

ORDINANCE NO. 2662

AN ORDINANCE to repeal Article I, to add a new Article I-A, and to amend and reordain the third definition in Section 32-10, Article II, all of Chapter 32 of The Code of the City of Alexandria, Virginia, 1963, as amended; which Chapter 32 relates to SOLICITATION FOR CHARITABLE, ETC., PURPOSES, which Article I formerly related to IN GENERAL, which new Article I-A relates to SOLICITATION FOR CHARITABLE PURPOSES, which Article II relates to SOLICITATIONS FOR NONCHARITABLE PURPOSES, which Section 32-10 relates to DEFINITIONS and which third definition relates to PEDDLER, SOLICITOR OR CANVASSER.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article I, Chapter 32 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is repealed.

Section 2. That Chapter 32 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding a new article numbered I-A to read as follows:

Article I-A. Solicitation for Charitable Purposes.

Sec. 32-9.16. Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this article, have the meanings indicated in this section:

Charitable organization. Any person which is or holds itself out to be organized or operated for any charitable purpose, or any person which solicits or obtains contributions solicited from the public. This definition shall not be deemed to include any church or convention or association of churches, primarily operated for nonsecular purposes and no part of the net income of which inures to the direct benefit of any individual; nor shall it include any political party as defined in section 24.1-1, Code of Virginia (1950), as amended, or any political campaign committee required by local, state or federal law to file a report or statement of contributions and expenditures; nor shall it include any labor union registered under section 40.1-76, Code of Virginia (1950), as amended, nor any trade association; nor shall it include any authorized individual who solicits, by authority of such organization, solely on behalf of a registered charitable organization or on behalf of an organization excluded from the definition of charitable organization.

Charitable purpose. Any charitable, benevolent, humane, philanthropic, patriotic or eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any public official or instigating, prosecuting or intervening in litigation.

Contribution. Any gift, bequest, devise or other grant of any money, credit, financial assistance or property of any kind or value, including the promise to contribute, except payments by the membership of an organization for membership fees, dues, fines or assessments or for services rendered to individual members, and except money, credit, financial assistance or property received from any governmental authority. The term "contribution" shall not include any donation of blood or any gift made pursuant to article 2, section 32.1-289 et seq., chapter 8, title 32.1 of the Code of Virginia (1950), as amended, also known as the Uniform Anatomical Gift Act.

Director. The city manager or his or her designee.

Person. Any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit.

Sale, sell and sold. The transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

Solicit and solicitation. The request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including without limitation, the following methods of requesting such contribution:

- (a) Any oral or written request;
- (b) Any announcement to the press, over the radio or television, or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;
- (c) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or
- (d) The sale of, offer or attempt to sell any advertisement, advertising space, subscription, ticket or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable organization is used or referred to in any such appeal as an inducement

or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

A solicitation, as defined herein, shall be deemed to occur when the request is made at the place the request is received, whether or not the person making the same actually receives any contribution.

Sec. 32-9.17. Registration of charitable organizations.

Every charitable organization, except as otherwise provided in this article or by state law, which intends to solicit contributions within the city, or have funds solicited on its behalf in the city, shall, prior to any solicitation, file an initial registration statement with and upon forms acceptable to the director. It shall be the duty of the president, chairperson or principal officer of such charitable organization to keep the statements required by this article accurate and up-to-date on at least an annual basis.

Any charitable organization may file with the director evidence, including, but not limited to, a copy of the registration statement it has filed with the state commissioner, pursuant to the requirements of chapter 5, section 57-48, et seq., title 57 of the Code of Virginia, (1950), as amended, a copy of the letter of exemption provided for by section 57-60 of the state code, or other evidence of compliance and, therefore, exemption pursuant to section 57-50 of the state code. Such filing shall be deemed to be compliance with the requirements of this section. The director may require that any or all of the information listed below be included in the statement:

(a) The name of the organization and the purpose for which it was organized;

(b) The principal address of the organization, the address of any of its offices within the city and its designated agent for service of process within the Commonwealth of Virginia. If no such agent is designated, the organization shall be deemed to have designated the secretary of the commonwealth;

(c) The names and addresses of any chapters, branches or affiliates of the organization located in the city;

(d) The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code;

(e) The names and addresses of the officers, directors, trustees, principal salaried executive staff officer, if any, and any person having custody of financial records of the organization;

