

First Reading: _____
Second Reading: _____

ORDINANCE NO. 374

AN ORDINANCE ESTABLISHING RULES AND REGULATIONS UNDER WHICH DOOR-TO-DOOR SOLICITATION MAY BE CONDUCTED WITHIN THE CITY; EXPRESSING FINDINGS AND INTENT; PROVIDING FOR DEFINITIONS; EXEMPTING CERTAIN ACTIVITIES AND ORGANIZATIONS; ESTABLISHING REQUIREMENTS FOR A LICENSE AND PROCEDURES FOR THE ISSUANCE AND SUSPENSION OR REVOCATION OF LICENSES; SETTING FORTH UNLAWFUL AND PROHIBITED ACTIVITIES; ESTABLISHING PENALTIES FOR VIOLATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; ESTABLISHING AN EFFECTIVE DATE; AND, FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, O.C.G.A. § 36-35-3(a) authorizes the City of Flowery Branch to adopt clearly reasonable ordinances relating to its property, affairs, and local government; and

WHEREAS, Section 6.5 of the City of Flowery Branch Charter authorizes the city council to adopt ordinances requiring any individuals or corporations who transact business in the city to obtain a license or permit for such activity from the city and pay a reasonable fee for such license to the extent not precluded by state law; and

WHEREAS, O.C.G.A. § 48-13-8(b) authorizes the City of Flowery Branch to provide by local ordinance for imposition and collection of regulatory fees on businesses doing business within the corporate limits and for punishment of violation of such a local ordinance; and

WHEREAS, O.C.G.A. § 48-13-9 authorizes the City of Flowery Branch to investigate said businesses as protection of the public health, safety or welfare.

NOW THEREFORE, the Council of the City of Flowery Branch hereby ordains as follows:

SECTION 1. FINDINGS AND INTENT.

The intent of the city council in enacting this ordinance is to regulate the sale of goods and services by soliciting at residences in the city, to the end that criminal activity in the city and abusive techniques utilized by any such solicitors which adversely affect the public health, safety and welfare in the city will be curtailed. This ordinance is not intended as a de facto prohibition of door-to-door solicitation, nor is it an attempt to adversely affect interstate commerce. Instead, this ordinance is intended to balance competing interest, reduce criminal activity and protect city residents from abusive sales techniques versus the conduct of proper commercial sales activity.

SECTION 2. DEFINITION.

For the purpose of this ordinance, the term “solicitor” shall include any person who solicits orders door-to-door or house-to-house on behalf of a business, individual, vocation or occupation.

SECTION 3. EXEMPT ACTIVITIES OR ORGANIZATIONS.

(a) Persons, businesses and organizations exempted from local regulation by operation of state or federal law or by the Constitution of the United States, or of the state, are exempt from the requirements of this ordinance.

(b) Bona fide charitable organizations tax exempt under Section 501(c)(3) of the Internal Revenue Code.

(c) Bona fide charitable or nonprofit organizations whose field sales representatives are under the age of 18 are not required to obtain a solicitor’s license.

SECTION 4. LICENSE REQUIRED; APPLICATION.

(a) All persons, firms, companies, corporations or other entities engaging or offering to engage in business as a solicitor involving going from door-to-door or house-to-house, without an appointment or invitation, in residential areas or businesses in the city, for the purpose of soliciting orders, sales, subscriptions or conducting business of any kind, shall file an application in the required form, and obtain a solicitor’s license for such activity from city clerk.

(b) The application shall include but shall not be limited to the following information:

- (1) Name, address and telephone number;
- (2) Date of birth;
- (3) Social Security number;
- (4) Physical description;
- (5) Name, address and telephone number of the applicant’s employer;
- (6) Name, address and telephone number of the applicant’s supervisor;
- (7) Brief description of products or services to be sold;
- (8) Description of motor vehicles to be used by the applicant in conducting the solicitation; and,
- (9) Criminal history.

SECTION 5. INVESTIGATION.

(a) A review of criminal history records is required prior to the issuance of a solicitor's license. In addition to a review of criminal history, the applicant must provide the following items:

- (1) Two forms of positive identification (only official United States Government issued pictured identification accepted; e.g., a valid driver's license, military ID card or valid state ID card).
- (2) Fingerprints may be required on occasion for positive identification.

(b) The city shall make an investigation, including but not limited to an investigation of the police record and moral character of the applicant. The city clerk shall furnish the application to the police chief. The police chief shall furnish a report to the city clerk of the criminal history record, if any, of the applicant.

(c) The criminal history record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of criminal history records, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order.

SECTION 7. DISQUALIFICATION.

(a) No solicitor's license shall be issued to any applicant who provides any false or misleading information in connection with the application for the license required by this ordinance.

(b) No solicitor's license shall be granted to any person under the age of 18 or who has been convicted, pled guilty or entered a plea of nolo contendere under any federal, state or local law of any crime involving moral turpitude, illegal gambling, any felony, criminal trespass, public indecency, misdemeanor involving any type of sexual related crime, any theft or violence against person or property, any crime of possession or sale, or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under state law, criminal solicitation to commit any of these listed offenses, or attempts to commit any of these listed offenses, for a period of ten (10) years prior to the date of application for such license and has been released from parole or probation.

SECTION 8. DENIAL.

(a) If, as a result of the investigation authorized by this ordinance, the applicant's character or business responsibility is found to be unsatisfactory, the police chief shall endorse on such application his disapproval and the reasons for such disapproval, and return the application to the city clerk who will notify the applicant that the application is disapproved and that no license will be issued.

