Village of South Barrington

Ordinance No. 2012-967

AN ORDINANCE AMENDING
CHAPTER 3, ENTITLED “SOLICITORS,” OF TITLE 3,
ENTITLED “BUSINESS REGULATIONS,” OF THE
VILLAGE CODE OF THE VILLAGE OF SOUTH BARRINGTON

WHEREAS, the Village of South Barrington (hereinafter the “Village”) is a home rule unit of local government pursuant to Article VII of the Illinois Constitution; and

WHEREAS, except as limited in the Illinois Constitution, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the Corporate Authorities of the Village of South Barrington deem it in the best interest of the health, safety and welfare of the residents of the Village of South Barrington to amend Chapter 3, entitled “Solicitors,” of Title 3, entitled “Business Regulations,” of the Village Code of Ordinances of the Village of South Barrington, Cook County, Illinois, as hereinafter set forth.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of South Barrington, Cook County, Illinois:

Section 1: That Chapter 3, entitled “Solicitors,” of Title 3, entitled “Business Regulations,” as amended, is hereby deleted in its entirety and amended to read as follows:

“3-3-1: Findings and Purpose.

(1) It is hereby determined that:

a. Uninvited visits to private residential properties and privately owned businesses for the purposes of soliciting funds, goods, wares, merchandise or services by
persons and organizations have been occurring and continue to occur within the Village.

b. Residents and business owners have complained that these activities are intrusive upon their privacy and disruptive to their daily activities.

c. A variety of misrepresentations and other frauds are at times employed in such activities.

d. Burglaries and attacks on persons in their homes have occurred by persons claiming to be solicitors.

e. The Village has a legitimate and substantial interest in promoting the public health, safety, welfare of its residents by preventing fraudulent or criminal activities which may result from unregulated solicitation.

f. Noncommercial speech is entitled to broader protection under the First Amendment to the United States Constitution than commercial speech, affording the Village a greater ability to regulate commercial speech than noncommercial speech.

g. An effective way to promote and protect persons’ safety and privacy is by reasonably limiting the hours of solicitation and requiring solicitors to obtain permits in a content-neutral manner. Allowing individuals to determine their level of comfort with privacy and whether or not they want to receive solicitation will promote the Village’s interest in promoting public safety and protecting individuals’ privacy, while respecting solicitors’ interests in effective distribution of information. A reasonable accommodation of these competing interests can be
achieved by adoption of this Chapter, which regulates the time, place and manner of solicitations.

(2) Based on the findings described above, it is further found that there is a need for narrowly tailored reasonable, time, place and manner restrictions regarding soliciting within the Village so as to accomplish the following, to the extent reasonably possible:

a. Prevent crime, including burglaries and fraud, and deter such fraud and crime by determining the identity of solicitors by requiring solicitors to obtain a permit prior to soliciting within the Village;

b. Protect the health, safety, welfare and privacy of the citizens of the Village;

c. Ensure that the police department is aware of the number and identity of persons who will be soliciting for commercial and noncommercial purposes, and the geographical areas and time periods during which such activities will occur within the Village;

d. Prevent the imitation of noncommercial purposes by persons and organizations who would defraud the public, and thereby cause noncommercial purposes and organizations to be endangered by the suspicions engendered by such practices;

e. Protect the welfare, safety, peace, privacy, comfort and convenience of the public in its homes, from unwanted disturbances and intrusions; by reasonably restricting the hours of solicitation activities;

f. Prohibit the solicitation of occupants of property when the occupant has posted a sign prohibiting such activities; and

g. Respect the solicitors’ interests in effective distribution of information. This subchapter is expressly not intended to interfere with the exercise of free speech
and free exercise rights protected by the First Amendment (e.g., religious proselytizing, anonymous political speech, and the distribution of handbills).

3-3-2: Definitions.

The following words, terms and phrases, when used in this Chapter shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

**Applicant** means any person or entity that has filed an application for a commercial or noncommercial solicitation permit as hereinafter provided.

**Charitable organization** means (1) any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such which solicits and collects funds for charitable purposes and includes each local, county, or area division of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization; (2) a not-for-profit organization incorporated pursuant to 805 ILCS 110/0.01 & 805 ILCS 110/35; or (3) any other organization that has been granted tax-exempt status from the State of Illinois or the Internal Revenue Service pursuant to Section 501(c)(3) of the Internal Revenue Code.

**Charitable purpose** means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

**Commercial solicitation** means solicitation which is not conducted for any charitable purpose or political purpose, or on behalf of any charitable organization, as those terms are defined herein.

