

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2008-01

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF LOXAHATCHEE GROVES, BY ENACTING A NEW ARTICLE TO BE ENTITLED "SOLICITATION OF EMPLOYMENT"; TO PROVIDE SPECIFIC CONTENT NEUTRAL TIME, PLACE, AND MANNER RESTRICTIONS ON THE STREET-SIDE SOLICITATION OF EMPLOYMENT FROM PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE CREATION OF A NEW CODE SECTION TO BE ENTITLED "DEFINITIONS"; PROVIDING FOR THE CREATION OF A NEW CODE SECTION TO BE ENTITLED "PROHIBITION OF SOLICITATION OF EMPLOYMENT IN COMMERCIAL PARKING AREAS AND CERTAIN MULTI-FAMILY RESIDENTIAL AREAS"; PROVIDING FOR THE CREATION OF NEW CODE SECTION TO BE ENTITLED "VIOLATION PENALTY"; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, §2(b) of the Constitution of the State of Florida and Chapter 166, Florida Statutes, the Town of Loxahatchee Groves ("Town") has a governmental and corporate powers of a duly constituted municipality; and

WHEREAS, it has been brought to the attention of the Town Council that large groups of individuals frequently congregate on a daily basis in areas of the Town, within or immediately adjacent to public rights-of-way, to solicit and attempt to solicit and attempt to solicit employment from the occupants of vehicles on Town streets and rights-of-way, and that these individuals frequently rush cars and step into the streets and right-of-way in an attempt to get hired; and

WHEREAS, the practice of street-side solicitation of employment has been identified by the Town Council as being unsafe for both the persons engaging in the solicitation, and for traffic in general; and

WHEREAS, the Town Council has held several public hearings and workshops on the problem of street-side solicitation of employment, and has received input from Town staff, the Palm Beach County Sheriff's Office, members of the public, including Buena Fe, Inc., a non-profit organization that serves the immigrant community in Loxahatchee Groves, that among other things, advances the rights and interests of day laborers; and reports and other published information pertaining to the street-side solicitation of employment; and

WHEREAS, after reviewing the evidence presented to the Town Council, the Town Council has made findings of fact concerning the street-side solicitation of employment by day laborers and other individuals within the Town;

WHEREAS, the Town Council has found that there is evidence to support a finding of fact that there are secondary adverse effects of soliciting employment from occupants of vehicles; and

WHEREAS, in making these findings and enacting this Ordinance, the Town Council has relied on evidence of secondary effects of street-side solicitation of employment, which include, but is not limited to, the experiences of other municipalities such as the Town of Jupiter, Florida; newspaper articles reporting incidents and complaints about solicitation by day laborers in Palm Beach County, Florida; the recommendations of Town staff and the Town's Charter Neighborhood Task Force, and the testimony and evidence received at numerous Town Council meetings, public hearings, and workshops; and

WHEREAS, the Town Council has found that the record evidence supports a finding that the adverse and negative secondary effects of street-side solicitation include, but are not limited to:

- (1) Street-side solicitation of employment compromises the safety of pedestrians and motorists using the public right-of-way, including the solicitors, persons who are being solicited, and persons who are involved in the solicitation;
- (2) Street-side solicitation of employment diverts the attention of, and distracts motorists, thereby making it more difficult for motorists to obey traffic laws, observe traffic signal and warnings, and safely operate their motor vehicles;
- (3) Street-side solicitation of employment causes the blocking of lanes of traffic and sidewalks, disrupts traffic circulation and generally impedes the free flow of traffic and impairs traffic safety and efficiency;
- (4) Street-side solicitation of employment is an inherently dangerous activity which can result in serious personal injury, death and property damage;
- (5) Street-side solicitation of employment place a significant strain on police resources because of the influx of day laborers and traffic in areas where solicitations occur;
- (6) Street-side solicitation of employment often harass motorists and passers-by, deposit trash and debris on public property and rights-of-way, urinate and defecate on public property and rights-of-way, create unwanted noise, and make undesirable uses of public space;
- (7) The cumulative impact of street-side solicitation of employment on public property and on the Town's streets and rights-of-way, has created a significant safety

hazard which poses a significant and substantial risk to the interest of the public in the free flow of travel and public safety in the Town.

