

ORDINANCE 907 (2016)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ADDING CHAPTER 5.24 OF TITLE 5 OF THE LAKEPORT MUNICIPAL CODE REGULATING SOLICITATION

THE CITY COUNCIL OF THE CITY OF LAKEPORT DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Chapter 5.24 "Solicitation". Chapter 5.24 "Solicitation" of Title 5 of the Lakeport Municipal Code is hereby added in its entirety:

Chapter 5.24

SOLICITATION

Sections:

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5.24.020	Definitions
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5.24.010 Purpose and Intent.

A. The purpose of this chapter is to regulate solicitation in the city to allow residents to protect their peace and tranquility, to allow the free and safe flow of pedestrian and vehicular traffic, and to deter fraud and other criminal behavior. It is the intent of this chapter to respect the rights of free expression guaranteed by the California and United States Constitutions; to constitute reasonable, content-neutral, time, place and manner restrictions; and to impose the smallest burden on expressive activity necessary to accomplish the objectives of this chapter. This chapter shall be construed in light of this intent.

B. The exclusion of religious and political motivations from the purposes for solicitation regulated by this chapter is intended to provide greater protection for such expressive activity as required by such judicial decisions as *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton* (2002) 536 U.S. 150, and not to require city officials to

determine what does and does not constitute bona fide religious and political motives except as necessary to do so. Accordingly, in the enforcement of this chapter, city officials shall accept claims that activity is politically or religiously motivated unless evidence is obtained demonstrating those claims to be untruthful.

5.24.020 Definitions.

Unless it is apparent from the context that another meaning is intended, the following words in this chapter shall have the meaning ascribed to them by this section.

A. "Charitable" shall mean and include activity, either actual or purported, that is philanthropic, social service, welfare, benevolent, educational, and fraternal—but not religious or political—in character.

B. "Solicit" and "Solicitation" shall mean the request, directly or indirectly, of money, credit, property, financial assistance, patronage or other things of value; hawking, peddling, or vending for charitable or commercial purposes; or offering to perform services for payment. A "solicitation" shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this subsection. "Solicit" or "Solicitation" includes activity conducted door to door, in any place of public accommodation, in any place of business open to the public generally, on city streets and sidewalks, in the public parks, or in any public places. "Solicit" and "solicitation" shall also mean and include the following methods of securing money, patronage, credit, property, financial assistance or any other thing of value:

1. Any oral or written request;
2. The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication, unless such handbill or written advertisement has been placed within a business open to the public generally with the express permission of the owner or operator of such business;
3. The offer, sale or taking of orders for any goods, services, merchandise, wares or other tangible items.

5.24.030 Solicitation Permit Required.

No person shall engage in solicitation, as that term is defined in section 5.24.020, within the city without having first obtained a permit from the city manager or his or her designee; but when a permit has been issued to any person, the agents and solicitors for such person shall not be required to obtain individual permits.

5.24.040 Exemptions.

This chapter shall not apply to solicitations made upon premises owned or occupied by the organization on whose behalf such solicitation is made.

5.24.050 Application for Permit.

A. An application for permit to solicit, or for renewal of such a permit, shall be made to the city manager upon forms prescribed by the city manager and signed under penalty of perjury. The application shall be filed with the city manager at least seven calendar days before a permit to conduct a solicitation may become effective; provided, however, that the city manager may for good cause shown allow the filing of a late application. The city manager shall grant or deny the permit within five business days after the application is made. In the event the city manager fails to act upon a permit within the time prescribed herein, the permit shall be deemed granted.

B. An application for a new or renewed solicitation permit shall contain at least the following information: address, telephone and other contact information for the applicant; the purpose for which the solicitation is to be made; the total amount of any funds to be raised thereby, if any; the use or disposition to be made of any receipts; an outline of the method or methods to be used in conducting the solicitations, including dates and times for the commencement, conduct and termination of the solicitation; a statement to the effect that if a permit is granted, it will not be used or represented in any way as an endorsement by the city or by any department, officer or employee thereof; the names of other cities or unincorporated areas in which the person registering has solicited or proposes to solicit within the month preceding or following the period in which the person seeks to solicit in the city; and if the applicant is unable to provide any of the foregoing information, the reasons why such information is not available.

C. If, while any application is pending, or during the term of any permit, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the city manager in writing thereof within 24 hours after such change, provided that notice need not be given the city manager other than on a day when city hall is open for business.

5.24.060 Issuance of Permit.

A. The city manager or his or her designee shall issue a permit for solicitation unless any of the following have been demonstrated:

1. The applicant has failed to provide the required information or to articulate a reasonable basis for his or her inability to do so;
2. Any statement made in the application is untrue; or

3. The proposed time, place or manner of solicitation is inconsistent with any provision of this code or other applicable law, or poses a threat to the public health or safety.

B. If the city manager denies a permit to any applicant, the city manager, within the time for action on an application set forth in paragraph (A) of section 5.24.050, shall arrange to send by registered mail or personal delivery written notice of the denial to the applicant, stating the reasons for such denial. The city manager may use fax, email or any other means reasonably calculated to give actual notice to the applicant.

