

CITY OF DAPHNE

ORDINANCE NO. 2013-30

AN ORDINANCE REGULATING SOLICITATION

WHEREAS the City Council of the City of Daphne has determined that the solicitation ordinance currently in place is inadequate to protect the public health, safety and welfare of the citizens, and preserve the quality of life, property values and character of the City of Daphne;

WHEREAS the City Council of the City of Daphne has determined that Solicitation (as hereinafter defined) endangers public health, safety and welfare of the citizens, and is a public nuisance that damages the quality of life, property values and character of the City of Daphne;

WHEREAS it is the intent of the City Council of the City of Daphne to enact a content-neutral ordinance regulating Solicitation to further a compelling governmental interest of protecting the public health, safety and welfare of the citizens, and preserving the quality of life, property values and character of the City of Daphne; and

WHEREAS it is not the intent of the City Council of the City of Daphne to suppress any speech activities protected by the United States Constitution or the Alabama Constitution.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA AS FOLLOWS:

I. DEFINITIONS. For the purposes of this Ordinance, the following words shall have the following meanings:

A. "Solicitation" means the practice of going in and upon private residences or business establishment in the City of Daphne, without permission, invitation or consent of the owner or occupant, for the purpose of soliciting orders for the sale of goods, wares, merchandise, services or donations.

B. "Solicitor" means a person engaged in Solicitation.

II. BACKGROUND CHECK AND BUSINESS LICENSE REQUIREMENT. Solicitors within the City must submit a Solicitors Background Check Request and receive a Business License (pursuant to the City Business License Ordinance) prior to engaging in Solicitation.

III. APPLICATION.

A. Before a Business License may be issued to a Solicitor, an applicant shall provide complete information concerning the applicant and the business represented including, but not limited to: goods to be sold, description of vehicle, employer's name and address, record of any convictions of any law

violation, identifying pictures, finger printing, and any other information which may be required to perform a criminal background check by the chief of police or his designee.

B. A Business License shall be issued subject to the provisions of this section and inquiry of pertinent information to be made by the mayor, chief of police, or their designee after receipt of an application.

C. No Business License shall be issued to any person who has been convicted of a federal or state felony, or a crime involving theft, harassment, sexual misconduct or moral turpitude.

IV. FEES. Upon filing of the application for permit, the following fees shall be collected from the applicant:

A. Solicitor Fee of seventy-five dollars (\$75.00) for each Solicitor.

B. A deposit against sales tax in the amount of one hundred dollars (\$100.00), which deposit shall be held by the City and for each Solicitor credited to any sales tax owing, returned to the licensee if the City determines that all sales tax due has been paid, or applied by the Solicitor as a deposit for a Business License issued in future years.

C. In the event the Business License is denied, the applicant shall be entitled to receive a refund of one hundred sixty-five dollars (\$165.00), and the remaining ten dollars (\$10.00) will be retained by the City as reimbursement for the expenses involved in conducting the background check.

V. VIOLATION. Any persons convicted of a Violation (as defined below) shall be fined the sum of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), and the Solicitor's Business License shall be revoked. Each Solicitation of a household or business establishment resulting in a Violation shall be considered a separate offense. It is a Violation to engage in any of the following activities:

A. Solicitation within the City of Daphne by persons not holding a valid Business License.

B. Intentionally or recklessly making materially false or fraudulent statements in the course of Solicitation.

C. Using a fictitious name, an alias, or any name other than a true, correct and legal name.

D. Solicitation at a business establishment that has properly displayed a “No Soliciting” placard as outlined in the “NO SOLICITING’ NOTICES” Section of this Ordinance.

E. Solicitation at a private residence.

VI. REVOCATION. A Solicitor’s Business License shall be revoked if the Solicitor otherwise becomes disqualified for the issuance of a Business License.

VII. “NO SOLICITING” NOTICES.

A. Any owner or occupant of a business establishment who desires not to have Solicitors call on them shall give notice of the desire to refuse Solicitors by displaying a clearly visible weatherproof placard no smaller than sixteen (16) square inches and no larger than ninety-four (94) square inches stating “No Soliciting” which shall be posted on or near the main entrance of the private property and not within the public right-of-way.

B. The display of said placard shall be deemed to constitute notice to any Solicitor that the owner or occupant of the business establishment does not desire to invite Solicitors.

VIII. TIME OF DAY RESTRICTIONS. No Solicitor shall conduct Solicitation before 9:00 a.m. or after sunset.

IX. EXCEPTIONS. Persons, organizations or entities which are (1) exempt from the City Business License Ordinance or (2) exempt from payment for such Business License or City Sales Tax or (3) conducting fundraisers on behalf of primary or secondary schools of which the citizens of the City of Daphne attend (the “Exempt Parties”) are exempt from the Background Check and Business License Requirement as stated in Section II of this Ordinance. Accordingly, the Exempt Parties are also exempt from the Violations described in Subsections A and E of Section V.

X. SEVERABILITY. The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held to be unconstitutional or invalid, such decision shall not affect or impair the remainder of this Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof separately and independently of each other.

XI. REPEALER. Ordinance Nos. 1995-01, 1995-08 and 2010-47 are hereby repealed in their entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

XII. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of the City of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE 3RD DAY OF JUNE, 2013.

CITY OF DAPHNE



DANE HAYGOOD, MAYOR

ATTEST:



REBECCA A. HAYES, CITY CLERK