

**ORDINANCE NO. 369-2020**

**AN ORDINANCE REPEALING AND REPLACING CHAPTER 5.05 TO PROHIBIT DOOR-TO-DOOR SOLICITATION AT RESIDENCES WITH POSTED "NO SOLICITING" SIGNS; REGULATING HOURS; PROVIDING FOR PROCEDURES AND PENALTIES; AND DECLARING AN EMERGENCY**

**WHEREAS**, Chapter 5.05 currently requires certain peddlers and solicitors to register with the City and to obtain and display a license; and

**WHEREAS**, recently numerous jurisdictions across Oregon have changed comparable provisions as Oregon and federal courts have invalidated similar requirements on the grounds that they violate the Oregon and United States Constitutions; and

**WHEREAS**, these judicial decisions have found that constitutional protections afforded to free speech and the free exercise of religion outweigh the City's interest in the regulation of peddlers and solicitors; and

**WHEREAS**, the City Council and all City officials have the legal obligation to maintain constitutional ordinances and to conform to judicial rulings; and

**WHEREAS**, the City Council still desires to address public safety concerns of City residents and combat against nuisance, harassment, and invasion of individual privacy; and

**WHEREAS**, City enforcement of "No Soliciting" signs will substantially accomplish the City's objectives but will not impinge on constitutional protections.

**NOW THEREFORE,**

**THE CITY OF HUBBARD ORDAINS AS FOLLOWS:**

Section 1. Chapter 5.05 is repealed.

Section 2. Chapter 5.05 is replaced as described in Exhibit "A," which is attached and incorporated into this ordinance.

Section 3. This ordinance being necessary for the immediate preservation of the public peace, health and safety so the City is in compliance with court rulings, an emergency is declared to exist and this ordinance shall take effect immediately upon passage.

Whereupon, the Mayor declared the motion to be carried and the Ordinance adopted.

Passed and approved by the City Council of the City of Hubbard this 14 day of July, 2020, by the following votes:

AYES: 5

NAYS: ~~0~~



Charles Rostocil, Mayor and/or

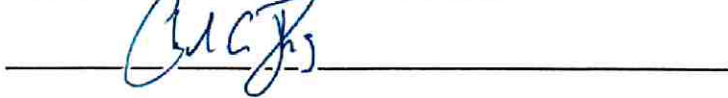
James Audritsh, City Council President

ATTEST:



Vickie Nogle, Director of Administration/City Recorder

APPROVED BY THE CITY ATTORNEY:



Beery Elsner and Hammond LLP

## Exhibit A

5.05.010. Purpose. To regulate residential soliciting hours and prohibit door-to-door solicitors at residences posting "no soliciting" signs.

5.05.020 Definition. For the purposes of this chapter, the terms "solicit" and "solicitation" shall mean the entry onto real property used for residential purposes by a person for the purpose of communicating with an occupant of the property, whether the communication is verbal, visual, or in writing.

5.05.030. Prohibited Acts. It is unlawful for any person to:

- A. Solicit before 9:00 a.m. or after 9:00 p.m. without the consent of the occupant to do so.
- B. Leave written materials upon real property where a "No Solicitation" sign conforming to the requirements of this chapter is posted.
- C. Solicit where a "No Solicitation" sign conforming to the requirements of this chapter is posted.
- D. Allow or permit any person soliciting on their behalf or under their direction to commit any act prohibited by this section.

5.05.040. Consent to Enter Real Property.

- A. It shall be an affirmative defense to an alleged violation of this chapter that the person charges received actual or constructive consent of the occupant prior to entering the real property. Constructive consent may be implied from the circumstances of each instance, the relationship of the parties and actual or implied contractual relationships.
- B. The occupant of real property shall be considered to have given constructive consent to enter real property for the purpose of solicitation between the hours of 9:00 a.m. and 9:00 p.m. if they have not posted a "No Solicitation" sign, pursuant to this chapter.

5.05.050. Effect of Posting "No Soliciting" Sign.

- A. If an occupant of real property chooses to not invite solicitors, or certain types of solicitors, onto their property the occupant may post a sign indicating their preference, such as a sign stating "No Solicitation." The effect of posting a sign stating "No Solicitation," or similar words to that effect is to express the

refusal of the occupant to grant consent to any person to enter their real property to solicit.

- B. Signs posted pursuant to this section shall be posted on or near the boundaries of the property at the normal points of entry.
- C. For real property possessing no apparent barriers to entry at the boundaries of the property that limit access to the primary entrance of a structure located on the property, placement on the sign at the primary entrance to the structure constitutes compliance with this section.

5.05.060. Violation - Penalty

Any person violating any of the provisions of this chapter, upon conviction thereof, in the municipal court of the city of Hubbard, Oregon, shall be punished by a fine of not more than \$100.00

5.05.070. Criminal Penalty – Criminal Trespass. A person who enters or remains unlawfully on property posted with a "No Solicitation," "No Trespassing," or similar sign is subject to prosecution for Criminal Trespass under Oregon state statute by the Marion County District Attorney's Office in Marion County Circuit Court.

5.05.080. Compatibility. Nothing in this chapter shall relieve any person or entity who solicits and conducts business in the City from compliance with chapter 5.01 Business Registration.

5.05.090. Severability. The sections and subsections of this chapter are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.