

Solicitation Ordinance

City of North Port Ordinance No. 05-33

Administrative Code 54 - Solicitation

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The Solicitation Ordinance has the following administrative, enforcement and safety issues:



Administrative Issue #1: The City Clerk Administers the Ordinance

Section 54 – 4

“Upon compliance ...the finding by the city clerk that the applicant is entitled to the issuance of a registration certificate, the registration certificate shall then be issued to the applicant...”

Administrative Issue #2:

The City Clerk does not Perform Background Checks nor Take Finger Prints

Section 54 – 4

“the city clerk shall not be required to issue such a certificate to any person who shall have been convicted of any crime ...”

“The form of such certificate ... shall include ... finger prints of the applicant;”

Administrative Issue #3:

Information Required for the Application is Unverifiable

Sec. 54-3. - Application procedure.

(a) An applicant for a registration certificate under the terms hereof shall execute an application form at the office of the City Clerk of North Port, which application form shall require the following information:

(5) A statement as to the approximate amount to be collected by the applicant from each customer and whether such amount is in full or partial payment.

(6) The length of time during which the applicant expects to remain in the City of North Port for the purpose of engaging in such activity.

(7) A statement whether any registration certificate provided for in this section was issued or denied to the applicant within the current or prior calendar year and, if issued, whether such registration certificate has been revoked, setting forth the reasons for such revocation, if any.

Administrative Issue #3

Information Required for the Application is Unverifiable continued:

Sec. 54-3. - Application procedures...

(8) A statement as to whether the applicant has been convicted of any crime and, if so, the nature of the offense and punishment or penalty assessed therefore.

(b)The applicant shall attach to such application a sample copy of the order or receipt form or forms used by him or her in connection with such activity.

Administrative Issue # 4: The \$50 Fee is Too Low and Does Not Cover Background Checks

Sec. 54-3 (g)

“[T]he city clerk is authorized and instructed to take the fingerprints of the applicant and have such fingerprints checked with the Federal Bureau of Investigation in Washington, D.C., or any like source or agency and, as compensation for the time, trouble and expense, the applicant shall pay to the city clerk for the city an additional fee of \$50.00.”

Enforcement Issue #1

The Exceptions Can Apply (or Said to Apply) to Most Situations:

Section 54 – 1 (3) *Exceptions:*

(3)Exceptions. The terms "peddler," "solicitor" or "agent" shall not include the following:

(a)Individuals peddling, soliciting or canvassing for charitable or religious purposes.

(d)Representatives and/or salespersons conducting a prearranged visit to demonstrate their product line.

(e)Students peddling, soliciting or canvassing for schools located within Sarasota and Charlotte Counties.

Safety Issue

Keeping Solicitors, Home Owners and Property Safe:

February 17, 2016 the North Port Sun published an article from Neighborhood Watch describing two recent incidents in North Port where persons were seen posing as door-to-door salesmen. Later, the homes these persons approached were found to have been burglarized. Homeowners are now urged to report anyone they do not recognize. Many homeowners possess firearms.

Safety Issue

Keeping Solicitors, Home Owners and Property Safe: Continued:

Especially, with our grade school and high school aged students going door to door for school sales.

According to research, out of 134 fatal Florida cases analyzed by the Tampa Bay Times in which the Stand Your Ground defense was raised or played a role, 19 percent saw the deaths of children or teens. Another 14 involved victims were 20 or 21. And another 8 teens were injured in nonfatal cases.

Solicitation Enforcement Statistics 2013-2016

Since 2013 the North Port Police Department has responded to 194 calls for service related to solicitors, panhandling, door-to door sales, and suspicious persons later related to solicitation.

This includes calls for service that started as other types of complaints but upon officer arrival and investigation, found to be solicitation related.

