

City of Punta Gorda

ORDINANCE NO. 1630-10

AN ORDINANCE OF THE CITY OF PUNTA GORDA, FLORIDA, AMENDING CHAPTER 12 OF THE CITY CODE OF ORDINANCES, "BUSINESS TAX ACT"; AMENDING SECTION 12-2 RELATING TO DEFINITIONS; DELETING SECTION 12-19 RELATING TO DOOR-TO-DOOR SELLING; DELETING SECTION 12-20 REGARDING SOLICITING ON CITY STREETS; DELETING SECTION 12-22 RELATING TO HOURS FOR CANVASSING AND SOLICITING; DELETING SECTION 12-23 RELATING TO ENFORCEMENT OF VIOLATIONS; AMENDING CHAPTER 15 OF THE CITY CODE OF ORDINANCES "OFFENSES AND MISCELLANEOUS PROVISIONS" CREATING A NEW SECTION 15-45 IN CHAPTER 15 RELATING TO DOOR-TO-DOOR SELLING, SOLICITING, AND CANVASSING, PROVIDING DEFINITIONS, PROVIDING PROHIBITIONS AGAINST DOOR-TO-DOOR SELLING, SOLICITING, HAWKING, PEDDLING, AND CANVASSING, PROVIDING HOURS FOR DOOR-TO-DOOR CANVASSING, PROVIDING FOR ENFORCEMENT, PROVIDING FOR APPEALS, PROVIDING FOR PENALTIES; ADDING A NEW SECTION 15-46 PROHIBITING PEDDLING AND SOLICITING ON CITY STREETS; AMENDING CHAPTER 9A, OF THE CITY CODE OF ORDINANCES "CODE ENFORCEMENT & ABATEMENT OF NUISANCES" AMENDING SECTION 9A-33(P) RELATING TO PENALTIES; AMENDING CHAPTER 9A, SECTION 9A-33(Q) RELATING TO PENALTIES; REPEALING EMERGENCY ORDINANCE NO. 1627-10; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas, and to engage others in debate without undue government interference; and

WHEREAS, the United States Supreme Court has recognized the need to balance the right to free speech with the right of all citizens and residents to the privacy in one's home, including the right to be free from unwanted and unwelcome intrusions; and

WHEREAS, the City Council has received complaints from its citizens concerning unwanted interruptions of their privacy by solicitors, canvassers, and door-to-door salespersons at unreasonable hours; and

WHEREAS, the City Council, in the interest of protecting the welfare and privacy rights of its citizens, desires to provide regulations to prohibit commercial soliciting, canvassing, door-to-door selling, hawking and peddling within all residentially zoned districts of the City of Punta Gorda, with an exception for canvassing for bona fide political or religious purposes; and

WHEREAS, the City Council, in the interest of protecting the welfare and privacy rights of its citizens, desires to prohibit all commercial and non-commercial soliciting, canvassing, door-to-door selling, hawking and peddling within all residentially zoned districts of the City of Punta Gorda where citizens and residents, on an individual basis desire to be protected from such activities at their residences; and

WHEREAS, for the sake of clarity, the City Council desires to remove provisions relating to soliciting, canvassing, door-to-door selling, hawking and peddling from Chapter 12, Code of Punta Gorda, Florida which relates to Business Taxes and to place such provisions within Chapter 15, Code of Punta Gorda, Florida which relates to Offenses and Miscellaneous Provisions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PUNTA GORDA, FLORIDA, THAT:

I. Chapter 12, Section 12-2, Code of Punta Gorda, Florida is hereby amended by the deletion of the definitions for the terms "Non-commercial Soliciting" and "Canvassing" as follows [Additions are shown as underlined, deletions are shown as ~~strikethroughs~~]:

Sec. 12-2. Definitions.

Non-commercial Soliciting. ~~For purposes of this Chapter, the term "Nonecommercial Soliciting" shall mean any attempt to make personal contact with a resident or occupant at his/her residence without prior specific invitation or appointment from the resident, for the purpose of: (1) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose; (2) distributing a handbill or flyer advertising a commercial event or service; or (3) soliciting orders for, or for the sale, lease or rental of consumer goods, wares, merchandise or services with a purchase price of Twenty five Dollars (\$25.00) or less. The term "Non-commercial Soliciting" shall also include the door to door selling of all persons who are exempt from the requirement to obtain a business tax receipt under the provisions of Section 12-19 of this Chapter.~~

