

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 100, “STREETS AND SIDEWALKS,” OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 100.41, “STREET SOLICITATION,” TO REDEFINE AND MODIFY REQUIREMENTS FOR PEDESTRIAN SOLICITATION ACTIVITY ON CITY STREETS AND SIDEWALKS TO ENSURE THE SAFETY OF PEDESTRIANS AND MOTORISTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pompano Beach (“City”) desires to modify and update certain regulations regulating and impacting solicitation in order to respond to recent case law including *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015); and

WHEREAS, the City has a legitimate interest in promoting the safety and convenience of its citizens on public sidewalks and streets. *Madsen v. Women’s Health Center*, 512 U.S. 753, 768 (1994); *Heffron v. Int’l Soc’y Krishna Consciousness, Inc.*, 452 U.S. 640, 650 (1981); *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941); and

WHEREAS, the City has a compelling interest in ensuring the public safety and preventing coercion, *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 190 (D. Mass. 2015) and *Cosac Foundation, Inc. v. City of Pembroke Pines*, 2013 WL 5345817 (S.D. Fla. 2013); and

WHEREAS, the Broward Sheriff’s Office has provided data regarding the number of accidents which have occurred at intersections throughout the City. Based on this data the City has identified eight (8) heavily trafficked intersections, which during the period of February 1, 2018 through February 1, 2020 experienced a significant number of accidents. These intersections included Copans Road and Andrews Avenue (136 accidents), Atlantic Boulevard and Dixie

Highway (136 accidents), Sample Road and Powerline Road (126 accidents), Copans Road and Powerline Road (117 accidents), Atlantic Boulevard and Federal Highway (88 accidents), Copans Road and Federal Highway (79 accidents), Atlantic Boulevard and Powerline Road (70 accidents) and Sample Road and Dixie Highway (68 accidents); and

WHEREAS, in order to address changed and changing conditions as the City continues to develop, the City Commission further desires to clarify and revise the wording and restrictions on activities in public rights-of-way; and

WHEREAS, the City does not desire to unduly restrict solicitation activities beyond the minimum necessary to ensure the safety of motorists, pedestrians and pedestrian solicitors alike; and

WHEREAS, pedestrians traversing or otherwise occupying traffic-laden streets and roadways in the City are not compatible with the normal and safe movement of traffic; and

WHEREAS, § 316.008(1), F.S., authorizes local authorities to prohibit or regulate any class or kind of traffic found to be incompatible with the normal and safe movement of traffic on streets and highways under their jurisdiction; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the preceding "Whereas" clauses are ratified and incorporated as a record of the legislative intent of this Ordinance.

SECTION 2. That Section 100.41, “Street Solicitation,” of Chapter 100, “Streets and Sidewalks” of the City of Pompano Beach Code of Ordinances is hereby amended as follows:

§ 100.41 STREET SOLICITATION PEDESTRIAN AND MOTORIST INTERSECTION SAFETY.

(A) Definitions. For purposes of this section, the following words, terms, phrases and derivations shall have the meanings given herein.

NEUTRAL GROUND. Any area, a minimum of three feet wide, that divides a roadway or divides the roadway for vehicles driving in opposite directions; including, but not limited to, paved ~~or unpaved~~ medians measuring at least three feet in width.

SOLICIT. To personally hand to or seek to transmit by hand or receive by hand anything of any kind, whether or not payment in exchange is required or requested, to or from an occupant or occupants of any vehicle, which is engaged in travel on or within any portion of any right-of-way.

STREET OR HIGHWAY. That portion of a roadway, street or highway improved, designed or ordinarily used for vehicular traffic; including, but not limited to, shoulders, bike lanes and contiguous public parking, but shall not include sidewalks, bike paths, private property, or streets closed to vehicular traffic. The term Street or Highway shall include bike lanes which are delineated but a contiguous part of the Street or Highway pavement.