**Noncommercial solicitation** means solicitation for a charitable purpose or political purpose, or on behalf of a charitable organization, as those terms are defined herein.

Noncommercial solicitation shall include the following so long as the person is not requesting, either directly or indirectly, money, credit, funds, contributions, personal property or anything of value: (1) A person communicating or otherwise conveying ideas, views or beliefs or otherwise disseminating oral or written information to a person willing to directly receive such information, provided that such information is of a political, religious or charitable nature; (2) A person seeking to influence the personal belief of the occupant of any residence or business in regard to any political or religious matter; (3) A person seeking to obtain, from an occupant of any residence or business, an indication of the occupant’s belief in regard to any political or religious matter; (4) A person conducting a poll, survey or petition drive in regard to any political matter; and (5) A person carrying, conveying, delivering or transporting dairy products, newspapers or other goods to regular customers on established routes or to the premises of any person who had previously ordered such products or goods and is entitled to receive the same.

**Nonresidential premises** means and includes all buildings, structures, and units in the Village occupied for nonresidential purposes.
Peddler means any person who engages in peddling. Peddler shall include but not be limited to any person required to be licensed pursuant to the “Transient Merchant Act of 1987” (225 ILCS 465, et seq.)

Peddling means the act of door to door selling, or offering for sale, any goods, wares, merchandise, foodstuffs, services or other property of any kind, character or description whatsoever, for any kind of consideration whatsoever, for immediate delivery.

Person means any individual, organization, group, association, partnership, corporation, trust or any combination thereof.

Political purpose means any activity in support of bona-fide candidates for public office, or any matter related to the election, nomination, or performance of public officials, or issues presented to the electorate at any election.

Residence means and includes every separate living unit in the Village occupied for residential purposes by one (1) or more persons, contained within any type of building or structure.

Solicit means to engage in any acts of solicitation as defined herein.

Solicitation means the act of any person traveling by foot, vehicle or any other type of conveyance who goes from residence to residence, business to business, from place to place or in or along any highway, street or sidewalk within the Village either: (1) requesting, either directly or indirectly, money, credit, funds, contributions, personal property or anything of value; (2) taking or attempting to take orders for the sale of any goods, wares, merchandise or services of any kind, or description for future delivery or for services to be performed in the future, in person or by the in-person distribution of flyers and leaflets; and (3) selling and making immediate delivery any goods, wares, merchandise or services of any kind or description, commonly referred to as “peddling”.

3-3-3: Administration.

(1) The Chief of Police shall have the following powers and duties, which shall at all times be performed without consideration of the content or viewpoint of the information being distributed by a solicitor:

(a) To administer and rule upon the applications for, and the issuance, renewal, suspension, denial and revocation of permits as set forth in this Chapter.

(b) To take such further actions as the Chief of Police shall deem necessary to carry out the purposes and intent of this Chapter and to exercise such additional powers.
in furtherance thereof as are implied or incident to those powers and duties expressly set forth in this Chapter.

(2) The powers and duties of the Chief of Police under this Section may be exercised be any designee of the Chief of Police.

3-3-4: Solicitation Permits.

(1) Solicitation Permit Required. A Commercial or Non-commercial solicitation permit shall be required to solicit within the Village.

(2) Solicitation Without Permit Prohibited. It shall be unlawful for any person not in possession of a current and valid Commercial or Non-commercial solicitation permit to solicit within the Village at any time after the effective date of this Chapter.

(3) Solicitation Without Permit Badge Displayed. It shall be unlawful for any person to solicit within the Village at any time that a current and valid Commercial or Non-commercial solicitation permit badge is not displayed in plain view on the person who is soliciting after the effective date of this Chapter. Such permit badge shall contain the name of the peddler or solicitor, and the name of the group or organization, if any, on whose behalf the peddler or solicitor is conducting activities that are regulated under this Chapter.

(4) Solicitation in Violation of Permit Prohibited. It shall be unlawful for any holder of a Commercial or Non-commercial solicitation permit to solicit except in the manner authorized by, and in compliance with, the provisions of this Chapter.

(5) Assignment or Transfer of Permit Prohibited. It shall be unlawful for any holder of a Commercial or Non-commercial solicitation permit to assign or transfer a Commercial or Non-commercial solicitation permit.
3-3-5: Solicitation Restrictions.