Canvassing. ~~For the purpose of this Chapter, the term "Canvassing" shall mean any attempt to make personal contact with a resident or occupant at his/her residence without prior specific invitation or appointment from the resident, for the purpose of: (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, political or social issue, or political candidate, even if incidental to such purpose the canvasser accepts a donation of money for or against such cause; or (2) distributing a handbill or flyer advertising a non-commercial event or service.~~

II. Chapter 12, Code of Punta Gorda, Florida is hereby amended by the deletion of Sections 12-19, 12-20, 12-22, and 12-23 Florida in their entirety as follows and the remainder of Chapter 12, Code of Punta Gorda, Florida shall be renumbered as necessary [Additions are shown as underlined, deletions are shown as ~~strikethroughs~~]:

Sec. 12-19. Door-to-Door Selling, Solicitors/Peddlers

~~For the purposes of this article, the phrase "door-to-door selling" is defined to mean the practice of going in and upon private residences in the City by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences for the purpose of soliciting orders for, or for the sale, lease or rental of consumer goods, wares, merchandise or services with a purchase price in excess of Twenty-five Dollars (\$25.00) which includes all interest, service charges, finance charges, postage, freight, insurance and service or handling charges, whether under single or multiple contracts, made pursuant to an installment contract, loan agreement, other evidence of indebtedness, or a cash transaction or other consumer credit transaction. For purposes of this ordinance, the term "door-to-door selling" shall also include any transaction in which the seller or a person acting for the seller engages in a personal solicitation of the sale, lease, or rental at a place other than at the seller's fixed location business establishment where goods or services are offered or exhibited for sale, lease or rental, and the buyer's agreement or offer to purchase is given to the seller and the sale, lease or rental is consummated at a place other than at the seller's fixed location business establishment.~~

~~It shall be unlawful for any person to engage, on behalf of himself or others, in the business of door-to-door selling without first having obtained a business tax receipt from the office of the City Clerk. It shall also be unlawful for any person to conduct any door-to-door selling between the hours of 7:00 p.m. and 9:00 a.m.~~

~~The following are excluded from the operation of this ordinance and shall be required to complete an affidavit of exemption in a form prescribed by the City Clerk:~~

- ~~(1) Bona fide agents, business representatives or salesmen making calls or soliciting orders at the usual place of business of a customer regarding products or services for use in connection with the customer's business;~~
- ~~(2) Solicitors, salesmen, or agents making a call or business visit upon the express invitation, oral or written of an inhabitant of the premises or his agent;~~
- ~~(3) Telephone solicitors, salesmen or agents making calls which involve transactions that are unsolicited by the consumer and consummated by telephone and without any other contract between the buyer and the seller or its representative prior to delivery of the goods or performance of the services;~~
- ~~(4) Solicitors, salesmen or agents conducting a sale, lease or rental of consumer goods or services by sample, catalog, or brochure for future delivery;~~
- ~~(5) Minors conducting home solicitation sales under the supervision of an adult supervisor who holds a valid home solicitation sale permit. Minors excluded from operation of this section must, however, carry personal identification which includes their full name, date of birth, residence address, employer and the name and permit number of their adult supervisor.~~

~~(6) Those sellers or their representatives that are currently regulated as to the sale of goods and services by Florida Statutes, Chapter 470 (Funeral Directing, Embalming and Direct Disposition), and Chapter 497 (Funeral and Cemetery Services):~~

~~An application for a business tax receipt shall be made to the City Clerk on a form prescribed by the City Clerk which shall contain at least the following information:~~

- ~~(1) The name of the individual or company applying for a business tax receipt;~~
- ~~(2) The signature of the applicant;~~
- ~~(3) The full name, local residence address and home phone number of the applicant;~~
- ~~(4) The permanent residence address of the applicant;~~
- ~~(5) The name and address of the applicant's employer and the business phone number;~~
- ~~(6) The sex and race of the applicant and any company representative who shall be soliciting within the City limits;~~
- ~~(7) The date of birth of the applicant and any company representative who shall be soliciting within the City limits;~~
- ~~(8) A statement as to whether or not the applicant and any company representative who shall be soliciting within the City limits has been convicted of or has pleaded guilty or nolo contendere to any crime, the nature of the offense, and the punishment or penalty assessed therefor; and~~
- ~~(9) A copy of a current photo identification of the applicant and any company representative who shall be soliciting within the City limits identification.~~

~~Upon application, the City Clerk, after determining applicant's compliance with applicable law and ordinances, shall issue a business tax receipt upon payment of the appropriate business tax.~~

~~Sec. 12-20. Peddling/Soliciting on City Streets Prohibited.~~

~~It shall be unlawful for any person to obstruct the use of any public streets by standing or approaching motor vehicles thereon or by endangering the safe movement of vehicles or pedestrians traveling thereon for the purpose of peddling/soliciting.~~

~~Sec. 12-22. Hours for Canvassing and Non-Commercial Soliciting.~~

~~It shall be unlawful and a violation of this Chapter for any person to engage in canvassing or non-commercial soliciting between the hours of 7:00 p.m. and 9:00 a.m.~~

Sec. 12-23. Enforcement of Canvassing, Non-Commercial Soliciting and Door-to-Door Selling Violations.

