

ORDINANCE NO. 10-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 118, "SOLICITORS AND PEDDLERS AND DISTRIBUTION OF HANDBILLS", BY AMENDING SECTION 118.13, "HOURS OF SOLICITATION" TO PROVIDE CONSISTENCY AND CONFORMITY WITH CASE LAW; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 118 SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City Commission of Delray Beach finds it necessary and appropriate to amend section 118.13, "Hours of Solicitation," to ensure that the City of Delray Beach's Code of Ordinances is in compliance with case law addressing solicitation curfews within a municipality; and

WHEREAS, the United States Supreme Court, in *Virginia Board of Pharmacy v. Virginia Citizen's Consumer Council*, 425 U.S. 748 (1976), held that commercial speech "that does no more than propose a commercial transaction" is protected by the First Amendment. *Id.* at 762. The Florida Supreme Court, in *Atwater v. Kortum*, 95 So. 3d 85, (Fla. 2012), reiterated that "solicitation in a business context is protected commercial speech" and upheld the application of the four prong test to evaluate the constitutionality of a statute regulating free speech as outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980) *Atwater* at 91 (citing *Edenfield v. Fane*, 507 U.S. 761, 764, 113 S. Ct. 1792, 123 L. Ed. 2d 543 (1993)); and

WHEREAS, an extensive line of authority from the U.S. Supreme Court and numerous federal courts, in addressing the constitutionality of curfew restrictions, has invalidated restrictions on solicitations, *vis-à-vis* curfews, as unconstitutional violations of the First Amendment. See *Project 80's Inc. v. City of Pocatello*, 942 F. 2d 635 (9th Cir. 1991); *City of Watseka v. Illinois Public Action Council*, 479 U.S. 1048 (1987); *Ohio Citizen Action v. City of Englewood*, 671 F. 3d 564 (6th Cir. 2012); *City of Watseka v. Illinois Public Action Counsel*, 796 F.2d 1547 (7th Cir. 1986); *New Jersey Citizen Action v. Edison Township*, 797 F. 2d 1250 (3d Cir. 1986); *Wisconsin Action Coalition v. City of Kenosha*, 767 F. 2d 1248 (7th Cir. 1985); and *Association of Community Organizations for Reform v. City of Frontenac*, 714 F. 2d 813 (8th Cir. 1983); and

WHEREAS, the City Commission of Delray Beach desires to establish a constitutionally permissible solicitation curfew that not only protects the privacy of the citizens of Delray Beach, including the private enjoyment of their homes, but also comports with the First Amendment protections afforded to those conducting solicitations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 118, "Solicitors and Peddlers and Distribution of Handbills", Section 118.13, "Hours of Solicitation", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 118.13. – HOURS OF SOLICITATION.

No person, while conducting the activities of a peddler or solicitor, whether licensed or unlicensed, shall enter upon any private property, knock on doors, vend products from motor vehicles or otherwise disturb the citizens of the City of Delray Beach ~~between the hours of 7:00 p.m. and 8:00 a.m., September through May or between the hours of 8:00 p.m. and 8:00 a.m., June through August~~ before 9:00 a.m. and no later than the earlier of thirty (30) minutes after sunset or 9:00 p.m.

Section 2. All ordinances or parts of ordinances in conflict be and the same are hereby repealed.

Section 3. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 4. Specific authority is hereby given to codify this Ordinance.

Section 5. This Ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on second and final reading on this the ____ day of _____, 2017.

MAYOR

ATTEST:

City Clerk

First Reading_____

Second Reading_____