(1) It shall be unlawful for any person to go in or upon, ring the bell, knock on the door of or attempt to gain admission to any residence, dwelling, apartment or nonresidential premises which is posted with a sticker or sign bearing the words “No Trespassing,” “No Peddlers,” “No Solicitors,” or any other similar notice indicating in any manner that the occupants of such residence or nonresidential premises desire not to be disturbed or to have their rights of privacy disturbed for the purpose of soliciting unless such occupant has specifically requested or invited such solicitation. For convenience, the Village’s Police Department may make available to Village residents stickers or weatherproof cards bearing notice of the type herein described for posting on or near the main entrance door to any residence or nonresidential premises.

(2) It shall be unlawful for any person to go in or upon, ring the bell, knock on the door of or attempt to gain admission to any residence, dwelling, apartment or nonresidential premises for the purpose of conducting solicitation at any time before 9:00 a.m. and after 9:00 p.m. on any day, unless such person has been requested or invited by the owner or adult occupant of the premises to be thereupon for such purposes.

(3) It shall be unlawful for any person conducting solicitation at any residence or nonresidential premises to fail to leave, and to fail to cease conducting solicitation at, such residence or nonresidential premises immediately upon receiving, from any person present at such residence or nonresidential premises, a request to leave or cease conducting solicitation.
(4) It shall be unlawful for any person who engages in peddling or solicitation as defined in Section 3-3-2 of this Chapter, to misrepresent the right of a buyer to rescind or cancel a sale under the provisions of applicable law.

(5) Misrepresentation. It shall be unlawful for any person who engages in peddling or solicitation to use any false plan, scheme or ruse; to cheat, deceive, or make any fraudulent misrepresentation while acting as a peddler or solicitor in the Village, whether through the company or organization or through an employee or solicitor thereof;

(6) Sales other than as in the application. It shall be unlawful for any person who engages in peddling or solicitation, as defined in Section 3-3-2 of this Chapter, to barter, sell or peddle any goods, wares, merchandise, foodstuffs, services or other property other than as specified in the application.

(7) It shall be unlawful for any person to conduct solicitation in or on any sidewalk or other public property, way or place in a manner that completely or substantially impedes the flow of pedestrian or vehicular traffic in, on or around such sidewalk or public property, way or place. No person conducting solicitation shall have the exclusive right to any sidewalk or other public property, way or place, nor to establish a permanent stationary location for such solicitation.

(8) It shall be unlawful for any person to conduct solicitation of employment, business, contributions or sales of any kind or collect money for such from the occupant of any vehicle traveling upon any street or highway when:

(a) The solicitation or collection causes the person performing the activity to enter onto the traveled portion of a street or highway; or
(b) The solicitation or collection involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions; or

(c) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction.

For purposes of this Section, the traveled portion of the street or highway shall mean that portion of the road normally used by moving motor vehicle traffic.

(9) The Village shall establish and maintain a Do Not Solicit Registry, upon which any person in lawful possession or occupation of any residence may request to be placed after completing the necessary application. It shall be unlawful for commercial solicitors to solicit at any residence registered in the Do Not Solicit Registry.

(10) A violation of this Section is hereby defined to be a public nuisance.

3-3-6: Commercial Solicitation Permit Application.

(1) Applications for a Commercial Solicitation permit shall be made on forms provided by the Police Department. The applications shall be provided by the Police Department immediately upon request. The applicant shall verify under oath by signature or other similar affirmation that the statements made by the applicant in the application are true, complete and accurate. The application shall contain the following:

(a) The applicant’s full legal name, age, telephone number, current residence address, and the applicant’s business address, if other than residence address;

(b) The full legal name, telephone number, current residence address, and the business address, if other than residence address of the person, or organization, if any, sponsoring, promoting or conducting the proposed activities;
(c) The applicant’s social security number, the applicant’s driver’s license number or other official form of identification and the applicant’s vehicle identification number, if any;

(d) A current photograph of the applicant;

(e) A brief physical description of the applicant, including height, weight, and hair and eye color;

(f) In the case of a Commercial Solicitation Permit, the name and address of the applicant’s current employer or person or entity on whose behalf the applicant is conducting commercial solicitation;

(g) A brief description of the subject matter of the applicant’s solicitation and method of operation;

(h) The dates for which the applicant seeks a commercial solicitation permit, and the specific dates upon which the applicant will solicit;

(i) Names of the three (3) most recent communities where the applicant has solicited house to house;

(j) Information regarding the use or revocation of prior commercial solicitation permits issued to the applicant by the Village, if any, including the date, or approximate date, of the last previous application for a commercial solicitation permit from the Village, if any;

(k) Information regarding prior or current violations, if any, by the applicant of any of the provisions of this Chapter, or the solicitation regulations of any other local, state, or federal government; and
(1) Information regarding any prior conviction of the applicant of a felony under the laws of the State of Illinois, any other state, or the United States.