5.24.070 Term of Permit.

All permits issued under this chapter shall be valid for 30 calendar days unless renewed, revoked or suspended pursuant to this chapter. Upon good cause shown, the city manager may issue a permit valid for more than 30 calendar days, but in no event shall a permit be valid for more than one year. Any permit issued under this chapter shall not be transferable or assignable.

5.24.080 Identification Card.

All persons to whom permits have been issued hereunder shall furnish an identification card to each of their agents and solicitors, which card is required to be in the possession of each agent and solicitor and presented upon request when soliciting in the city. Identification cards shall include at least the following: the permit number; the name and address of the permittee; a statement describing the permittee's purpose and activity; the signature of the permittee or one authorized to bind the permittee; the name and signature of the solicitor to whom the card is issued; the period of time during which the solicitation is authorized; and, printed prominently thereon in red, the statement, "This identification card is not an endorsement of any solicitation by the City of Lakeport or any of its officers or employees."

5.24.090 Revocation of Permit.

If it is shown that any person to whom a permit has been issued under this chapter has violated any provision of this chapter or of any other law in connection with solicitation in the city, the city manager shall immediately suspend the permit and shall notify the permit holder within two business days of the suspension as specified in section 5.24.060 for a notice of denial of a solicitation application, stating the reasons for the suspension.

5.24.100 Appeals.

If an applicant or permittee is aggrieved by any action of the city manager to deny, suspend or revoke a permit, he or she may appeal to the city council by filing within 15 calendar days of the decision a written statement with the city clerk setting forth reasons for the appeal. The city clerk shall set a time and place for hearing the appeal at the next regularly scheduled council meeting which occurs more than 84 hours after the notice of appeal is received and

shall notify the applicant or permit holder of the time and place of hearing. The city council may affirm, reverse or affirm with conditions, the decision of the city manager and shall apply the standards of this chapter in doing so. Unless the city council unconditionally approves the permit, it shall state the reasons for its decision in writing. The Council may delegate its decision to a hearing officer provided that the decision of that officer is provided to the appellant not later than 84 hours after the Council timely acts under this section. The action of the city council or hearing office shall be final as to the city, but shall be subject to judicial review pursuant to Code of Civil Procedure, section 1094.5.

5.24.110 Manner of Solicitation and Prohibitions.

No person shall do any of the following when engaged in solicitation:

- A. Solicit without a permit or solicit without carrying on his or her person the identification card required by this chapter.
- B. Solicit after a permit has expired.
- C. Solicit at any dwelling, including but not limited to a house, apartment, or condominium at which is displayed a sign reading "No Solicitations," "Do Not Disturb," or any other indication that the occupants do not wish to be solicited or to have their privacy otherwise disturbed.
- D. Touch, come into physical contact with, or affix any object to the person of any member of the public, without the express permission of that person.
- E. Persistently and importunately solicit any member of the public after such person expresses his or her desire not to be solicited.
- F. Intentionally obstruct the free movement of any member of the public on any street, sidewalk or other place or in any place open to the public.
- G. Threaten any harm to any person who declines to be solicited.
- H. Misrepresent his or her physical or mental health.
- I. Solicit for any purpose other than those specified in the application upon which the permit was issued.
- J. While the occupant of a moving vehicle, solicit, or attempt to solicit, business or contributions of money or other property, from a person within the public right-of-way who is not in that same vehicle.

K. Solicit, or attempt to solicit, business or contributions of money or other property, from a person who is the occupant of a moving vehicle or a vehicle stopped in traffic while the solicitor is not in that same vehicle.

5.24.120 Violations; Penalties.

Any person who intentionally violates any provision of this chapter is guilty of a misdemeanor punishable as provided in Chapter 1.08 of this code.

SECTION 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 3. CEQA. This ordinance is not a "project" subject to the California Environmental Quality Act (CEQA). "Project" does not include "general policy and procedure making" or "[o]rganizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment" pursuant to CEQA Guidelines § 15378(b). In addition, this ordinance is exempt from CEQA because it does not apply to the modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies that are not designed to increase services or expand a system pursuant to CEQA Guidelines §15273.

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting the entire text.

INTRODUCED and first read at a regular meeting of the City Council on the 17th day of May 2016, by the following vote:

AYES: Mayor Pro Tem Mattina, Council Members Parlet, Scheel and Turner

NOES: None

ABSENT: Mayor Spillman

ABSTAINING: None

READ AND AMENDED at a regular meeting of the City Council on the 7th day of June 2016, by the following vote:

AYES: Mayor Spillman, Council Members Mattina, Parlet, Scheel and Turner

NOES: None

ABSENT: None

ABSTAINING: None

FINAL PASSAGE AND ADOPTION by the City Council occurred at a meeting thereof held on the 21st day of June, 2016, by the following vote:

AYES: Mayor Spillman, Council Members Mattina, Parlet, Scheel and Turner

NOES: None

ABSENT: None

ABSTAINING: None



MARC SPILLMAN, Mayor

ATTEST:



KELLY BUENDIA, City Clerk