

1 **CITY OF SANTA FE, NEW MEXICO**

2 **BILL NO. 2010-27**

3 **INTRODUCED BY:**

4
5 **Councilor Trujillo**

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9
10 **AN ORDINANCE**

11 **REPEALING ARTICLE 18-3 SFCC 1987; AND CREATING A NEW ARTICLE 18-3 SFCC**
12 **1987 REGARDING SOLICITATION ON PRIVATE PROPERTY WITHIN THE CITY OF**
13 **SANTA FE.**

14
15 **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

16 **Section 1. Article 18-3 SFCC 1987 (being Ord. #1956-35, as amended) is repealed.**

17 **Section 2. Section 18-3.1 SFCC 1987 (being Ord. #1956-35, as amended) is**
18 **repealed.**

19 **Section 3. Section 18-3.2 SFCC 1987 (being SFCC 1981, §9-6-2) is repealed.**

20 **Section 4. Section 18-3.3 SFCC 1987 (being SFCC 1981, §9-6-2) is repealed.**

21 **Section 5. Section 18-3.4 SFCC 1987 (being SFCC 1981, §9-6-4) is repealed.**

22 **Section 6. A new Article 18-3 SFCC 1987 is ordained to read:**
23 **18-3 SOLICITATION**

24 **Section 7. A new Section 18-3.1 SFCC 1987 is ordained to read:**

25 **18-3.1 [NEW MATERIAL] Short Title. Article 18-3 SFCC 1987 shall be cited as the**

1 “Solicitation Ordinance”.

2 **Section 8. A new Section 18-3.2 SFCC 1987 is ordained to read:**

3 **18-3.2 [NEW MATERIAL] Legislative Findings.**

4 A. The governing body is concerned for the health, safety, peace and welfare of the
5 citizens of the city of Santa Fe.

6 B. Current city of Santa Fe laws consider the practice of going onto property by
7 commercial solicitors or itinerant vendors a nuisance.

8 C. The Supreme Court of the United States and other Federal courts have determined
9 that door-to-door solicitation is commercial speech, protected under the First Amendment to the
10 Constitution of the United States.

11 D. The Supreme Court also established a test for governmental regulation of commercial
12 speech. In part, the test requires that “The governmental interest must be substantial, such as the need
13 to (i) protect privacy, (ii) prevent crime and/or (iii) for consumer protection, *Central Hudson Gas &*
14 *Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980); 100 S. Ct. 2343.

15 E. The governing body recognizes the First Amendment protection door-to-door
16 solicitors have; however, the governing body further recognizes the need to protect the health, safety,
17 peace and welfare of the citizens of Santa Fe.

18 F. This Solicitation Ordinance balances the First Amendment protection of commercial
19 solicitors and the health, safety, peace and welfare of the citizens of Santa Fe.

20 **Section 9. A new Section 18-3.3 SFCC 1987 is ordained to read:**

21 **18-3.3 [NEW MATERIAL] Purpose.** The purpose of this Article is to regulate
22 solicitation on private property within the city of Santa Fe while protecting the health, safety and
23 welfare of the residents of the city.

24 **Section 10. A new Section 18-3.4 SFCC 1987 is ordained to read:**

25 **18-3.4 [NEW MATERIAL] Definitions.** As used in Article 18-3 SFCC 1987:

1 *Charitable* means the purpose of an organization which (i) has received a letter of
2 determination approving tax exempt status under Title 26 of the United States Code Section
3 501(c)(3); or the purpose of a school organization, club or team, recognized and affiliated with a
4 public or private school, having a program with annual campaigns to support the public or private
5 school club.

6 *Chief of police* means the city's chief of police or the chief's designee.

7 *Office* means the city's accounts receivable office.

8 *Person* means any individual.

9 *Political* means on behalf a political party or candidate or for the purpose of influencing
10 legislation or personal belief.

11 *Religious* means on behalf of an established religion which means a particular system of faith
12 and worship recognized and practiced by a particular church, sect or denomination.

13 *Solicitation*

14 A. Means the act of any person traveling by foot, vehicle or any other type of
15 conveyance who goes on private property to:

16 (1) Request, either directly or indirectly, money, credit, funds,
17 contributions, personal property or anything of value;

18 (2) Take or attempt to take orders for the sale of any goods, wares,
19 merchandise or services of any kind, or description for future delivery or for services
20 to be performed in the future, either in person or by distributing flyers and leaflets;

21 (3) Sell and make immediate delivery of any goods, wares, merchandise
22 or services of any kind or description or

23 (4) Communicating or otherwise conveying ideas, views or beliefs or
24 otherwise disseminating oral or written information to a person willing to directly
25 receive such information, provided that such information is of a commercial nature.