Breakdown follows on next slide

- Citations issued for solicitation:

2013 = 3

2014 = 0

2015 = 1

2016 = 3

Total = 7

- Warnings issued for solicitation:

2013 = 6

2014 = 1

2015 = 3

2016 = 0

Total = 10

Solicitation Enforcement Statistics 2013-2016



● ABANDONED 911 CALL.....	1
● ASSIST AGENCY.....	1
● CITY CODE VIOLATION.....	29
● CRIMINAL MISCHIEF.....	1
● DISTURBANCE CIVIL.....	3
● DISTURBANCE FAMILY.....	1
● DISTURBANCE JUVENILE.....	2
● FOLLOW-UP INVESTIGATION.....	2
● FRAUD.....	1
● HARASSING/OBSCENE/THREAT CALL.....	3
● HIGHWAY OBSTRUCTION.....	1
● HITCH HIKER/PEDESTRIAN.....	1
● MENTALLY ILL.....	1
● PUBLIC SERVICE.....	88
● SUSPICIOUS INCIDENT.....	14
● SUSPICIOUS PERSON.....	31
● SUSPICIOUS VEHICLE.....	5
● TRAFFIC STOP.....	2
● TRESPASS.....	7
 Grand Total.....	 194

Commission Direction

The City Commission directed staff to draft an ordinance for consideration similar to Punta Gorda's ordinance presumably because it:

- Prohibits any door-to-door selling, soliciting, hawking, or peddling within any residential zoned district, and
- Prohibits Peddling/solicitation on city streets.

The draft based upon Punta Gorda's Ordinance is Exhibit 1.

Summary of Issues of the Draft Based Upon Punta Gorda's Ordinance

March 29, 2017 the U.S. District Court, Massachusetts awarded \$519,488.97 in attorney's fees and costs over the City of Worcester, Massachusetts panhandling and solicitation ordinances.

Worcester's ordinance "unconstitutionally restricted the right to freedom of speech".

The award was based upon the Supreme Court's decision *Reed v Gilbert*.

Summary of Issues of the Draft Based Upon Punta Gorda's Ordinance

In 2015, the 1st Circuit ruled in the case of *Cutting v. City of Portland, Me.*, 802 F.3d 79, 88 (1st Cir. 2015) that within the solicitation ordinance it was unlawful to prohibit any person from standing, sitting, staying, driving or parking on a median strip, except pedestrians in the course of crossing from one side of the street to the other. They explained that while the ordinance was content neutral, it was not narrowly tailored to achieve a government interest. “In fact, it is hard to imagine a median strip ordinance that could ban more speech.”

Summary of Issues of the Draft Based Upon Punta Gorda's Ordinance

The ordinance based upon Punta Gorda's ordinance (Exhibit 1) prohibits obstruction of the streets by solicitors approaching vehicles or standing on the public street. F.S.S. 316.2045 (Section 4.01 (4) in the initial draft)

- The United States District Court for the Middle District of Florida ruled F.S.S. 316.2045 unconstitutional in 2003.
- The proposed alternative ordinance (Exhibit 2) removes that prohibition.

The ordinance based upon Punta Gorda's ordinance (Exhibit 1) prohibits solicitation between the hours of 7:00 PM and 9:00 AM (Section 4.01(3) in the initial draft)

- Court has found that banning panhandling and solicitation during specific hours to be unconstitutional.
- The proposed alternative ordinance (Exhibit 2) removes the time restriction.

Summary of Issues of the Draft Based Upon Punta Gorda's Ordinance

The courts have further ruled that:

- A city may not add a buffer zone around any specific area for prohibition of solicitation.
- Speech may not be restricted if other criminal or civil ordinances already address the issue (*i.e.*, “aggressive solicitation”).

Alternative Draft Ordinance

The City Attorney's office has provided an alternative draft ordinance for consideration (Exhibit 2)

Commission Direction

1. Rescind City of North Port Ordinance No. 05-33 Administrative Code 54 – Solicitation.
2. Repeal and Replace with draft based upon Punta Gorda's Ordinance
3. Repeal and Replace with draft provided by the City Attorney
4. Take no action at this time