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December 7, 2017

To: City Council Members, Mayor Marlin
RE: Solicitation Ordinance repeal, 2nd memo

Given the opinion of city legal staff whereby they believe the current ordinance related to solicitation would not likely survive a constitutional challenge and to litigate the issue would be very costly to the City, the Clerk's office continues to recommend the removal of Chapter 17 from City Code.

As I stated in my earlier memo, the police department has sufficient language to aid residents with respect to in person solicitation. Section 15-35 as copied below prohibits any person from (1) remaining on the land of another after receiving notice to depart; or (2) entering upon the land of another in violation of a sign stating that entry is forbidden. Any written or posted notice of no solicitation or trespass would fit under this section of the code.

Sec. 15-35. - Criminal trespass to land generally.

- (a) Any person, except the invited guest of a lawful tenant, who knowingly and without lawful authority enters upon the land or any part thereof of another, after receiving, prior to such entry, notice from the owner, occupant, or authorized person that such entry is forbidden, or remains upon the land of another after receiving notice from the owner, occupant, or authorized person to depart shall be guilty of an offense.
- (b) A person has received notice from the owner, occupant, or authorized person within the meaning of this section if notified personally, either orally or in writing, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof.

(Code 1975, § 21.54; Ord. No. 9495-93, § 3, 4-3-95; Ord. No. 2008-09-101, § 1, 9-15-08)

State Law reference— Damage and trespass to property, 720 ILCS 5/21-1 et seq.

As to Garage Sales, I quickly checked what a number of surrounding, similarly sized cities and villages regulate. Here is a summary of my findings:

Champaign:

<http://champaignil.gov/wp-content/uploads/2014/11/Garage-Sales-Template.pdf>

Garage, rummage, yard, and similar sales shall be permitted in residential districts subject to the following limitations:



- (1) No such sale shall be more than four (4) days in duration and the collective total of all such sales shall not exceed four (4) events in any calendar year.
- (2) No goods purchased for resale may be offered for sale at the garage sale.
- (3) Any directional or advertising signs for the sale shall be removed immediately upon closing of the sale.
- (4) All directional and advertising signs placed off-site shall have the permission of the owner of the property on which the sign is to be placed.
- (5) No directional or advertising sign may be larger than two and a half (2.5) square feet.

Rantoul:

Provided, however, this shall not be construed as applying to any person(s) who hold a "garage sale" as defined herein, if the duration of such sale is not held on more than three consecutive days and if no such sale is held on more than three separate occasions in any calendar year on the same premises.

Danville:

Garage, rummage, yard and similar sales shall be permitted as temporary uses in any zoning district provided that no such sale shall be more than 72 hours in duration and the total number of sales on a lot shall not exceed two in any calendar year.

Normal:

The total number of sales in one calendar year shall not exceed three. The total number of sale days shall not exceed twelve in one calendar year. Signs related to the sale must be contained on private property. Signs shall be removed promptly after the end of the sale.

Bloomington:

No more than three (3) garage/group sales are held on the same premises during any calendar year. The duration of said sales is limited to no more than three (3) consecutive days or two (2) consecutive weekends and during daylight hours.

West Peoria:

Garage sales shall not be conducted more than one time or for more than three consecutive days each calendar quarter. In no event shall a garage sale be conducted either before 7:00 a.m. or after 7:00 p.m. on any one day of sale. Residents are advised that all public works projects are almost impossible to reschedule and will proceed as planned, regardless of garage sales. It is recommended that residents check with City Hall about planned public works before scheduling a garage sale.

In summary, I believe that our ordinance is substantially more generous in that 6 sales per year are allowed.





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October 17, 2017

To: City Council Members, Mayor Marlin
RE: Solicitation Ordinance repeal

Introduction

This proposed Code amendment will repeal Chapter 17 and amend Chapter 15 to regulate garage sales.