(b) No application for a solicitor's license shall be received or acted upon if the applicant has submitted the same or similar application for a solicitor's license within the preceding twelve (12) months which was denied.

SECTION 9. APPROVAL; ISSUANCE.

If, as a result of the investigation authorized by this ordinance, the applicant's character and business responsibility are found to be satisfactory, the police chief shall endorse on such application his approval and reasons for such approval, and return the application to the city clerk, who shall, upon payment of regulatory fees as established by resolution of the city council, issue a solicitor's license. A solicitor's license shall contain the name, address, physical description and organizational affiliation of the licensee; a description of the solicitation activity to be engaged in; an expiration date; and the signature and seal of the city clerk. The city clerk shall keep a record of all solicitors' licenses issued.

SECTION 10. DURATION; RENEWAL.

A solicitor's license shall be valid for twelve (12) months from the date it is issued. However, the license may be renewed by filing a renewal application with the city clerk upon forms prescribed by her, and paying a renewal fee as established by resolution of the city council.

SECTION 11. SUSPENSION OR REVOCATION.

(a) The license issued to any solicitor charged with any felony, criminal trespass, public indecency, misdemeanor involving any type of sex crime, theft or violence against person or property, criminal solicitation to commit any of these offenses, or violation of this or any other Flowery Branch ordinance shall be deemed suspended and subject to seizure from the time of lawful arrest by the Flowery Branch Police Department. Such suspension shall remain in effect until the solicitor is convicted or acquitted, or until the charge is dismissed, "dead-docketed," "nolle prossed," or "no-billed." It shall be the responsibility of the solicitor to present the city clerk with proof that the arrest which lead to the suspension was dismissed, "dead-docketed," "nolle prossed," or "no-billed." Upon representation of proof of such dispositions, the solicitor's license will be reinstated and will be valid until the date of the original expiration.

(b) The license of any solicitor who is convicted, has entered a plea of guilty, or has received a nolo contendere to a felony, criminal trespass, public indecency, misdemeanor involving any type of sex crime, theft or violence against person or property, or criminal solicitation to commit any of these offenses, shall be deemed revoked and subject to seizure by the chief of police or his designee from the time of such conviction, guilty or nolo contendere sentencing.

(c) The license of any solicitor who is convicted, has entered a plea of guilty or received a nolo contendere sentencing for any violation of this ordinance shall be deemed revoked and subject to seizure by the chief of police or his designee from the time of such conviction, guilty or nolo contendere sentencing.

SECTION 12. UNLAWFUL OR PROHIBITED ACTIVITIES.

The following are prohibited practices for solicitors and any violation shall constitute grounds for suspension, revocation or denial of renewal of license, and/or arrest.

(a) Solicit on Sunday, or between the hours 8:00 p.m. and 9:00 a.m. Monday through Saturday.

(b) Solicit at any location where a sign is posted at or near the main entrance or driveway to the residence or business prohibiting such activity.

(c) Using any entrance, or part of the building, other than the main entrance to the residence or business.

(d) Entering a residence except at the express invitation of the occupant.

(e) Failure of the solicitor to inform the occupant in plain terms of the solicitor's identity and the purpose of the call.

(f) Making more than one solicitation call at the same location within any consecutive fourteen (14) day period, unless invited back by the occupant.

(g) The solicitor to represent that they are participating in any contest, game or other competitive endeavor, or that they are offering the occupant an opportunity to participate in any such contest, game or endeavor.

(h) The solicitor to use vulgar, insulting or threatening language in the course of any solicitation.

(i) The solicitor to remain upon the property of the residence or business after the occupant has verbally indicated that they do not wish to make a purchase. For the purpose of this ordinance, a solicitation shall be deemed to continue until the solicitor has left the property of the residence or business.

(j) Soliciting anyone under the age of 18.

(k) Failure of solicitor to have a valid license prominently displayed on their person (upper front portion of the body commonly referred to as the top of the shoulders down to the waist) or refuse any person's request to examine same.

(l) For more than two solicitors to engage in solicitation upon any residence or business at the same time for the same goods or services.

(m) Solicitor to violate any of the provisions of this ordinance, or to violate any other city ordinance while engaging in any solicitation activity.

(n) Solicitor to lend, rent or sell their license to another, or to solicit using the license of another.

(o) Solicitor to alter or deface their license or the license of another.

SECTION 13. PENALTIES FOR VIOLATION.

Any person violating any provision of this ordinance shall be guilty of a misdemeanor, punishable by a fine not to exceed \$1000.00 or imprisonment for 6 months or both. Each day in violation of this ordinance shall constitute a separate offense.

SECTION 14. REPEALER.

All ordinances, or parts thereof, in conflict with this ordinance are hereby repealed.

SECTION 15. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 16. CODIFICATION.

It is the intention of the city council, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Flowery Branch, Georgia, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION 17. EFFECTIVE DATE.

This ordinance shall take effect and be in force from and after the adoption and enactment of this ordinance, the public health, safety and welfare demanding it.

Adopted, this the ___ day of March 2008.

Diane Hirling, Mayor

Signatures Continued Next Page

Craig Lutz, Post 1

Chris Fetterman, Post 2

Pat Zalewski, Post 3

Allen J. Bryans, Sr., Post 4

Mary Jones, Post 5

ATTEST:

Melissa McCain, City Clerk

APPROVED AS TO FORM:

E. Ronald Bennett, Jr., City Attorney