

5/30/06

ORDINANCE NUMBER O- 19497 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 7 2006

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 7, DIVISION 00, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 57.01, 57.01.1, 57.01.2, 57.01.3, 57.01.4, 57.01.5, 57.01.6, 57.01.7, 57.01.8, 57.01.9, 57.01.10, 57.01.11, 57.01.12, 57.01.13, 57.01.14, 57.01.15, 57.01.16, 57.01.17, 57.01.18, 57.01.19, 57.01.20, 57.01.21, 57.01.22, 57.01.23, 57.01.24, 57.01.25, 57.01.26, 57.01.27, 57.01.28, 57.01.29, 57.01.30, 57.01.31, 57.01.32, 57.01.33, 57.01.34, 57.01.35, 57.01.36, 57.01.37, 57.01.38, 57.01.39, 57.01.40, 57.01.41, 57.01.42, 57.01.43, 57.01.44, 57.01.45, 57.01.46, 57.01.47, 57.01.48, RELATING TO CHARITABLE SOLICITATIONS.

WHEREAS, San Diego Municipal Code Chapter 5, Article 7, Division 0, entitled "Soliciting-Begging-Charitable Solicitations," purports to regulate charitable solicitation via a permit process, contained in Sections 57.01, 57.01.1, 57.01.2, 57.01.3, 57.01.4, 57.01.5, 57.01.6, 57.01.7, 57.01.8, 57.01.9, 57.01.10, 57.01.11, 57.01.12, 57.01.13, 57.01.14, 57.01.15, 57.01.16, 57.01.17, 57.01.18, 57.01.19, 57.01.20, 57.01.21, 57.01.22, 57.01.23, 57.01.24, 57.01.25, 57.01.26, 57.01.27, 57.01.28, 57.01.29, 57.01.30, 57.01.31, 57.01.32, 57.01.33, 57.01.34, 57.01.35, 57.01.36, 57.01.37, 57.01.38, 57.01.39, 57.01.40, 57.01.41, 57.01.42, 57.01.43, 57.01.44, 57.01.45, 57.01.46, 57.01.47, 57.01.48; and

WHEREAS, ordinances and laws similar to those provisions have been struck down as unconstitutional in both state and federal courts, including the U.S. Supreme Court; and

WHEREAS, the cases holding such ordinances and laws unconstitutional include *Hillman v. Britton*, 111 Cal. App. 3d 810 (1980), *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988), and *Carreras v. City of Anaheim*, 768 F.2d 1039 (9th Cir. 1985); and

WHEREAS, the City Attorney has previously opined that these sections are generally unenforceable; and

WHEREAS, the San Diego Police Department has not enforced these sections for some time; and

WHEREAS, the permit requirement and process are the subject of a lawsuit filed against the City, *Animal Protection & Rescue League and Dorota Valli v. City of San Diego*, San Diego Superior Court Case No. GIC 860935; and

WHEREAS, in the course of that litigation the assigned Deputy City Attorney represented to the judge that the City Attorney's office would propose a repeal of these Code sections to the City Council; and

WHEREAS, California Business and Professional Code sections 17500-17510.95 protect consumers from fraudulent charitable solicitations by allowing state and local prosecutors to seek injunctive relief and monetary fines against those who violate the state regulations; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 7, Division 0 of the San Diego Municipal Code is here by amended by repealing Sections 57.01, 57.01.1, 57.01.2, 57.01.3, 57.01.4, 57.01.5, 57.01.6, 57.01.7, 57.01.8, 57.01.9, 57.01.10, 57.01.11, 57.01.12, 57.01.13, 57.01.14, 57.01.15, 57.01.16, 57.01.17, 57.01.18, 57.01.19, 57.01.20, 57.01.21, 57.01.22, 57.01.23, 57.01.24, 57.01.25, 57.01.26, 57.01.27, 57.01.28, 57.01.29, 57.01.30, 57.01.31, 57.01.32, 57.01.33, 57.01.34, 57.01.35, 57.01.36, 57.01.37, 57.01.38, 57.01.39, 57.01.40, 57.01.41, 57.01.42, 57.01.43, 57.01.44, 57.01.45, 57.01.46, 57.01.47, 57.01.48.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Mary T. Nuesca
Mary T. Nuesca
Deputy City Attorney

MTN:sc
03/23/06
Aud.Cert.: N/A
Or.Dept: PD
O-2006-102

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 30 2006

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 6-7-06
(date)

[Signature]
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor