

ORIGINAL

ORDINANCE 2010 - 15

AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF SUNNYSIDE, WASHINGTON,  
AMENDING CHAPTER 5.22 OF THE SUNNYSIDE MUNICIPAL CODE  
PERTAINING TO SOLICITOR'S LICENSE

**WHEREAS**, the City Council of the City of Sunnyside has previously adopted ordinances codified at Chapter 5.22 pertaining to licensing and regulation of solicitors; and

**WHEREAS**, the City Council desires to amend such section to allow for existing licensed businesses within the City of Sunnyside to be exempt from the solicitor's licensing requirements; and

**WHEREAS**, the City Council finds and determines that such amendment is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

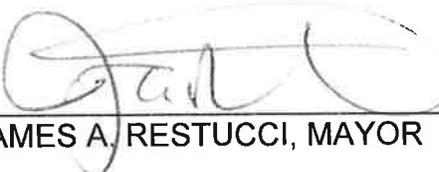
**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

**Section 1.** Chapter 5.22 of the Sunnyside Municipal Code is hereby amended to and which shall read as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

**Section 2.** Except as amended herein, Chapter 5.22 of the Sunnyside Municipal Code shall remain unchanged.

**Section 3.** This ordinance shall be effective five days after passage, approval and publication as required by law.

PASSED this 12<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

ATTEST:

  
DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:

  
MENKE JACKSON BEYER EHLIS & HARPER, LLP  
Attorneys for the City of Sunnyside

## **Chapter 5.22 SOLICITORS**

Sections:

- 5.22.010 Purpose.
- 5.22.020 Definitions.
- 5.22.030 License – Required – Exemptions.
- 5.22.040 License – Application requirements – Fee.
- 5.22.050 Conditions applicable to all solicitors.
- 5.22.060 License – Review – Revocation – Appeal.
- 5.22.070 Enforcement – Penalties.
- 5.22.080 Severability.

### **5.22.010 Purpose.**

The purpose of this chapter is to promote the public health, safety and welfare by providing regulation of solicitors and solicitations, to preserve reasonable opportunities and locations for such solicitation, and to provide regulation of public property and rights-of-way to preserve and protect the public's rights to privacy and access to places of business within the City of Sunnyside. The intent of this chapter is to provide consistency between local regulation of such activities and the provisions of Chapter 19.09 RCW, as amended by 2007 Laws of the State of Washington, Chapter 471.

The City Council specifically finds that banks and financial institutions have unique characteristics which support a restriction upon solicitation within 75 feet of any public entry of such institutions during days when such institutions are open to the public. Such institutions receive and transmit deliveries of large amounts of cash and securities through such entries using armored car services and security personnel. Restricting access to such areas by solicitors preserves a cordon of security for such deliveries, serves as a necessary security measure for the safety of employees and patrons of such institutions, and reduces risk that persons posing as solicitors have immediate access or entry into such delivery vehicles or institutions for the purpose of theft and other crimes. Such restriction does not restrict the ability of solicitors to perform lawful solicitation activities in all other permitted areas within the City, and is narrowly drawn to fit a specific, vital government interest. [Ord. 2166 § 2, 2007.]

### **5.22.020 Definitions.**

When used in this chapter, unless the context otherwise requires:

A. "Commercial solicitor" means any person who goes from house to house, from business to business, from place to place, or from state to state, and who solicits, takes, or attempts to take orders for any goods, wares or merchandise, including books, periodicals, magazines or personal property of whatever nature whatsoever, including any services for future delivery; or

## EXHIBIT "A"

B. "Charitable solicitor" means any person who communicates any written or oral request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which: (1) any appeal is made for any charitable purpose; (2) the name of any charitable organization is used as an inducement for consummating the sale; or (3) any statement is made that implies that the whole or any part of the proceeds from the sale or contribution will be applied toward any charitable purpose or donated to any charitable organization ("charitable solicitor").

The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

"Solicitation" does not include bingo activities, raffles, and amusement games conducted under Chapter 9.46 RCW and applicable rules of the Washington State Gambling Commission. The term "solicitor" does not include mobile sales, which are governed by Chapter 5.21 SMC.

C. "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments or works; lessening the burden of government; lessening of neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combining community deterioration and juvenile delinquency.

D. "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. [Ord. 2166 § 2, 2007.]

### **5.22.030 License – Required – Exemptions.**

It is unlawful and a nuisance for any person to engage in solicitation in violation of the provisions of this chapter.

A. Commercial Solicitors. It is unlawful for any commercial solicitor to engage in such business without obtaining a solicitor's license in compliance with the provisions of this chapter.

B. Exemptions. The following are exempt from the license requirement, but are subject to the provisions of SMC 5.22.050:

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1. Business with Current City of Sunnyside License going door to door or business to business to solicit a service or product currently offered at their existing business are exempt from the licensing requirement.

2. Charitable solicitors are exempt from the license requirement, but in addition to the provisions of SMC 5.22.050, are subject to applicable provisions of Chapter 19.09 RCW, as such now exists or is hereafter amended.

3. Insurance sales representatives calling on the retail or wholesale trade, advertising sales representatives calling on the retail or wholesale trade, and other solicitors calling exclusively on the retail or wholesale trade are exempt from the licensing requirement.

4. Newspaper salespersons, whether subscriptions are taken or not.

5. Peddlers of or takers of orders for the sale of any fruit, vegetables, berries, butter, eggs, milk, poultry, meat or farm products raised or produced by such solicitor.

6. Candidates campaigning for elective office, and those assisting such candidates, and those persons engaged in campaigning for or against ballot issues, and those soliciting support or opposition to any political issue. [Ord. 2166 § 2, 2007.]

### **5.22.040 License – Application requirements – Fee.**

A. Application. The applicant shall provide a written signed application stating:

1. The name, address, telephone number and contact person for the principal applicant;
2. The nature of the products or services involved, and the names of the manufacturers, if any;
3. The proposed method of operation in the City;
4. A list of persons who will solicit or canvass in the City, including each person's name, address and telephone number, and a general description of each person; and
5. Any other information required by the City.

B. Fee – License. The license fee ~~shall be \$50.00, which~~ shall accompany the complete application. The license issued shall be valid for a term of 30 days from date of issuance.

C. Identification. Each person authorized to solicit pursuant to the license shall not conduct business within the City without possessing a valid copy of the license at all times, and shall present such license upon request. [Ord. 2166 § 2, 2007.]

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### **5.22.050 Conditions applicable to all solicitors.**

The following conditions apply to all solicitation, and distribution of written materials in conjunction with such solicitation, by commercial solicitors and charitable solicitors:

A. No Soliciting Signs Compliance. No solicitor shall contact any residence or business that is posted by signage that such contacts are not desired by the resident or business.

B. Restriction on Use of Certain Public Property and Rights-of-Way – Financial Institutions. No person or entity shall solicit contributions or distribute written materials on the public streets, sidewalks or public rights-of-way within 75 feet of any public entrance to any financial institution, including but not limited to banks, credit unions, or any other FDIC-insured institution, on days when such institutions are open to the public.

C. No Obstructing of Public Rights-of-Way. No person or entity shall solicit contributions or distribute written materials on any public street, nor on any public sidewalk or right-of-way where such activity obstructs pedestrian or vehicular traffic or constitutes a hazard to the safety of pedestrians or drivers of vehicles. For the purpose of this section, the judgment of a law enforcement officer, exercised in good faith, shall be conclusive as to whether the activity constitutes a hazard to pedestrians, vehicular traffic or the person engaged in solicitation or distribution of materials.

D. Handbilling Laws Applicable. In addition to the provisions of this section, the provisions of Chapter 8.08 SMC pertaining to handbill distribution apply. In the event of any conflict between the provisions of Chapter 8.08 SMC and this chapter, the provisions of this chapter shall control.

E. No Harassment or Intimidation. No person or entity may, when contacting a donor or potential donor for the purpose of charitable solicitation, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the contact. [Ord. 2166 § 2, 2007.]

### **5.22.060 License – Review – Revocation – Appeal.**

A. License – City Manager Decision – Appeal. The City Manager, or his designee, after consideration of the application and the requirements of this chapter, may grant, grant with conditions, or deny the application. The decision of the City Manager is subject to the appeal procedures in subsection (B) of this section.

B. License – Revocation – Appeal. Any decision of the City Manager granting, granting with conditions, or denying any application for license under this chapter may be appealed pursuant to the procedures in this subsection. Any license granted under this chapter may be revoked by the City Manager for any violation of any of the provisions of this chapter, or for permitting the violation of any of the provisions of this chapter, or for violation of any city, state or federal law or code. Any applicant or licensee who is aggrieved by any denial of license or condition imposed on such license, or by revocation of license, may appeal the decision of the City Manager to the

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Hearing Examiner pursuant to Chapter 2.46 SMC by filing with the City Clerk within 20 days from the date of any such revocation a written notice of appeal and the appeal fee. Thereupon the City Clerk and the City Manager shall forthwith transmit to the Hearing Examiner all applications and other documents constituting the records upon which the revocation action was taken. Upon the filing of such appeal, a time and place of hearing shall be set and the appellant advised thereof. The hearing before the Hearing Examiner shall be an open record hearing, and the Hearing Examiner shall have the power to affirm, alter, or overrule the ruling and decision of the City Manager. Failure to timely appeal the decision of the City Manager shall make the revocation decision of the City Manager final and binding.

C. Appeal Fee. The appeal fee for any appeal described above shall be \$150.00, and shall accompany the written appeal presented to the City Clerk. [Ord. 2166 § 2, 2007.]

### **5.22.070 Enforcement – Penalties.**

Violation of this chapter is a misdemeanor, and any person, business, firm, corporation or entity which violates any of the provisions of this chapter shall upon conviction be punished by a fine of up to \$1,000 and/or imprisonment for a term not to exceed 90 days. [Ord. 2166 § 2, 2007.]

### **5.22.080 Severability.**

Should any section, paragraph, sentence, clause or phrase of this chapter, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this chapter be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this chapter or its application to other persons or circumstances. [Ord. 2166 § 2, 2007.]