

**ORDINANCE NO. 750**

**AN ORDINANCE RELATING TO REGULATION OF DOOR-TO-DOOR SOLICITATION; AMENDING CODE CHAPTER 5.04; ADOPTING A NEW CODE SECTION TO PROHIBIT SOLICITATION TO RESIDENCES WITH POSTED “NO SOLICITING” SIGNS; AND REPEALING CODE SECTION 5.04.110(C).**

WHEREAS, Scappoose Municipal Code (“Code”) Section 5.04.110(C) requires peddlers and solicitors, as such terms are defined by Code Section 5.04.020, to supply certain information to the City, to undergo a background check by the City’s Chief of Police, and to provide a bond and insurance upon request by the City Manager; and

WHEREAS, the United States Supreme Court has invalidated similar permitting requirements as applied to those who are soliciting for political or religious purposes, in *Watchtower Bible and Tract Society of New York v. Village of Stratton*, 122 S.Ct. 2080 (2002); and

WHEREAS, Code Section 5.04.110(C) as written may subject the City to claims that this Section violates federal and state Constitutional limitations on the government regulation of free speech and the free exercise of religion; and

WHEREAS, Code Section 5.04.040(A) states that, “Nothing in this chapter shall be construed to apply to any person transacting and carrying on business within the city which is exempt from taxation or regulation by the city by virtue of the Constitution of the United States or the State of Oregon”; and

WHEREAS, the constitutional protections afforded to free speech and the free exercise of religion may outweigh the City’s interest in promoting public safety and peaceful enjoyment for City residents through the regulation of peddlers and solicitors; and

WHEREAS, requiring compliance with a “No Soliciting” regulation will substantially accomplish the City’s objectives without impinging on constitutional protections; now, therefore,

**THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:**

**Section 1.** Section 5.04.040(A) is hereby amended to read as follows:

“Nothing in this chapter shall be construed to apply to any person transacting and carrying on any business or activity within the city which is exempt from taxation or regulation by the City by virtue of the Constitution of the United States or the State of Oregon.”

**Section 2.** The following subsection is added to Section 5.04.040:

“L. Peddlers and Solicitors, as such terms are defined in this Section, who peddle or solicit goods or services door-to-door, exclusively, are exempt from the requirements of this Chapter.”

**Section 3.** The following new Code Section is hereby adopted, and added to City Code Chapter 9.16, Article III, "Offenses Relating to Property":

A. Definition. For purposes of this Section, the terms "solicit" and "solicitation" shall mean the entry onto real property used for residential purposes by a person for the purpose of communicating with an occupant of the property, whether the communication is verbal, visual or in writing.

B. Prohibited Acts, Penalties.

1. It is unlawful for any person to:
  - a. Solicit before 9:00 a.m., or after 9:00 p.m. when the local time is daylight savings time, or after 8:00 p.m. when the local time is standard time, without the consent of the occupant to do so.
  - b. Allow, suffer or permit any person soliciting on their behalf or under their direction to commit any act prohibited by this section.
  - c. Leave written materials upon real property where a sign conforming to the requirements of this Section is posted.
  - d. Solicit upon real property where a sign conforming to the requirements of this Section is posted.
2. Violation of (1)(a), (b), or (c) of this section is punishable as a civil violation.
3. Violation of (1)(d) of this section is punishable as a criminal trespass in the second degree, pursuant to Scappoose Municipal Code Section 9.08.010(D)(3).

C. Consent to Enter Onto Real Property, Exemptions.

1. It shall be an affirmative defense to an alleged violation of Section (1)(a), (c) or (d) that the person charged with the violation or crime had received actual or constructive consent of the occupant prior to entering the real property. Constructive consent to enter real property may be implied from the circumstances of each instance, the relationship of the parties and actual or implied contractual relationships.
2. The occupant of real property shall be considered to have given constructive consent to enter real property for the purpose of solicitation between the hours of 9:00 a.m. and 9:00 p.m., when the local time is daylight savings time, or between 9:00 a.m. and 8:00 p.m., when the local time is standard time, if they have not posted a "No Solicitation" sign pursuant to this Section.

3. Nothing in this section shall be construed to authorize the entry into a structure located on real property. The right to enter any structure must be otherwise provided for by law.

4. Officers, employees, or agents of a governmental entity, while performing activities within the scope of their office, employment or agency, are exempt from the requirements of this Section.

5. No person may be charged with a violation of this Section in connection with an act committed between 4:00 p.m. and 9:00 p.m. on each October 31st.

D. "No Solicitation" Sign.

1. An occupant of real property who chooses to not invite solicitors onto his or her property may post a "No Solicitation" sign pursuant to this Section. The effect of such posting is to express the refusal of consent to any person to enter onto such real property to solicit, except to those persons exempt from these provisions by subsections C(4) and C(5) of this Section.

2. Signs posted pursuant to this section shall be posted on or near the boundaries of the property at the normal points of entry, or at the normal point of entry, or both, and must contain the words "No Solicitation" or "No Solicitors" or words to that effect in characters no less than 1" in height.

E. Evidentiary Matters. It shall be prima facie evidence of a violation of this Section if written material is found on real property upon which a sign conforming to the requirements of this Section has been posted. The person responsible for such written material shall be the person identified in the written material as its proponent, sponsor, distributor or potential beneficiary of the communication conveyed.


**Section 4.** Section 5.04.110(C), "Peddlers and Solicitors," is repealed in its entirety.

ADOPTED this 19<sup>th</sup> day of July, 2004.

  
Glenn E. Dorschler, Mayor

First Reading: July 6, 2004  
Second Reading: July 19, 2004

Attest:

  
Susan M Pentecost, City Recorder