(2) If, during the pendency of any application for, or during the term of any commercial solicitation permit there is any change in any material information given in the application for such permit, the applicant shall promptly notify the Chief of Police in writing of such change.

(3) Within ten (10) business days of receipt of an application for a Commercial Solicitation permit, the Chief of Police shall grant the application and issue the permit provided that the applicable requirements contained in Section 3-3-7 are satisfied. If the requirements contained in Section 3-3-7 are not satisfied, the Chief of Police shall, within ten (10) business days of receipt of the application for a permit, deny the application and state the reasons in writing for such denial. If the Chief of Police fails, within ten (10) business days of receipt of the application for a permit, to act on the application, then, provided that the permit fee has been paid, the application shall be considered granted. The Chief of Police shall cause to be kept in the Village records an accurate record of every commercial solicitation permit application received and acted upon together with all other information and data pertaining thereto, including commercial solicitation permits issued or denied under the provisions of this Section.

(4) The fee for each Commercial Solicitation permit application shall be One Hundred Dollars ($100.00).

(5) A Commercial Solicitation permit shall expire one (1) year from the date of its issuance.

(6) A Commercial Solicitation permit may be renewed by the applicant by reaffirming that the information in the prior application remains true, complete and accurate, or by
submitting in a new application, with any information that has changed from the prior
application, and provided that the applicable requirements contained in Section 3-3-7 are
satisfied.

3-3-7: Commercial Solicitation Permit Requirements.

(1) A commercial solicitation permit shall be subject to, and granted upon, the following
conditions, restrictions and requirements:

(a) The material statements made in the application are true;

(b) The applicant has not been convicted of a felony under the laws of the State of
Illinois, any other state or the United States within five (5) years of the date of the
application;

(c) The applicant has not been convicted of a sex offense as set forth in 720 Illinois
Compiled Statutes, Act 5, Article 11, et seq., or any equivalent law of any other
State;

(d) The applicant has not had a previously issued commercial solicitation permit
revoked by the Village within five (5) years of the date of the application;

(e) The applicant has not been convicted of violating any provisions of this Chapter
within five (5) years of the date of the application;

(f) The applicant has not been convicted of a misdemeanor resulting from criminal
trespass, theft, fraud, deception or misrepresentation within five (5) years of the
date of the application;

(g) The Chief of Police may conduct a background investigation of the applicant
through the use of the Police Department resources including, but not limited to,
an Accurint background investigation.
(h) The application is accompanied by a current photograph of the applicant; and

(i) The applicant has paid the commercial solicitation permit application fee.

3-3-8: Non-commercial Solicitation Permit Application.

(1) Applications for a Non-commercial Solicitation permit shall be made on forms provided by the Chief of Police. The applications shall be provided by the Police Department immediately upon request. The applicant shall verify under oath by signature or other similar affirmation that the statements made by the applicant in the application are true, complete and accurate. The application shall contain the following:

(a) The applicant’s name, age and current residence address;

(b) The applicant’s social security number, the applicant’s driver’s license number or other official form of identification and the applicant’s vehicle identification number if any;

(c) A current photograph of the applicant;

(d) A brief physical description of the applicant, including height, weight, and hair and eye color;

(e) The dates for which the applicant seeks a commercial solicitation permit;

(f) Names of the three (3) most recent communities where the applicant has solicited house to house;

(g) Information regarding the revocation of prior Non-commercial solicitation permits issued to the applicant by the Village, if any;

(h) Information regarding prior or current violations, if any, by the applicant of any of the provisions of this Chapter, or the solicitation regulations of any other local, state, or federal government;
(i) Information regarding any prior conviction of the applicant of a felony under the laws of the State of Illinois, any other state, or the United States;

(j) The name of the organization the applicant represents, if any, and the name or names of the organization on behalf of which the applicant intends to solicit contributions;

(k) The name and address of the organization’s registered agent for service in Illinois and in the state in which the organization was legally established;

(l) The principal address of the organization the applicant represents, if any, and the address of its principal office in Illinois, if different. If the organization does not maintain a principal office, the name and address of the location where the records of the organization are maintained;

(m) The charitable purpose of the organization and evidence of its tax exempt status;

(n) The dates for which the applicant seeks a Non-commercial solicitation permit, and the specific dates upon which the applicant will solicit.

(2) If, during the pendency of any application for, or during the term of, any Non-commercial solicitation permit there is any change in any material information given in the application for such permit, the applicant shall promptly notify the Village Administrator in writing of such change.