1 B. Does not mean the following:

2 (1) A person communicating or otherwise conveying ideas, views or
3 beliefs or otherwise disseminating oral or written information to a person willing to
4 directly receive such information, provided that such information is of a political,
5 religious or charitable nature;

6 (2) A person seeking to influence the personal belief of the occupant of
7 any residence regarding any political or religious matter;

8 (3) A person seeking to obtain, from an occupant of any residence, an
9 indication of the occupant's belief in regard to any political or religious matter;

10 (4) A person conducting a poll, survey or petition drive in regard to any
11 political matter;

12 (5) A person carrying, conveying, delivering or transporting dairy
13 products, newspapers or other goods to regular customers on established routes or to
14 the premises of any person who had previously ordered such products or goods and is
15 entitled to receive the same; and

16 (6) A person whose business is to solicit dealers or permanent merchants
17 in the usual course of business.

18 *Solicitor* means any person, whether a resident of the city or not, engaged in solicitation.

19 **Section 11. A new Section 18-3.5 SFCC 1987 is ordained to read:**

20 **18-3.5 [NEW MATERIAL] Solicitation for Charitable, Religious or Political Purposes**

21 **Exempt.**

22 Solicitation for charitable, religious or political purposes is exempt from the licensing
23 provisions set forth in Section 18-3.6 SFCC 1987; however, the organization or person, if the
24 solicitation is not on behalf of an organization, is required to comply with the provisions set forth in
25 paragraphs 18-3.11 C., D., E. and F. SFCC 1987.

1 **Section 12. A new Section 18-3.6 SFCC 1987 is ordained to read:**

2 **18-3.6 [NEW MATERIAL] License Required.**

3 A. Except as set forth in Section 18-3.5 SFCC 1987 above, it is unlawful for any person
4 to engage in solicitation within the city without a valid solicitation license issued by the city of Santa
5 Fe.

6 B. Licenses are not assignable or transferable.

7 **Section 13. A new Section 18-3.7 SFCC 1987 is ordained to read:**

8 **18-3.7 [NEW MATERIAL] License Application.**

9 A. The application for a license shall be available at the city's accounts receivable office
10 and shall include the following information:

11 (1) The name, permanent residence address of the applicant, date of birth, social
12 security number, a brief description of the applicant and a photograph of the applicant;

13 (2) The applicant shall present a valid identification card issued by a state within
14 the United States of America prior to being finger printed;

15 (3) Complete employment history for the past ten years;

16 (4) Disclosure of any criminal convictions, infraction or misdemeanor citations
17 received, including any municipal code violations and criminal or civil cases pending. This
18 shall include any cases dismissed or expunged pursuant to state law;

19 (5) A statement that the person is not currently under investigation for any
20 crimes related to solicitation or other criminal offense including, but not limited to, violent
21 crimes, sexual assault, possession of controlled substances, theft, fraud or burglary;

22 (6) Name and addresses of employer if applicable;

23 (7) Requested time and place to solicit within the city; and

24 (8) Such other information as the office may require.

25 B. The application shall include the signature of the applicant acknowledging that the

1 information contained in the application is true and correct to the best of the applicant's knowledge;
2 that the applicant consents to a criminal background check, including fingerprinting, at the expense of
3 the applicant; and that the applicant will comply with all provisions of Article 18-3 and all applicable
4 city, state and federal laws. The applicant's signature shall be notarized.

5 C. The application shall be submitted to the office at least ninety (90) calendar days
6 prior to the time the solicitor requests to engage in solicitation.

7 D. An application fee, as established by resolution of the governing body, shall be paid
8 at the time the application is submitted.

9 E. The applicant shall maintain, at all times, accurate application information with the
10 city. If there is any change, or modification to the information provided on the initial application, the
11 applicant shall give written notification of such change to the office within two (2) weeks of the
12 change.

13 F. Applicants shall comply with the insurance requirements set forth in Section 18-3.11
14 SFCC 1987.

15 **Section 14. A new Section 18-3.8 SFCC 1987 is ordained to read:**

16 **18-3.8 [NEW MATERIAL] Criminal Background Check.**

17 A. Upon the request of the city's accounts receivable office, the chief of police shall
18 initiate the finger printing and criminal background checks, of prospective solicitors.

19 B. The chief of police is authorized to receive criminal history record information from
20 any agency or department of the state of New Mexico or the United States government.

21 C. The office shall not issue a license to a person who refuses to consent to or cooperate
22 in the securing of a criminal background check subject to the provisions of this Article.

23 D. The office shall not issue a license to a person that the chief of police has received a
24 criminal background check revealing a conviction for any felony offense or serious misdemeanor
25 including, but not limited to, violent crimes, sexual assault, possession of controlled substances, theft,

1 fraud or burglary. Such person shall be disqualified from receiving a license.