STREET PEDESTRIAN SOLICITOR. Any person who ~~stands or goes while standing or going upon~~ any portion of a public street, highway or neutral ground within the city, personally hands to or seeks to transmit by hand or receive by hand for the purpose of, or actually engaged in: soliciting, collecting or accepting donations or contributions anything of any kind, whether or not payment in exchange is required or requested, to or from an occupant or occupants of any vehicle; which is engaged in travel on or within any portion of any right-of-way. The term shall not apply to any person who does not enter into any portion of the Street or Highway. soliciting business or employment from an occupant or occupants of any vehicle; selling any thing or service or distributing any tangible thing or object, to an occupant or occupants of any vehicle.

VEHICLE. As currently defined in F.S. § 316.003(75), or as modified hereafter.

(B) Restrictions. It shall be unlawful for any person to fail to comply with, or to violate in any manner, the following regulations and requirements for ~~street pedestrian~~ solicitors within the city:

(1) Street Pedestrian solicitors may solicit before sunrise and after sunset only at intersections or on street segments with illuminated street lights

which ensure the visibility of the pedestrian solicitor between the hours of 6:00 a.m. 12:00 p.m. daily;

~~(2) — Street solicitors may solicit only on city streets, highways or neutral ground located at, or immediately adjacent to, an intersection controlled by an official traffic control signal, as currently defined by F.S. § 316.003(24), or as modified hereafter, and only when said devices are fully operational;~~

(32) Street Pedestrian solicitors may not solicit during any period when visibility is substantially impaired by inclement weather;

(4) — No one under 18 years of age may solicit in accordance with § 131.17 of the city's code of ordinances;

(53) (a) Street Pedestrian solicitors may not solicit at an intersection, or any portion thereof, which contains, or is controlled by a railroad crossing, or within 600 feet of any such intersection.

(b) No solicitation or conduct permitted pursuant to this section may be conducted on railroad property without written permission of the railroad;

(64) No street pedestrian solicitor shall solicit at or within any portion of an intersection which is under construction, repair or renovation;

~~(7) — No more than two street solicitors shall occupy any one corner or location within, or portion of, an intersection at any one time for purposes of solicitation~~

~~(a) — Violation of this provision shall constitute a safety hazard.~~

~~(b) — Upon notification of the violation by city law enforcement officers, solicitors at the location may reach an agreement to achieve compliance between themselves and immediately implement said resolution.~~

~~(c) — If no such agreement is reached, all solicitors at the corner or specific location of the violation may then be removed from the location for the remainder of that day's solicitation period, pursuant to the provisions of subsection (9) below;~~

(85) No street pedestrian solicitor shall solicit within any intersection or location where a traffic accident has occurred involving disabled vehicles, property damage or personal injury, and while police, fire or fire rescue are engaged in their various duties, until such time as:

...

(6) No pedestrian solicitor shall solicit at or within 400 feet of the following intersections of:

- (a) Copans Road and Andrews Avenue,
- (b) Atlantic Boulevard and Dixie Highway,
- (c) Sample Road and Powerline Road,
- (d) Copans Road and Powerline Road,
- (e) Atlantic Boulevard and Federal Highway,
- (f) Copans Road and Federal Highway,
- (g) Atlantic Boulevard and Powerline Road, and
- (h) Sample Road and Dixie Highway.

(7) The city and its law enforcement agency shall review its traffic accident data every two years to determine if any amendment of the locations listed in subsection (6) above is warranted.

~~(9) (a) City law enforcement officers may order the temporary removal of a street solicitor from any location during an emergency situation or under circumstances requiring such removal for the immediate safety of the public or the solicitor.~~

~~(b) Failure to obey any such lawful order shall constitute a violation of this section along with other applicable Florida statutes;~~

~~(10) While engaged in solicitation activities, all street solicitors must wear an OSHA or ANSI-approved orange or other brightly colored safety vest containing reflective material on both front and back;~~

~~(11) Street solicitors shall only solicit while the flow of traffic on the side of the road or highway where the solicitation takes place is stopped;~~

~~(12) Street solicitors may not alter or impede the flow of traffic by any means, and upon an indication of a green arrow or if none, a green light, may not remain in the portion of the paved road or highway designated for vehicular use, and shall return to neutral ground, sidewalk or other location off road area, upon the commencement of traffic flow from its stopped position;~~

~~(13) (a) No street solicitor shall solicit on any city street, highway or neutral ground while under the influence of alcoholic beverages, chemical substances or controlled substances, when effected to the extent that the solicitor's normal faculties are impaired.~~

~~(b) — *NORMAL FACULTIES* mean those faculties of a person, such as the ability to see, hear, walk, talk, make judgments and, in general, to normally perform the many mental and physical acts of our daily lives, including, but not limited to those acts required to safely conduct solicitation activities upon city streets, highways or neutral ground;~~

~~(14) — No one may consume an alcoholic beverage or possess any open container containing an alcoholic beverage upon any city street, highway, neutral ground, sidewalk or any unlicensed public premises, pursuant to § 133.11 of the city's code of ordinances;~~

~~(15) — (a) — Street solicitors shall not place personal belongings, including, but not limited to, folding chairs, umbrellas, coolers or other objects, in the median, neutral ground, street or roadway, but may utilize other materials to secure solicitation items and prevent their uncontrolled dispersal onto the streets.~~

~~(b) — All such materials must be removed at the end of a solicitation period;~~

~~(16) — No products or goods may be deposited or stored on streets, highways, neutral ground, sidewalks or any other public property, for the purpose of distribution of such products or goods to street solicitors.~~

~~(a) — Street solicitors may place on a median or neutral ground an amount of goods which are needed for immediate sales or distribution, provided the items do not present a hazard to motorists and pedestrians, and are secured in a manner to prevent uncontrolled dispersal onto the streets.~~

~~(b) — All products or goods must be removed from a location at the end of the solicitation period to avoid litter or other hazards;~~

~~(17) — No street solicitor shall:~~

~~(a) — Solicit in an aggressive or intimidating manner, and shall not intentionally block the path of travel of a vehicle or cause a vehicle to take evasive action to avoid contact or collision with a solicitor;~~

~~(b) — Physically touch any portion of a vehicle nor throw any object at or into any vehicle unless specifically requested by an occupant;~~

~~(c) — Create a dangerous condition by disrupting or distracting motorists or vehicular traffic for solicitation purposes.~~

~~(18) — Street solicitors shall place a brightly colored, portable reflective sign within approximately 300 feet, or where practicable, to inform vehicular traffic that solicitors are active at the upcoming intersection.~~

~~(a) — Signs shall be placed for each direction of traffic affected by the activity of a solicitor.~~

~~(b) — At the conclusion of that day's solicitation activity, each sign shall be removed by the solicitor;~~

~~(19) — All street solicitors shall provide and display a number or other marking on their person, adequate to identify an individual solicitor, for purposes of potential problems or complaints.~~

~~(a) — Such number or marking shall be displayed to the public during all solicitation activities.~~

~~(b) — Upon request, companies or organizations will provide information regarding the identity of a solicitor to law enforcement officers for investigative purposes;~~

~~(20) — All companies or organizations utilizing or placing more than one street solicitor on city streets at any one time, shall first provide the City Manager with the name of a current contact person from the company or organization, along with a valid telephone number and address, for the city to provide this information to its residents on its cable television channel or by other means, for purposes of citizen complaints or comments;~~

~~(21) — All street solicitors must complete a roadway safety course from the National Safety Council, or a similar, equivalent safety course, and must furnish proof of completion of same within the preceding 12 month period, when so requested by a city law enforcement officer.~~

(C) Protected activities. The regulations of this section are not intended in any way to infringe upon any individual's constitutional First Amendment rights or one's constitutional right to picket or to legally protest, but are provided to ensure the safety of those exercising those rights as well as the safety of pedestrians, cyclists and motorists exercising their right to free travel and use of the city streets, highways and right-of-ways.

(D) Penalty. Any person convicted of violating a provision of subsection (B) above shall be subject to punishment by a civil penalty not exceeding \$500, or imprisonment in the county jail for a term not exceeding 60 days, or by both fine and imprisonment pursuant to § 10.99 of the City's Code.

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2020.

PASSED SECOND READING this _____ day of _____, 2020.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB:jrm
5/11/2020
L:ord/ch100/2020-136a