Background

Urbana City Code Chapter 17 regulates peddlers, solicitors, and transient merchants. On-street and door-to-door solicitation are forms of free speech protected by the First Amendment. Chapter 17 implicates First Amendment rights because it distinguishes between different types of solicitation based upon the solicitors' messages. It exempts persons involved in charitable or political solicitation from obtaining a license but requires those engaged in commercial activities to comply with the chapter's licensing requirements. Because the necessity for a license depends entirely on the subject of the message to be expressed, Chapter 17 imposes content-based restrictions on free speech. In *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015), the United States Supreme Court held that such restrictions are presumptively unconstitutional. Accordingly, the proposed amendment will repeal Chapter 17.

Repealing this chapter will eliminate Section 17-3, which prohibits solicitors from (1) entering a private residence after the occupant asks the solicitor to leave; or (2) disobeying a "no solicitors" sign. Nevertheless, the Police Department will be able to address complaints of these kinds using Urbana City Code Section 15-35, which generally deals with criminal trespass. Section 15-35 prohibits any person from (1) remaining on the land of another after receiving notice to depart; or (2) entering upon the land of another in violation of a sign stating that entry is forbidden.

Repealing Chapter 17 also will abolish Section 17-2, which regulates garage sales. As such, the proposed amendment will add a section to Chapter 15 to allow no more than six garage sales on residential premises within a 12-month period.

Fiscal Impact

Approval of the proposed amendment will have no direct fiscal impact because the City Council eliminated the solicitor licensing fee in July. Non-approval will allow Urbana City Code provisions that are inconsistent with the First Amendment to remain in effect and will hinder the City's ability to regulate garage sales.

Recommendation

Approve the ordinance repealing Urbana City Code Chapter 17 and amending Chapter 15 regarding garage sales.



ORDINANCE NO. 2017-10-064

**AN ORDINANCE REPEALING URBANA CITY CODE CHAPTER 17 AND
AMENDING CHAPTER 15 REGARDING GARAGE SALES**

WHEREAS, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the City Council heretofore enacted Urbana City Code Chapter 17 to regulate peddlers, solicitors, and transient merchants in the City; and

WHEREAS, the First Amendment to the United States Constitution prohibits the government from restricting free expression because of its message, ideas, subject matter, or content; and

WHEREAS, the restrictions Chapter 17 places upon free speech are contrary to the rights protected by the First Amendment; and

WHEREAS, the City Council, after due consideration, finds that repealing Chapter 17 is necessary to comply with the First Amendment; and

WHEREAS, the City Council further finds that amending Urbana City Code Chapter 15 to regulate garage sales in the City, as herein provided, will protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1. Urbana City Code Chapter 17, “Peddlers, Solicitors and Transient Merchants,” is hereby repealed upon the effective date of this Ordinance.

Section 2. Urbana City Code Chapter 15, “Miscellaneous Offenses and Provisions,” Article I, “In General,” is hereby amended by the addition thereto of a new section to be known and designated as Section 15-6, “Garage sales,” and to read as follows:

Sec. 15-6. - Garage sales.

- (a) For the purposes of this section, a “garage sale” is any occasion in which tangible personal property is offered for sale to the public on or from a residential premises, including without limitation all sales entitled “garage,” “yard,” “tag,” “lawn,” “attic,” “basement,” “rummage,” “estate,” “flea market,” or any similar casual sale of tangible personal property.

- (b) No person, shall operate, conduct, manage, allow, or permit to be conducted more than six (6) garage sales on any such premises within a twelve (12) month period or any garage sale exceeding three (3) consecutive calendar days. No person, shall operate, conduct, manage, allow, or permit to be conducted a garage sale except as permitted by this section.
- (c) This section does not apply to persons selling tangible personal property pursuant to process or order of a proper court of competent jurisdiction.

Secs. 15-7—15-15. - Reserved.

Section 3. Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 4. This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 5. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this ___ day of _____, 2017.

AYES:

NAYS:

ABSTENTIONS:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ___ day of _____, 2017.

Diane Wolfe Marlin, Mayor