~~(a) Enforcement of violations of Sections 12-19, 12-20 and 12-22 of this Chapter shall be by means of citations issued for non-criminal infractions. Such citations may be issued by any City Police Officer and any Code Enforcement Officer of the City and shall be in such form as may be adopted for such use by the Chief of the Punta Gorda Police Department. The citation given to any violator shall specify the violation and the civil penalty therefor and shall notify the violator:~~

- ~~(1) That the civil penalty must be paid at the Office of the City Clerk no later than ten (10) days after the date the citation is issued unless the violation is appealed to the Code Enforcement Board, giving the address of the City Clerk's Office;~~
- ~~(2) That any appeal must be filed with the Code Enforcement Board Clerk, within ten (10) days after the date the citation is issued, in the City's Code Compliance Division, giving the address of the City's Code Compliance Division; and~~
- ~~(3) That, if found guilty of the violation by the Code Enforcement Board on an appeal, the violator shall pay the assessed civil penalty as well as the cost of the appeal in the amount of Fifty Dollars (\$50.00).~~

~~(b) Any person who elects to contest a citation may appear before the City of Punta Gorda Code Enforcement Board to present evidence, provided a hearing is requested in writing, through the Code Enforcement Board Clerk in the City's Code Compliance Division, within ten (10) days after the date of the citation. The Code Enforcement Board, after a hearing, shall make a determination as to whether a violation has been committed and, upon a finding that the violator is guilty, shall impose the civil penalty therefor, along with the cost of the appeal in the amount of Fifty Dollars (\$50.00). Any person who receives a citation for a violation of any provision of Sections 12-19, 12-20 and 12-22 of this Chapter and neither pays the civil penalty nor files a written appeal of the citation within ten (10) days after the date of the citation shall be deemed to have violated such provisions, with said violation being punishable as provided in Section 1-6 of this Code.~~

~~(c) Any person who violates any provision of Sections 12-19, 12-20 and 12-22 of this Chapter shall be assessed a civil penalty as follows:~~

- | | |
|---|---------------------|
| _____ (1) For the first offense after a written warning..... | \$100.00 |
| _____ (2) For the second offense..... | \$200.00 |
| _____ (3) For each subsequent offense..... | \$300.00 |

III. Chapter 15, Section 15-45, Code of Punta Gorda, Florida is hereby amended in its entirety to read as follows [Additions are shown as underlined, deletions are shown as strikethroughs]:

Sec. 15-45. Reserved. Door-to-Door Selling, Soliciting and Canvassing

A. **Definitions.** The following words and phrases, when used in this Section shall have the meanings respectively ascribed to them:

Door-to-Door Selling, Soliciting, Hawking, or Peddling. For purposes of this Section, the term "door-to-door selling, soliciting, hawking or peddling" shall mean any attempt to make personal contact with a resident or occupant at his/her residence without prior specific invitation or appointment from the resident for the purpose of: (1) selling, leasing, renting, or soliciting orders for any consumer goods, wares, merchandise, books, magazines, personal property of any nature whatsoever, home improvements, or services; (2) attempting to obtain a donation for any patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, or other charitable purpose; or (3) distributing a handbill, door hanger, or flyer for any purpose other than for bona fide religious or political purposes. The term shall not include telephone, mail, or email solicitation, nor shall the term include "Canvassing" as that term is defined herein.

Canvassing. For the purposes of this Section, the term "canvassing" shall mean any attempt to make personal contact with a resident or occupant at his/her residence without prior specific invitation or appointment from the resident, for the purpose of: (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, political or social issue, or political candidate, even if incidental to such purpose the canvasser accepts a donation of money; or (2) distributing a handbill, door hanger, or flyer for bona fide religious or political purposes.

B. **Prohibition Against Door-to-Door Selling, Soliciting, Hawking or Peddling.** It shall be unlawful for any person to conduct any door-to-door selling, soliciting, hawking or peddling within any residentially zoned district of the City of Punta Gorda, Florida.