(f) A statement indicating whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;

(g) A statement indicating whether the organization is authorized by any other governmental agency or authority within the Commonwealth of Virginia to solicit contributions and whether it, or any officer, professional fund-raiser or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction;

(h) The general purpose or purposes for which the contributions to be solicited shall be used;

(i) The name or names under which it intends to solicit contributions;

(j) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(k) The names of the individuals or officers of the organization responsible for the final distribution of the contributions;

(l) A statement indicating whether the organization or any officer thereof, or any professional solicitor or professional fund-raiser retained by the organization has ever been convicted in any jurisdiction of embezzlement, larceny or other crime involving the obtaining of money or property by false pretenses or the misapplication of funds impressed with a trust, unless such person has received a pardon for such offense, and, if so, a description of the pertinent facts;

(m) A statement showing the percentage which the organization's fund-raising expenses for the preceding fiscal year bore to such support it received directly from the public during that year; and

(n) The director may also require additional information which is listed in section 57-49 of the Code of Virginia (1950), as amended. Such additional information may only be required, however, when it is deemed by the director to be reasonably necessary in order to ensure compliance with the requirements and purpose of this article.

Sec. 32-9.18. Publication of warning concerning certain charitable organizations.

If the director shall determine that any charitable organization required to be registered pursuant to the provisions of this article is not registered and is soliciting in the city, he or she may, after 10 days' written notice mailed to the charitable organization, cause to be printed in one or more newspapers of general circulation in the city a notice in substantially the following form:

WARNING--UNREGISTERED CHARITABLE SOLICITATION

The organization named below has solicited contributions from area residents for allegedly charitable purposes. It has not registered with the director as required by law. Contributors are cautioned that their contributions to such organization may be used for noncharitable purposes.

A copy of such warning shall immediately be forwarded to the state commissioner for agriculture and consumer services or his or her duly authorized delegate.

Sec. 32-9.19. Information filed to become public records.

Registration statements required to be filed under this article shall become public records in the office of the director and shall be open to the general public for inspection during normal working hours and under such conditions as the director may prescribe. A reasonable charge may be made for any copies of such documents and information as may be furnished any person by the director.

Sec. 32-9.20. Prohibited acts.

In addition to the prohibited acts enumerated in section 57-57 of the Code of Virginia (1950), as amended, it shall be unlawful for any person to violate any of the provisions of this section in connection with any solicitation regulated by this article.

(a) No charitable organization shall use or exploit the fact of its registration under this article so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the city, except that any such registered charitable organization may use and advertise the following statement in connection with any solicitation for which it has registered under this article: "Registered with the City of Alexandria, Virginia, as required by law. Such registration does not imply any endorsement by the city of a public solicitation for contributions."

(b) No person shall knowingly make any false or misleading statement or otherwise engage in any deceptive practice.

(c) No person shall use the endorsement of any individual or organization without the endorser's written consent; provided, however, participation in a solicitation is deemed to be such consent. Nothing contained in this section shall prevent the publication of names of contributors, without their written consent, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(d) No person shall denominate any membership fee or purchase price of goods or services sold as a contribution or as a donation or in any other manner represent or imply that the member or the purchaser of such goods or services will be entitled to an income tax deduction for his or her cost, or any portion thereof, unless there shall first have been obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding such cost to be deductible. No charitable organization, other than an organization exempt under section 57-60(a)(3) of the Code of Virginia (1950), as amended, shall represent or imply that a contributor will be entitled to an income tax deduction for his contribution unless there shall first have been obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding gifts to such organization to be so deductible.

(e) No person shall use or display the name or emblem of a charitable organization in a solicitation without the organization's consent.

(f) No professional solicitor shall solicit in the name of or on behalf of any charitable organization unless such solicitor has written authorization of two officers of such organization, which authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, not to exceed one year from the date issued. A copy of such authorization shall be filed with the director.

Professional solicitors shall carry such written authorization on or about their person when making any such solicitation and shall exhibit the same on request to any person solicited by them or to any police officer of the city or agent of the director.

(g) No charitable organization shall accept any contribution exceeding five dollars (\$5.00) in cash or tangible personal property without providing, upon request of the donor, a written receipt signed by the person accepting such contribution.

