

TOWN OF HERNDON, VIRGINIA

Ordinance

June 8, 2010

Ordinance - Amending the Town Code to add new Article IV. Street Solicitations, to Chapter 66. Streets, Sidewalks and Certain Other Public Places, Herndon Town Code, to adopt regulations generally prohibiting solicitation of contributions, the distribution of hand bills, and sale of merchandise or services on public streets by pedestrians to occupants of motor vehicles.

BE IT ORDAINED by the Council for the Town of Herndon that:

1. Chapter 66. Streets, Sidewalks and Certain Other Public Places, Herndon Town Code (2000), as amended, is amended and re-ordained by the addition of new Article IV. Street Solicitations as follows:

Chapter 66. Streets, Sidewalks and Certain Other Public Places

Article IV. Street Solicitations.

Sec. 66-100. Findings.

The town council makes the following findings, based on the staff report, testimony at the public hearing, and its several legislative investigations:

(a) The (i) solicitation of contributions by pedestrians in the highways (ii) distribution of hand bills and the like by pedestrians in the highways, or (iii) sale or attempted sale of merchandise or services by pedestrians in the highways to occupants of motor vehicles in the public travel way of highways (prohibited activities) distracts drivers from their primary duties to watch traffic and to be alert for potential hazards in the highways, to observe all traffic signs, and to be prepared to move through the town with safety.

(b) The prohibited activities constitute a visual blight, inconvenience to pedestrians and motor vehicle drivers, a public traffic hazard, and a public nuisance; and subject such solicitors, distributors, sellers, or drivers to an unacceptable level of danger to the public by distracting drivers, by interjecting pedestrians into the vehicular travel way of highways, and by causing a highway obstruction to other pedestrians on the sidewalk or vehicular travel ways of highways.

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(c) The cumulative impact of such solicitation, distribution, or sales or attempted sales on highways on a daily basis creates a safety hazard and a significant and substantial risk to pedestrians and to the interest of the public in the safe and free flow of travel.

(d) The ample alternative channel for communication of the above described solicitation, distribution, and sale or attempted sale of merchandise or services is by means of pedestrian to pedestrian contact on the sidewalk portion of highways.

Sec. 66-101. Street distributions, solicitations, or sales.

(a) It is prohibited and unlawful for any person who is a pedestrian for a non-governmental purpose to engage in the distribution of handbills, leaflets, bulletins, literature, advertisements, or similar material to occupants of a motor vehicle when the motor vehicle and the pedestrian are located on highways within the town or when the motor vehicle or pedestrian are located on public roadways or medians within the town.

(b) It is prohibited and unlawful for any person who is a pedestrian for a non-governmental purpose to engage in solicitation of contributions of any nature from occupants of a motor vehicle when the motor vehicle and the pedestrian are located on highways within the town or when the motor vehicle and pedestrian are located on public roadways and medians within the town.

(c) In addition to the prohibitions in §66-1 of this Code, it is prohibited and unlawful for any person who is a pedestrian for a commercial purpose to engage in the sale of merchandise or services or the attempted sale of merchandise or services to the occupants of a motor vehicle when the motor vehicle and the pedestrian are located on highways within the town or when the motor vehicle and pedestrian are located on public roadways and medians within the town.

(d) The following acts, among others, may constitute elements of distribution, solicitation, sale, or attempted sale: pedestrian's presence on street; pedestrian's making a physical movement or gesture to or with respect to occupants of a motor vehicle on the street; pedestrian's display of merchandise or of the pedestrian's capability of offering services to occupants of motor vehicles on the streets in areas where pedestrians gather.

Sec. 66-102. Penalty.

(a) Any person who violates any provision of this article shall be guilty of a traffic infraction and upon conviction shall be subject to a fine of not more than \$250 for each such violation.

(b) The town manager and town attorney are authorized to file and complete (including by settlement) civil actions for injunction to prohibit future persistent and

significant violations of this chapter, or to abate any existing, persistent and significant violations of this chapter.

Sec. 66-103. Definitions.

The terms used in the article and not here defined shall carry their ordinary meanings. The terms set out below shall carry the meanings set out below.

Commercial purpose means with the intention of exchanging merchandise or services for money or other thing of value for the purpose of earning a livelihood or profit on a continuous or regular basis.

Contributions means a donation of money or goods in return for no value or nominal value.

Distribution means to give out or to deliver; or any acts seeking to give out or deliver.

Governmental basis or rationale means any intention, effort, or activity that supports, advances, or protects any program of or supported by the town, county, the Commonwealth or the United States of America.

Highway means "street." The word "street" shall include avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the town, and shall mean the entire width between the property lines thereof. It shall be construed to include a sidewalk or footpath not adjacent to the motor vehicle travel way, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the town council. The word "street" also includes or is supplemented by the definition of "highway" found in Code of Virginia, § 46.2-100. This latter term controls in cases of conflict or variance with the town council's definition here. In any event, "street" includes the sidewalk adjacent to the motor vehicular travel way.

Motor vehicle means every vehicle that is self-propelled or designed for self-propulsion. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle.

Median means a paved or planted strip dividing a highway into lanes according to the direction of travel.

Merchandise means tangible personal property that has economic value or satisfies an economic want.

Non-governmental purpose means any basis or rationale except for a governmental basis or rationale.

Pedestrian means a human being going or standing on foot.

Person includes an individual human being as well as a firm, partnership, association of persons, corporation, limited liability company, limited partnership, unincorporated association, or other artificial person.

Public roadway means highway.

Sale means rendering available for purchase for money or other thing of value of merchandise or services.

Services means useful labor that does not produce a tangible commodity.

Solicitation means to make, to offer, or to announce a request or plea for a sale of goods for the provision of services.

2. This ordinance shall be effective on and after July 1, 2010.