

ORDINANCE NO. 09- 121

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING SECTION 21-27.3 OF THE CODE OF ORDINANCES, PERTAINING TO SOLICITATION AND PEDDLING; AMENDING PURPOSE AND INTENT; AMENDING DEFINITIONS; PROVIDING PERMIT APPLICATION REQUIREMENTS; PROVIDING FOR PERMIT APPLICATION FEES; PROVIDING FOR PERMIT APPROVAL, DENIAL AND REVOCATION; PROVIDING FOR BACKGROUND CHECKS; PROVIDING FOR APPEAL OF PERMIT DENIAL OR REVOCATION; PROVIDING FOR NOTICE REGULATING SOLICITING; PROVIDING DUTY OF SOLICITORS; PROHIBITING UNINVITED SOLICITING IF NOTICE POSTED; PROVIDING TIME LIMITS FOR SOLICITATION; PROVIDING AGE LIMITATIONS; PROVIDING RESTRICTIONS ON METHODS OF SOLICITATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, solicitors and/or peddlers have recently become prevalent within the Town of Miami Lakes (the “Town”); and

WHEREAS, the Town Council finds that activities involving the solicitation of money provides opportunities for fraud against unsuspecting citizens; and

WHEREAS, the Town Council finds that the prevention of burglary and other criminal activities is a critical concern; and

WHEREAS, the Town Council finds that residents have a right to a degree of privacy in their own home; and

WHEREAS, the Town Council finds that it is necessary to regulate such solicitors and/or peddlers by requiring a permit for operating within the Town, providing for time limitations, and providing for age limits; and

WHEREAS, the Town Council further finds that it is appropriate to prohibit door-to-door solicitation or peddling where a homeowner posts written notice upon or near the main entrance door to his or her residence providing that such types of businesses are not allowed; and

WHEREAS, the Town Council finds this Ordinance to be in the best interest and welfare of the residents of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. Each of the above stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Amendments to Code. Section 21-27.3 of the Town Code of Ordinances is hereby amended to read as follows¹:

Section 21-27.3 Right-of-Way Vendors and Solicitors.

(a) Purpose and Intent.

- 1) The Town Council of the Town of Miami Lakes desires to adopt an ordinance prohibiting right-of-way vendors and solicitors on certain streets located in the Town because such vendors and solicitors pose a danger to themselves and the public at large by interfering with the safe movement of normal vehicular traffic.
- 2) Further, the Town Council desires to provide for registration of solicitors and peddlers operating within neighborhoods in the town to establish the solicitors' identity and authority to act in order to preserve the privacy of resident's in their own home and to further protect against fraudulent and criminal activities.

(b) Definitions.

As used in this Section, the following term(s) have the meaning set forth herein, except as otherwise indicated by the context.

¹ Additions to the Town Code are shown in underline; deletions from Town Code text are shown in ~~strikethrough~~.

Commercial Transaction shall mean any activity, conduct or carrying on of trade, business or financial matter, or the sale or bartering of and for goods or services, conducted for profit.

Charitable, Nonprofit or other Eleemosynary shall mean a not for profit organization established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, safety, fraternal, historical, athletic, medical, religious or other eleemosynary purpose. Such term includes a chapter, branch, area office, or similar affiliate soliciting contributions for a charitable organization.

Peddling shall mean selling or attempting to sell merchandise or services or both while carrying such merchandise or the materials necessary to provide services.

Right-of-Way Vendor shall mean any person who sells or offers for sale any thing or service of any kind, or who seeks any donation of any kind, or who personally hands to or seeks to transmit by hand or receive by hand any thing or service of any kind, whether or not payment in exchange is required or requested, to any person who operates or occupies a motor vehicle of any kind, which vehicle is engaged in travel on or within any portion of any of the roads designated in subsection (c), whether or not such vehicle is temporarily stopped in the travel lanes of the road. The term shall not apply to any person who merely holds or displays a sign lawfully permitted to be displayed by a person, as long as there is no entry by such person or sign into any portion of the roadway or its median. Further, this term shall not apply to official citations or notices provided pursuant to governmental authority.