2 E. The office shall promptly notify a person whose criminal background check reveals a
3 disqualifying criminal conviction.

4 **Section 15. A new Section 18-3.9 SFCC 1987 is ordained to read:**

5 **18-3.9 [NEW MATERIAL] Renewal; Revocation.**

6 A. All licenses granted under the provisions of this Article shall be valid for up to one
7 year and may be renewed thereafter, unless sooner revoked.

8 B. Prior to the expiration of a license and upon application for renewal of the license,
9 the city's accounts receivable office shall determine if the solicitor has acted in compliance with the
10 applicable provisions of this Article and conditions of the license.

11 (1) If determined to have been in substantial compliance, the license shall be
12 renewed upon payment of any applicable renewal fee.

13 (2) If a determination has been made that the solicitor is not in substantial
14 compliance with this Article, the license shall not be renewed and no other license shall be
15 issued to the solicitor within one (1) year of the date of the determination.

16 C. Renewal fees shall be established by resolution of the governing body.

17 D. The office may revoke any license granted under the provisions of this Article for
18 any of the following reasons:

19 (1) The applicant provided false, misleading or misrepresented information in
20 procuring license;

21 (2) The applicant or any person who worked on behalf of or with the applicant
22 failed to comply with the requirements, regulations, laws and conditions of approval
23 applicable to the license;

24 (3) The applicant or any person who worked on behalf of or with the applicant is
25 convicted of violating any federal, state or local law while in the course of operating under

1 the license; or

2 (4) The activities for which the license was granted were or are being conducted
3 in a manner that is detrimental to the public health, safety, peace or welfare of the citizens of
4 Santa Fe.

5 E. The office shall promptly notify a person whose license has not been renewed or has
6 been revoked in writing certified mail to the last known address filed.

7 F. When a license is revoked, no other license for solicitation shall be issued under the
8 provisions of this Article to the same applicant within one (1) year of the date of revocation.

9 **Section 16. A new Section 18-3.10 SFCC 1987 is ordained to read:**

10 **18-3.10 [NEW MATERIAL] Appeal; Hearing Officer.**

11 A. The applicant aggrieved by a decision of the city's accounts receivable office to deny
12 an application for or renewal of a license or revocation of a license shall have thirty (30) calendar
13 days from the receipt of a notice by the office to appeal such decision to a hearing officer appointed
14 by the city manager.

15 B. The appeal shall be filed on forms provided by the office together with any
16 applicable fee established by resolution of the governing body.

17 C. The appeal request shall set forth the appellant's reasons for asserting the decision
18 was in error or in violation of any city of Santa Fe ordinance or other applicable law.

19 D. A hearing officer appointed by the city manager shall conduct a formal hearing
20 within thirty (30) days of the receipt of the appeal. The office shall give written notice by certified
21 mail to the appellant at least ten days prior to the hearing.

22 E. The hearing officer shall make a decision on the basis of the preponderance of
23 evidence presented at the hearing. The hearing officer shall render a decision within thirty (30) days
24 after the date of the hearing. The hearing officer shall affirm or reverse the decision of the office.

25 F. The hearing officer's decision shall be final.

1 G. The failure of an appellant to appear at the appeal hearing shall extinguish the appeal.

2 **Section 17. A new Section 18-3.11 SFCC 1987 is ordained to read:**

3 **18-3.11 [NEW MATERIAL] Solicitation Operating Requirements.**

4 A. All persons who engage in solicitation that are required to obtain a license shall
5 comply with the following:

6 (1) Carry a photo identification and a copy of a valid license issued pursuant to
7 this Article; and if soliciting on behalf of another, carry written authorization to act on behalf
8 of such third party and carry a copy of the license issued to such third party; and

9 (2) Immediately present a solicitation license, identification and authorization to
10 act on behalf of a third party, if applicable, to any person approached for said solicitation and
11 to any law enforcement official, upon request.

12 B. It is unlawful for any person to go upon, ring the bell, knock on the door of or
13 attempt to gain admission to the premises of any residence in the city where the owner, adult
14 occupant or other person in control of the property has expressed an objection to such activity either
15 by explicit instructions, oral or written, or by posting a sign or decal bearing the words "No
16 Solicitation" or similar words, unless prior to such entry, bell ringing or knocking, such person has
17 been requested or invited by the owner or adult occupant or other person in control of the premises to
18 be there for such purpose. The sign or decal may be one provided by the city or otherwise. Activities
19 related to a service requested by the owner or occupant of the property and undertaken in the ordinary
20 course of business, including but not limited to deliveries of utility notices, telephone directory
21 deliveries, regular newspaper deliveries, work order notices and service inquiries, are presumed to be
22 requested or invited for the purpose of this Section.