(3) Within ten (10) business days of receipt of an application for a Non-commercial Solicitation permit, the Chief of Police shall grant the application and issue the permit provided that the applicable requirements contained in Section 3-3-9 are satisfied. If the requirements contained in Section 3-3-9 are not satisfied, the Chief of Police shall, within ten (10) business days of receipt of the application for a permit, deny the application and

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state the reasons in writing for such denial. If the Chief of Police fails, within ten (10) business days of receipt of the application for a permit, to act on the application, then the application shall be considered granted. The Chief of Police shall cause to be kept in the Village records an accurate record of every Non-commercial solicitation permit application received and acted upon, together with all other information and data pertaining thereto, including Non-commercial solicitation permits issued or denied under the provisions of this Section.

(4) There shall be no permit fee for a Non-commercial Solicitation permit.

(5) A Non-commercial Solicitation permit shall expire one (1) year from the date of its issuance.

(6) A Non-commercial Solicitation permit may be renewed by the applicant by reaffirming in writing that the information in the prior application remains true, complete and accurate, or by submitting, in a new application, with any information that has changed from the prior application, and provided that the applicable requirements contained in Section 3-3-9 are satisfied.

3-3-9: Non-commercial Solicitation Permit Requirements.

(1) A Non-commercial solicitation permit shall be subject to, and granted upon, the following conditions, restrictions and requirements:

(a) The material statements made in the application are true;

(b) The applicant has not been convicted of a felony under the laws of the State of Illinois, any other state, or the United States within five (5) years of the date of the application;
(c) The applicant has not been convicted of a sex offense as set forth in 720 Illinois Compiled Statutes, Act 5, Article 11, et seq., or any equivalent law of any other State;

(d) The applicant has not had a previously issued Non-commercial solicitation permit revoked by the Village within five (5) years of the date of the application;

(e) The applicant has not been convicted of violating any provisions of this Chapter within five (5) years of the date of the application;

(f) The applicant has not been convicted of a misdemeanor resulting from criminal trespass, theft, fraud, deception or misrepresentation within five (5) years of the date of the application;

(g) The Chief of Police may conduct a background investigation of the applicant through the use of the Police Department resources including, but not limited to, an Accurint background investigation.

(h) The application is accompanied by a current photograph of the applicant; and

(i) The solicitation will be conducted for a charitable purpose.

3-3-10: Revocation of Permits.

The Chief of Police shall revoke any permit issued under the provisions of this Chapter after a finding that any of the following causes exists:

(1) Fraud, misrepresentation or any false statement contained in the application for a permit;

(2) Failure, following thirty (30) days after the expiration of any appeal rights, to pay any penalty assessed under this Chapter;

(3) Violation of any term of the permit granted to the holder of a permit;

(4) Violation of any provision of this Chapter.
3-3-11: Appeal of Decisions of the Chief of Police.

Any decision of the Chief of Police under this Chapter shall be appealable. Any person aggrieved by a decision of the Chief of Police shall have the right to appeal the decision to the Village President, provided that the applicant files a written notice of appeal, including a statement of the grounds of appeal, with the Village President within fifteen (15) calendar days after notice of the decision of the Chief of Police. The Village President shall set a hearing on the appeal within ten (10) calendar days after receipt of the written notice of appeal and notice of the time and place shall be given to the aggrieved party. The Village President shall have the power to reverse, affirm or modify the decision of the Chief of Police. In making his/her determination, the Village President shall only consider the standards set forth in this Chapter. The Village President’s decision shall be rendered the same day as the hearing. The failure of the Village President to set or conduct a hearing in accordance with the requirements of this Section shall be considered a denial of the appeal.

3-3-12: Penalties.

Any person or entity who shall be guilty of a violation of any of the provisions of this Chapter shall be subject to a fine of not less than seventy-five dollars ($75.00) and not more than seven hundred fifty dollars ($750.00). A separate offense shall be deemed committed for every day a violation continues. The provisions of this Section shall not limit any other remedies authorized by law.

3-3-13: Severability.

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

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Section 2: Any ordinance or portion of any ordinance that is in conflict with the provisions of this Ordinance is repealed solely to the extent of said conflict.

Section 3: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

PASSED: This 12th day of July, 2012

APPROVED: This 13th day of July, 2012

[Signature]
Frank J. Munao, Jr., Village President

ATTEST:

[Signature]
Donna Wood, Village Clerk

AYES: 4  NAYS: 0  ABSTAIN: 0  ABSENT: 1

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