Soliciting shall mean and include any one or more of the following activities:

- 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; or
- 2) Seeking to obtain prospective customers for application or purchase of any type of product, service, insurance; or
- 3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication; or
- 4) Seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable or nonprofit association, organization, corporation, or project or for any other purpose; or

5) Peddling, selling or attempting to sell merchandise or services or both while carrying such merchandise or the materials necessary to provide services.

Solicitor shall mean:

- 1) a person, whether or not registered, who for a fee or other compensation solicits on behalf of others; or
- 2) a person, whether or not registered, who solicits for purposes of engaging a person in a Commercial Transaction.

(c) Prohibition on Right-of-Way Vendors or Solicitors on Certain Roads.

It is a violation of this Section for any person to act as a Right-of-Way Vendor or Solicitor in, at or upon Red Road (57th Avenue), Ludlam Road (NW 67th Avenue), Miami Lakes Drive/NW 154th Street, 79th Avenue, Miami Lakeway North, Miami Lakeway South, 89th Avenue, and 87th Avenue, including the swales and medians abutting such roads.

(d) Right-of-Way Vendors Permit Required.

A person must obtain a permit from the Town Manager or his designee in order to serve as a Solicitor or Right-of-Way Vendor within the Town as provided below. Such permit shall be visibly displayed on the front, outer garment of any Solicitor at all times during which the Solicitor is soliciting. Such permit shall contain the name of the solicitor as well as the name of the person or organization for whose benefit or on whose behalf the solicitor is acting and the dates for which such permit has been issued. Such A Right-of-Way Vendor's permit shall only be issued for vending not prohibited by Section 21-27.3(c); and must state the locations where the person may vend and may be subject to conditions. The following criteria shall be applied in the issuance of such a permit: A Solicitor without a Right-of-Way Vendor Permit shall not Solicit on any right-of-way or in any swales or medians abutting a right-of-way.

1) Any person desiring to engage in right of way vending, or in soliciting as a Solicitor, shall file an application with the Town Building Department which contains the following information:

- i. The name and age of the applicant. (an application must be filed for each individual who wishes to work under an organizational Soliciting or Vending license);
- ii. The type of permit desired (Solicitor or Right-of-Way Vendor);
- iii. The dates when the proposed solicitation will begin and end.

- iv. The type or types of products or services which the applicant will sell or attempt to sell;
 - v. The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time such application is filed, and the proposed method of delivery;
 - vi. A photograph of the applicant, as well as any individual who will work under the permit, taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two (2) inches by two (2) inches, showing the head and shoulders of the applicant in a clear and distinguishing manner;
 - vii. If the applicant is associated with a charitable, nonprofit or other eleemosynary organization, a brief description of the nature and purpose of such organization and the address of the main office of such organization and any applicable certificate of registration number and state tax exemption number.
 - viii. Whether or not the applicant has ever been convicted of a crime, misdemeanor, and if so, when, where and the nature of the offense;
 - ix. A written authorization form, signed by the individual prospective Solicitor, authorizing the Town to conduct a background check;
 - x. A statement that the applicant will observe and comply with the requirements of this Ordinance;
 - xi. A statement that the application is made under the penalties of Section 837.06, Florida Statutes, as amended, and that the giving of false or misleading information in the application is recognized as grounds for the denial, suspension or revocation of the permit;
 - xii. Proof of payment of appropriate occupational license taxes;
 - xiii. If any applicant will be working under or for an organization of any type, the names and ages of its principals and officers;
- 2) Permit Application Fee. At the time of filing the application, a fee of \$25 shall be paid to the Town for each individual applicant (an application must be filed for each individual within an organization who will be working under the requested license) to cover the cost of investigation of the facts stated therein.

- 3) License Fee. If an application is approved, a license fee must be paid for each organization (which will cover all individual applicants working for that organization), or if not affiliated with an organization, for each independent applicant. The license fee for the license required by this article shall be twenty-five dollars (\$25.00) per month or one hundred fifty dollars (\$150.00) per year for charitable, nonprofit or other eleemosynary organizations. The license fee for the license required by this Ordinance for any other organization or individual solicitor not affiliated with an organization shall be fifty dollars (\$50.00) per month or three hundred dollars (\$300.00) per year.

