is from out of town and stranded, or that he or she is homeless when that is not true;
 - (d) Stating the donation is for food but in reality is used for illegal drugs or alcohol;
 - (e) Stating or representing, by use of a uniform or otherwise, that the person soliciting is a member of a military service when the person

soliciting is neither a present nor a former member of a military service; and/or,

(r) Stating, representing or displaying an indication that the person soliciting suffers from a mental or physical disability or deformity when the person soliciting does not suffer the disability or deformity indicated.

(2) It is unlawful for any person to use or expose minors and animals to hazardous or harmful conditions in order to solicit, including but not limited to exposure to cold, heat, traffic, other animals, weather, or strangers.

(E) *Severability.*

(1) Severability is intended throughout and within the provisions of this section. If any section, sentence, clause or phrase of this division is held invalid or unconstitutional by a court of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the remaining portions of this division.

(2) This division is not intended to proscribe any demand for payment for services rendered or goods delivered which does not meet the definition of solicitation in this section.

(3) This division is not intended to create a result through enforcement that is absurd, impossible or unreasonable. The division, or any part thereof, should be held inapplicable in any such case where its application would be unconstitutional under the United States Constitution or the Constitution of this state.

(F) *Penalty.* Any person who shall violate or fail to comply with any provision of this section shall be guilty of an offense and shall, upon conviction, unless otherwise provided by this section, be punished as provided in Code §1-8.

SECTION 2. Section 28-9, Obstructing Streets or Sidewalks Generally, of the Murfreesboro City Code, is hereby amended by designating the existing Section 28-9 as subsection (A) and adding the following subsection (B):

(B) *Obstruction by Pedestrians.*

(1) No person shall stand in a roadway for the purpose of soliciting a ride.

(2) No person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.

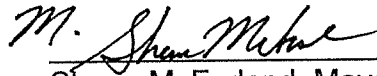
(3) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

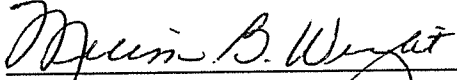
1st reading November 10, 2016

2nd reading November 17, 2016



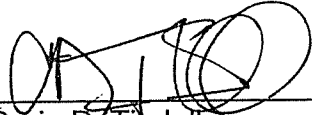
Shane McFarland, Mayor

ATTEST:



Melissa B. Wright
City Recorder

APPROVED AS TO FORM:



Craig D. Tindall
City Attorney

SEAL