(h) No person shall solicit within the city if such person has been convicted in any jurisdiction of embezzlement, larceny or other crime involving the obtaining of money or property by false pretenses or the misapplication of funds impressed with a trust, unless such person has received a pardon for such offense or the public is informed of such conviction in a manner approved in writing by the director before any solicitation occurs. No person shall solicit within the city if such person has ever been enjoined by any court or otherwise prohibited from soliciting in any jurisdiction, unless the director shall first determine in writing that such person is entitled to solicit in such jurisdiction at the time of soliciting within the city and that the reason for such injunction or prohibition does not involve moral turpitude.

(i) No person shall solicit within the city for the benefit of any other person located without the city, if such other person refuses to supply any information required by the provisions of this article. A solicitation shall be deemed to be on behalf of every person who receives, directly or indirectly, more than 10% of the gross amount collected.

(j) No person shall knowingly or willfully make any false statement in any registration statement required by this article.

Sec. 32-9.21. Enforcement.

(a) The director, upon his or her own motion or upon complaint of any person, may investigate any person and/or charitable organization to determine whether such person and/or charitable organization has violated any provision of this article or has filed any required registration statement which contains false and misleading statements. The director shall submit his or her findings in writing to the city attorney.

(b) Whenever the commonwealth's attorney or the city attorney shall have reason to believe that any person and/or charitable organization is operating in violation of any provision of this article or has knowingly or willfully made any false statement in any registration statement or that a charitable organization has failed to file a registration statement as required by this article, or that there is employed or is about to be employed in any solicitation or collection of contributions by or for a charitable organization any device, scheme or artifice to defraud or to obtain money or property from the public by means of any false pretense, representation or promise or that the officers or representatives of any charitable organization have refused or failed after notice to produce any records of such organization or that funds raised by solicitation activities are not devoted or will not be devoted to charitable purposes, the commonwealth's attorney or the city attorney may bring an action in the name of the city against such charitable organization and/or its officers

to enjoin such charitable organization from continuing such violation, solicitation or collection, or from engaging therein, or doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

Sec. 32-9.22. Liability imposed by other laws not decreased.

Nothing contained in this article shall be construed as making lawful any act or omission which is now unlawful, or as decreasing the liability, civil or criminal, of any person imposed by any existing law.

Sec. 32-9.23. Application to court for relief.

Any person aggrieved by any final decision or order of the director issued pursuant to this article may, within 15 days from the date of such order, apply for relief to the Circuit Court of the City of Alexandria, Virginia. Either party may appeal any final order of such court in the same manner as provided by law in cases other than cases of appeals of right.

Sec. 32-9.24. Penalties.

Any person who willfully and knowingly violates or causes to be violated any provision of this article, or who shall willfully and knowingly give false and incorrect information to the director in filing statements required by this article, whether such statement is verified or not, shall be guilty of a misdemeanor and upon conviction thereof, shall be sentenced to pay a fine of not less than \$100.00 or no more than \$500.00 or to be imprisoned in the Alexandria Correctional Center for not more than six (6) months, or both.

Section 3. That the third definition in Section 32-10, Article II, Chapter 32 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended and reordained to read as follows:

Peddler, solicitor or canvasser. The terms "peddler," "solicitor" or "canvasser" shall not be construed to include the following:

(a) Farmers or truck gardeners selling, offering for sale or soliciting orders for any products grown, raised or produced by them.

(b) Vendors of milk, bakery products, groceries or other food products of any kind, duly licensed in the city to sell the same from trucks or wagons.

(c) Persons peddling, soliciting or canvassing where the proceeds derived from such peddling, soliciting or canvassing are

to be used for charitable or religious purposes, provided, however, that they are in compliance with the requirements of article I-A of this chapter unless they are excluded therefrom or on behalf of a qualified and filed candidate or candidates for public office, or on behalf of a political party.

(d) Sales persons or agents for wholesale houses or firms who solicit orders from, or sell to retail dealers in the city for resale or other commercial purposes, or to manufacturers for manufacturing or other commercial purposes.

(e) Children of or under the age of 16 years, except when they are acting as agents of adults covered by this article.

(f) Route sales persons for laundry, dry cleaning, rug cleaning, garment storage, linen supply, towel supply and diaper services, operated from clearly identifiable vehicles, and newspaper delivery persons on a regular route.

Section 4. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

CHARLES E. BEATLEY, JR.
Mayor

Final Passage: March 13, 1982