

6-19

## ORDINANCE NO. F-0764

### ORDINANCE AMENDING CHAPTER 46, ARTICLE 3 COMMERCIAL AND NON-COMMERCIAL SOLICITATION, DIVISION 1 OF THE CODE OF ORDINANCES OF THE CITY OF WHEATON

WHEREAS, in the recent case of Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 153 L Ed 2d 205 (2002), the United States Supreme Court provides the most specific guidance to date, pertaining to ordinances regulating the activities of solicitors and canvassers and the relationship of those ordinances to the First Amendment of the Constitution of the United States; and

WHEREAS, the Corporate Authorities of the City of Wheaton desire to establish an Ordinance regulating the activities of solicitors, canvassers or peddlers operating within the City of Wheaton, which conforms to the requirements of the Watchtower v. Stratton, (*supra*) case and the First Amendment to the Constitution of the United States; and

NOW THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage, Illinois, that Chapter 46; Article II entitled "Peddlers," and Section 46-26 through 46-65; and Article III entitled "Commercial and Non-Commercial Solicitation," Sections 46-66 through 46-77 of Chapter 46 of the Code of Ordinances of the City of Wheaton are hereby repealed and rescinded in their entirety, and replaced with a new Article II to be entitled "Premises Solicitation", Division 1. "Generally": Sections 46-66 through 46-76, which shall read as follows:

#### Section 1 - Section 46-26 "Purpose"

- a) It is the purpose of this Ordinance to protect the health and welfares of the citizens of the City of Wheaton, to ensure clear direction to the Police Department in the regulation of commercial and non-commercial solicitation; and to protect the First Amendment Rights of solicitors, canvassers and peddlers operating within the City of Wheaton. It is further declared to be the policy of the Corporate Authorities of the City of Wheaton, that the occupants of residences, commercial establishments, or industrial buildings ("premises") located within in the City , have the right to determine whether any solicitor, canvasser or peddler shall be invited to their respective premises, and those persons who violate the provisions of this Article constitute a public and private nuisance, and a detriment to the health, safety and welfare of the residents of the City of Wheaton.
- b) The operation of any solicitor, canvasser or peddler in conformance with the terms of this Article shall not be interpreted to be an endorsement of any solicitor, canvasser or peddler by the City of Wheaton, its elected officials, or employees.

#### Section 46-27 "Definitions"

For purposes of this Article, the following words as used herein shall be construed to

have the following meaning.

“Premises” – A premise shall mean and include every separate unit occupied for any purpose by one or more persons contained within any type of building or structure.

“Solicit/Solicitation” – Solicit/solicitation shall mean and include any one or more of the following activities: any attempt or activity in furtherance of selling, acquiring or otherwise obtaining orders or contracts for the purchase of goods, wares, merchandise, food products, or any other property of any kind, character or description, including but not limited to, real estate and personal property of any kind or type, or services of any kind, character, or description whatsoever, for any kind of consideration whatsoever; and any activity which is carried on for the benefit of any charitable or non-profit association, organization, corporation or project or which seeks the contributions of alms, food, clothing, money, subscriptions, property or donations with or without an exchange of consideration.

#### Section 46-28 “Premises Occupant Notice Prohibiting Solicitation”

- a) Any citizen of the City of Wheaton desiring to prohibit solicitors, canvassers or peddlers from their premises shall: post a sign indicating that solicitors, canvassers or peddlers are prohibited from entering onto the premises; and attach the sign to the principal structure located on the premises near or at the main entrance to said structure; and the text of such sign shall be at least 1/3 inch in height and state “No Solicitors Invited”.
- b) If the principal structure on any premises is divided into multiple premises or dwelling units, each occupant of a premise to avail themselves of this Ordinance may post a sign in conformance with the requirements of Sub-section (a) of this Section.
- c) Signs posted as provided herein shall constitute sufficient notice to any solicitor, canvasser or peddler that they are not permitted at or on the premises.