- 4) Surety Bond. Every applicant for a license under this Ordinance shall file with the Town a surety bond, running to the Town in the amount of one thousand dollars (\$1,000.00), conditioned that the applicant shall comply fully with all of the provisions of this Ordinance, the Town Code of Ordinances and other ordinances of the Town and state law regulating and concerning the business of vending, peddling, or soliciting, and guaranteeing to any citizen of the Town that all money paid as a down payment will be accounted for and applied according to the representation of the Solicitor, and further guaranteeing to any citizen of the Town doing business with such Solicitor that the property purchased will be delivered according to the representations of such Solicitor. Action on such bond may be brought in the name of the Town for the use or benefit of the aggrieved person.

- 5) Permit Approval. The requested permit shall be issued with ten (10) business days of receipt of the application subject to the following: providing receipt of a "pass" response from a background check conducted by an independent agency based upon the following criteria, consistent with Town Administrative Order #07-01 for Volunteers and Independent Contractors:
 - i. Verification of application information. The giving of false or misleading information in the application shall be grounds for the denial, suspension or revocation of a permit.

 - ii. The Town shall conduct a background check, utilizing an independent agency. The agency shall provide the Town Manager with a pass or fail response based upon the criteria that an applicant found guilty, regardless of adjudication or plea of nolo contendere, for any of the following, shall not be allowed to vend or solicit within the Town:
 - a. Any felony offense involving violence, regardless of time elapsed;

- b. Any type of crime against children, regardless of time elapsed;
- c. Any crime of a sexual nature, regardless of time elapsed;
- d. Any drug offense related to possession with intent to distribute, regardless of time elapsed;
- e. Any felony conviction within the last seven years;
- f. More than one drug or alcohol related crime, including but not limited to DUI, DWI or other such offenses related to the operation of a moving vehicle while impaired within the last seven years;
- g. Any other conviction involving moral turpitude within the last seven years; or
- h. Any conviction of any economic crime at the felony level within the last seven years.

iii. Right-of-Way Vendor Permits. In addition to the requirements of 21-27.3(d)2)above, the following criteria shall be considered in the issuance of a Right-of-Way Vendor Permit to ensure vehicular and pedestrian safety:

- ia. Availability of rights-of-way;
- ib. Public health and safety;
- ic. Obstruction of traffic;
- id. Other Right-of-Way Vendors within the same area.

6) Permit Denial or Revocation. If the Town Manager or his designee finds a condition or deficiency under any of the provisions of Section 2) above, he shall deny the Permit application. If a permit has already been issued, the permit shall be revoked.

7) Appeal. If the Town Manager or his designee denies or revokes a permit under this Ordinance, the applicant may file an appeal of administrative decision for hearing before the Town Council. The Town Council shall evaluate the appeal based on the approval criteria in 21-27.3(d).

8) Badges worn by Vendors or Solicitors. The Town shall issue to each Vendor or Solicitor under this Ordinance at the time of delivery of the license, a badge which shall contain the words "Licensed Solicitor" or "Licensed Vendor," the period for which the license is issued and the number of the license, in letters and figures easily discernible from a distance of ten (10) feet. Such badge shall, during the time such licensee is engaged in soliciting, be worn constantly by the licensee on the front of his outer garment in such a way as to be conspicuous from a distance of ten (10) feet.

(e) Notice regulating soliciting.

- 1) Town residents that do not want soliciting by a Solicitor on their property shall post a clearly legible sign near the front door of their residence providing that soliciting is prohibited.
- 2) Where a homeowner or condominium association's regulations prohibit soliciting, that association may post a clearly legible sign at each entrance or street entering the neighborhood or property providing that soliciting is prohibited.
- 3) The posting of such a sign shall constitute sufficient notice to any Solicitor that soliciting by any person is prohibited at such residence.

(f) Duty of Solicitors.

- 1) Prior to soliciting on any premises within the Town, a Solicitor shall examine whether or not there is a sign prohibiting soliciting. In the event there is such a sign, the Solicitor shall immediately depart from the premises.
- 2) Any Solicitor who is permitted to solicit on a premises shall immediately depart from the premises when requested to do so by the occupant.