C. **Prohibition Against Door-to-Door Canvassing.** It shall be unlawful for any person to conduct any door-to-door canvassing within any residentially zoned district of the City of Punta Gorda, Florida, where the owner or occupant has placed on such residence, in a conspicuous place upon or near the main entrance to the residence, a weatherproof card, not less than three (3) inches by four (4) inches in size bearing the words "No Soliciting". The letters on such cards shall be not less than two-thirds (2/3) of an inch in height.

D. It shall also be unlawful for any person to conduct any door-to-door canvassing between the hours of 7:00 P.M. and 9:00 A.M.

E. Nothing contained in this Section shall be construed to limit the actions of any government employee or agent from conducting their official duties.

F. **Enforcement.** Violations of this Section shall be by means of citations issued for non-criminal infractions. Such citations may be issued by any City Police Officer and any Code Enforcement Officer of the City and shall be in such form as may be adopted for such use by the Chief of the Punta Gorda Police Department. The citation given to any violator shall specify the violation and the applicable civil penalty, and shall notify the violator:

- (1) That the civil penalty must be paid at the Office of the City Clerk no later than ten (10) days after the date the citation is issued unless the violation is appealed to the Code Enforcement Board, giving the address of the City Clerk's Office;
- (2) That any appeal must be filed with the Code Enforcement Board Clerk, within ten (10) days after the date the citation is issued, in the City's Code Compliance Division, giving the address of the City's Code Compliance Division; and
- (3) That, if found guilty of the violation by the Code Enforcement Board on an appeal, the violator shall pay the assessed civil penalty as well as the cost of the appeal in the amount of Fifty Dollars (\$50.00).

G. Appeal. Any person who elects to contest a citation may appear before the City of Punta Gorda Code Enforcement Board to present evidence, provided a hearing is requested in writing, through the Code Enforcement Board Clerk in the City's Code Compliance Division, within ten (10) days after the date of the citation. The Code Enforcement Board, after a hearing, shall make a determination as to whether a violation has been committed and, upon a finding that the violator is guilty, shall impose the applicable civil penalty along with the cost of the appeal in the amount of Fifty Dollars (\$50.00). Any person who receives a citation for a violation of any provision of this Section and neither pays the civil penalty nor files a written appeal of the citation within ten (10) days after the date of the citation shall be deemed to have violated such provisions, with said violation being punishable as provided in Section 1-6 of this Code.

H. Penalties. Any person who violates any provision of this Section shall be assessed a civil penalty as follows:

<u>(1) For the first offense after a written warning.....</u>	<u>\$100.00</u>
<u>(2) For the second offense.....</u>	<u>\$200.00</u>
<u>(3) For each subsequent offense.....</u>	<u>\$300.00</u>

IV. Chapter 15, Code of Punta Gorda, Florida is hereby amended by the addition of a new Section 15-46 to read as follows [Additions are shown as underlined, deletions are shown as ~~strikethroughs~~]:

Sec. 15-46. Peddling/Soliciting on City Streets Prohibited.

It shall be unlawful for any person to obstruct the use of any public streets by standing or approaching motor vehicles thereon or by endangering the safe movement of vehicles or pedestrians traveling thereon for the purpose of peddling/soliciting.

V. Chapter 9A, Section 9A-33(q), Code of Punta Gorda, Florida is hereby amended to read as follows [Additions are shown as underlined, deletions are shown as ~~strikethroughs~~]:

(g) Any condition in violation of ~~Chapter 19~~ Chapter 15, Sections 15-45 and 15-46 of the Punta Gorda City Code (~~Solicitors and Peddlers~~) (Door-to-Door Selling, Soliciting and Canvassing).

First offense.....100.00
Second offense..... 200.00
For each subsequent offense.....300.00

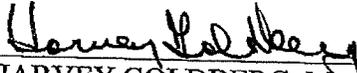
VI. City of Punta Gorda, Florida Emergency Ordinance No. 1627-10 is hereby repealed in its entirety.

VII. It is the declared intent of the City Council that, if any section, subsection, sentence, clause, phrase or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

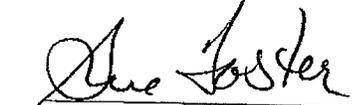
VIII. Any ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

IX. This Ordinance shall become effective immediately upon adoption.

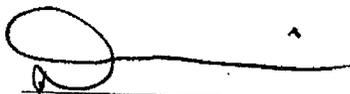
ADOPTED in regular session of the City Council of the City of Punta Gorda, Florida, this 17th day of March, 2010.


HARVEY GOLDBERG, Mayor

ATTEST:


SUE FOSTER, City Clerk

APPROVED AS TO FORM:


DAVID M. LEVIN, City Attorney