#### Section 46-29 “Duty of Solicitors”

- a) It shall be the duty of every solicitor, canvasser or peddler going upon any property within in the City of Wheaton to examine the area near or on the main entrance to said building or structure to determine whether it is posted with a notice consistent with this Ordinance. If a sign is posted consistent with the terms of this Ordinance, the solicitors shall immediately and peacefully depart from the property.
- b) Notwithstanding the prohibitions set forth in this Article, any solicitor, canvasser or peddler who has gained entry to any premises within the City, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by any occupant thereof. Such requests shall be phrased so as to lead a reasonable person to understand that they are no longer welcome on the premises. If a solicitor,

canvasser or peddler fails to comply with the requirements of this paragraph, said failure shall constitute a separate, distinct and additional act of uninvited solicitation as prohibited by this Article.

#### Section 46-30 "Uninvited Solicitation Prohibited"

It shall be a violation of this Ordinance for any solicitor, canvasser or peddler to go upon any premises and ring the doorbell upon or, at or near any door or create any sound in any other manner calculated to attract the attention of the occupant in such premises for the purposes of securing an audience with the occupant thereof and engage in any solicitation as defined herein, in contravention or defiance of any notice exhibited at the premises in accordance with the provisions of this Article.

#### Section 46-31 "Time Limit on Soliciting"

- a) It shall be unlawful and constitute a trespass for any solicitor, canvasser or peddler to go upon any premises and ring any door bell at, upon or near any door of any premises located thereon, or rap or knock upon any door and create any sound in any other manner calculated to attract the attention of the occupant in such premises for the purposes of securing an audience with the occupant thereof and engage in solicitation as defined herein, prior to nine o'clock (9:00 a.m.) or after nine o'clock (9:00 p.m.) on any weekday, or prior to ten o'clock (10:00 a.m.) or after six o'clock (6:00 p.m.) on any weekend day.
- b) Each premises visited in violation of this section shall constitute a separate and distinct violation of this Article and shall be punishable by separate fine.

#### Section 46-32 "Solicitation on Roadways"

Only persons soliciting or canvassing for any non-for-profit company or organization, any religious institution or any political candidate, political party or any individual making political statements may solicit on the public roadways within the City of Wheaton provided that: any person soliciting shall otherwise comply with the terms and conditions of this Article, except roadway soliciting or canvassing may commence one hour after dawn, and shall terminate one-half hour before sunset. Any person so soliciting or canvassing shall further comply with all provisions of Illinois Compiled Statutes Chapter 625, Section 5/11-1006; and no solicitation or canvassing shall occur on any public roadway that poses a hazard to public safety or impedes or disrupts the free flow of traffic. All other soliciting, canvassing or peddling on public roadways is prohibited.

#### Section 46-33 "Fraud"

It shall be unlawful for any person, engaged in any soliciting as defined herein, to make a false or misleading statement which is material to the subject matter of the

solicitation, canvassing or peddling. For purposes of this section, the terms false and misleading shall have the meanings described to them by a dictionary of common circulation. Each false or misleading statement shall constitute a separate and distinct violation of this provision and shall be punishable by a separate fine.

### Section 46-34 "Convicted Felon"

Solicitation or canvassing by any person convicted of any felony under the laws of the United States or any State of the United States, is hereby prohibited.

### Section 46-35 “Penalty for Violation of Article”

Any person found guilty of committing a violation of this Article shall be subject to a fine of not less than \$200.00 nor more than \$500.00 and each separate violation of this Article shall be considered as a separate offense.

### Section 46-36 through 46-85 "Reserved"

Section 46-36 through 46-85 are hereby reserved.

Section 2: That all Articles of Chapter 46 subsequent to this new Article II shall be renumbered sequentially as is consistent with this amending ordinance.

Section 3: All ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

Section 4: That if any part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this ordinance.

Section 5: This ordinance shall become effective after its passage, approval and publication in pamphlet form in the manner described by law.

  
James Carr  
Mayor

ATTEST:

Emily M. Consalvo  
City Clerk

A yes:

### Roll Call Vote:

Councilman Mork  
Councilman Mouhelis  
Councilman Eckhoff  
Councilman Gresk

Councilman Johnson  
Mayor Carr

Nays: None

Absent: Councilwoman Johnson

Motion Carried Unanimously

Passed: October 21, 2002  
Published: October 22, 2002