23 C. No person shall engage in abusive solicitation. Such abusive activity shall mean to do
24 one or more of the following while soliciting or immediately thereafter:

25 (1) Coming closer than three (3) feet to the person solicited unless and until the

1 person solicited indicates that the person wishes to make a purchase or otherwise receive the
2 solicitation;

3 (2) Blocking or impeding the passage of the person solicited;

4 (3) Repeating the solicitation after the person solicited has indicated an objection
5 to the solicitation;

6 (4) Following the person solicited by proceeding behind, ahead or alongside
7 such person after the person has indicated an objection to the solicitation;

8 (5) Threatening the person solicited with physical harm by word or gesture;

9 (6) Abusing the person solicited with words which are offensive and inherently
10 likely to provoke an immediate violent reaction; or

11 (7) Touching the solicited person without the solicited person's consent.

12 D. It is unlawful for any person, while soliciting, to go upon, ring the bell, knock on the
13 door of or attempt to gain admission to the premises of any residence, dwelling or apartment in the
14 city thirty (30) minutes after sunset or earlier than 10:00 a.m., unless such person has been requested
15 or invited by the owner or adult occupant of the premises to be thereupon for such purposes.

16 E. Insurance Requirements

17 (1) The applicant or employer, at its own cost and expense, shall carry and
18 maintain in full force and effect during the term of the license, comprehensive general
19 liability insurance covering bodily injury and property damage liability, in a form and with an
20 insurance company acceptable to the city, with limits of coverage in the maximum amount
21 which the city could be held liable under the New Mexico Tort Claims Act for each person
22 injured and for each accident resulting in damage to property. Such insurance policy shall be
23 required to name the city as an additional insured; and provide that the city be notified, no
24 less than 30 days in advance of cancellation for any reason. The applicant shall furnish the
25 city with a copy of a certificate of insurance as a condition prior to licensing.

1 (2) The applicant or employer shall also obtain and maintain workers'
2 compensation insurance, required by law, to provide coverage for applicant's employees
3 throughout the term of the license. Applicant shall provide the City with evidence of its
4 compliance with such requirement prior to licensing.

5 (3) All solicitors shall be required, as part of the application for license, to sign a
6 statement stating that the applicant shall hold harmless the City of Santa Fe from any liability,
7 damage or injury which is causally related to an act of ordinary negligence on the part of such
8 solicitor.

9 **Section 18. A new Section 18-3.12 SFCC 1987 is ordained to read:**

10 **18-3.12 [NEW MATERIAL] Not an Endorsement.** A license granted under this Article
11 is not an endorsement by the city of the solicitor or of any goods, wares, merchandise, services or
12 information that may be sold or distributed by the solicitor, and it is unlawful for any person to
13 represent that such an endorsement has been made.

14 **Section 19. A new Section 18-3.13 SFCC 1987 is ordained to read:**

15 **18-3.13 [NEW MATERIAL] Public Education.** The city shall engage in a continuing
16 program to explain and clarify the purposes and requirements of the Solicitation Ordinance to the
17 citizens of Santa Fe.

18 **Section 20. A new Section 18-3.14 SFCC 1987 is ordained to read:**

19 **18-3.14 [NEW MATERIAL] Enforcement.**

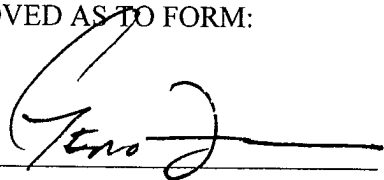
20 A. The applicant or solicitor shall be responsible for the conduct of all persons acting
21 with or on the behalf of the applicant or solicitor while in the course of operating under the license.
22 All persons found working, helping, volunteering or in any way assisting in the activities for which
23 the license was granted shall be considered employees of the applicant or solicitor. Any act or
24 omission of any person acting with or on the behalf of the applicant or solicitor constituting a
25 violation of the provisions of this Article shall be deemed the act or omission of the applicant or

1 solicitor for purposes of determining whether the applicant's or solicitor's license shall be granted,
2 denied, renewed or revoked.

3 B. Any violation of this Article shall be cause for revocation of a solicitation license and
4 the violator will be ineligible to receive a new license for a period of one (1) year.

5 C. The city may issue a citation or file a complaint against any person who violates any
6 provision of the Solicitation Ordinance. Any person who violates any provision of the Solicitation
7 Ordinance is guilty of a petty misdemeanor and is subject to the provisions of Article 1-3 SFCC 1987.
8 Each violation is a separate and distinct offense.

9 APPROVED AS TO FORM:

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12 GENO ZAMORA, CITY ATTORNEY