(g) Uninvited soliciting prohibited.

It shall be unlawful for any Solicitor to ring the doorbell upon or near any door or to create any sound in any other manner to attract the attention of the occupant of a residential property, for the purpose of engaging in or attempting to engage in soliciting, if a sign prohibiting soliciting, as provided for in this Ordinance, has been posted on the property.

(h) Time limit on soliciting.

It shall be unlawful for any Solicitor to ring the doorbell upon or near any door or to create any sound in any other manner to attract the attention of the occupant of a residential property, for the purpose of engaging in or attempting to engage in soliciting, prior to 9:00 a.m. or after 9:00 p.m. of any weekday or weekend.

(i) Age limitations.

- 1) It shall be unlawful for any Solicitor under the age of 14 to engage in solicitation.
- 2) It shall be unlawful for any Solicitor under the age of 18 to engage in solicitation without direct supervision by a person at least 18 years of age. Direct supervision means the supervising Solicitor shall at all times have

the minor in sight and shall in no event be more than 100 feet away from the minor.

(j) Restrictions on methods of solicitation.

It shall be unlawful for a Solicitor to do any of the following:

- 1) Falsely represent, directly or by implication, that the Solicitor is acting on behalf of a governmental organization, a charitable organization, a non-profit organization or any person other than the person for whom the Solicitor is actually acting.
- 2) Fail to identify herself or himself as a Solicitor for that in which the Solicitor is permitted.

(ke) Enforcement.

A violation of this Ordinance or any resolution adopted pursuant to this Ordinance may be enforced pursuant to Section 8CC-10 of the Town Code and by issuance of a uniform civil violation notice, citation, summons, notice to appear in county court, or by filing an action in civil court for injunctive relief. This Ordinance is supplemental and nothing contained herein shall prohibit the Town from enforcing this Ordinance by any other lawful means.”

Section 3. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town Code and that if necessary the sections of this Ordinance may be renumbered or re-lettered

to accomplish such intentions; and that the word "Ordinance" shall be changed to "Article", "Division" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon its adoption on second reading.

The foregoing Ordinance was offered by Councilmember George Lopez, who moved its adoption on first reading. The motion was seconded by Nancy Simon and upon being put to a vote, the vote was as follows:

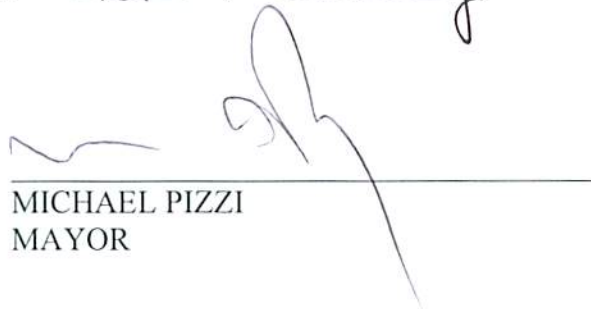
Mayor Michael Pizzi	<u>yes</u>
Vice-Mayor Richard Pulido	<u>yes</u>
Councilmember Mary Collins	<u>Absent</u>
Councilmember George Lopez	<u>yes</u>
Councilmember Robert Meador	<u>yes</u>
Councilmember Nick Perdomo	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>

PASSED AND ADOPTED on first reading this 8th day of December, 2009.

The foregoing Ordinance was offered by Councilmember Collins, who moved its adoption on second reading. The motion was seconded by Councilmember Lopez, and upon being put to a vote, the vote was as follows:

Mayor Michael Pizzi	<u>yes</u>
Vice-Mayor Nick Perdomo	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember George Lopez	<u>yes</u>
Councilmember Robert Meador	<u>yes</u>
Councilmember Richard Pulido	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>

PASSED AND ADOPTED on second reading this 12 day of January, 2010.



MICHAEL PIZZI
MAYOR

ATTEST:



MARJORIE TEJEDA
TOWN CLERK

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF MIAMI LAKES ONLY:



WEISS, SEROTA, HELFMAN, PASTORIZA,
COLE & BONISKE, P.L.
TOWN ATTORNEY