WHEREAS, throughout the adoption process of this Ordinance, the Town has received numerous documentations of the detrimental effect of streetside solicitation of employment, which include, but are not limited to reports from other cities and jurisdictions, news reports, code enforcement and nuisance violations, police reports, documenting increased safety and traffic hazards, newspaper and magazine reports, and citizens comments and complaints, and which demonstrate that the legislative intent of this Ordinance is not speech-related and is not intended to suppress or regulate speech but rather to curtail and eliminate the negative effects of such activities; and

WHEREAS, restrictions on solicitations of employment are appropriate to assure the free movement of traffic on Town streets and rights-of-way; and

WHEREAS, the Town Council has determined based upon the evidence, that it is necessary to enact a content-neutral ordinance to reasonably regulate the time, place and manner in which an occupation can be pursued, and to serve the public purpose of public safety and the free flow of traffic on Town streets and rights-of-way; and

WHEREAS, the Town Council has balanced the First Amendment protections of commercial speech, against the compelling governmental interests in promoting public safety in the regulation of commercial activities on the Town's streets and right-of-way in establishing reasonable regulations pertaining to the street-side solicitation of employment; and

WHEREAS, the Town Council finds that such regulations are necessary to promote the substantial government interests of the safety of pedestrians and motorists, combat traffic congestion, including obstructions and delays in traffic circulation, and to protect the quality of

urban life and to prevent activities such as harassment, littering, trespassing, public urination and defecation; and

WHEREAS, the Town Council also has legitimate interest in protecting the aesthetic appearance of the Town by reducing visual clutter; and

WHEREAS, the Town Council has determined that the regulations of street-side solicitation of employment as set forth herein, are justified, and are enacted without reference to the content of the regulated speech, are narrowly tailored to serve the significant governmental and public interests set forth herein, and that the regulations leave open ample channels of communication of the information; and

WHEREAS, among the other alternative channels of communication within the Town, is a labor center located on property within the Town, pursuant to an Agreement with the Town. The labor center is operated by a private not-for-profit entity, and with the support of the Town shall continue to operate and exist on a long-term basis. The Town has entered into the Agreement for the specific purpose, among other public purposes, to facilitate and provide for a labor center as an alternative method and means of communicating and/or soliciting employment within the Town; and

WHEREAS, it is the intent of the Town Council that these regulations on the street side solicitation of employment and any potential impact on First Amendments rights be mitigated through the Town's planning and support of the labor center and the preservation of alternative channels for communicating the availability of employment. Consequently, should the labor center contemplated herein permanently cease to operate and there is no other compatible equivalent to the labor center within the Town at that time, then the Town Council shall reconsider the restrictions of this Ordinance and their effect on communicating the availability of

work, and shall take any and all reasonable and necessary actions to ensure the continued protection of First Amendment based rights; and

WHEREAS, although the Town Council expressly recognized the labor center as referenced herein as an alternative channel of communicating employment related speech, the Town Council further acknowledges and agrees that there are multiple other additional means of communicating work opportunities and availability within the Town;

WHEREAS, the labor center is but one of many alternative avenues of communication, which are available within the Town for the expression of availability for work; including but not limited to the solicitation of employment by the distribution of business cards, flyers, personal advertisements and other forms of publication of commercial speech which are hand distributed placed on real and personal property; the solicitation of employment from pedestrians, from business owners, and/or from lawfully parked vehicles and/or from lawfully stopped vehicles from locations within the Town which may from time to time be designated by the Town Council pursuant to this Ordinance as permissible areas for the solicitation of employment; and

WHEREAS, the Town Council of the Town of Loxahatchee Groves, Florida therefore deems it necessary and advisable, to amend the Code of Ordinances to create new Article to be entitled "Solicitation of Employment".

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AS FOLLOWS:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct, and are hereby incorporated herein and made a part hereof.

Section 2. The Code of Ordinances for the Town of Loxahatchee Groves, Florida is hereby amended by enacting a new Article entitled "Solicitation of Employment" to read as follows.

ARTICLE I SOLICITATION OF EMPLOYMENT

Section 1. Legislative Purpose.

The purpose of this Article is to reasonably regulate the time, place, and manner of the solicitation of employment involving occupants of vehicles which are traveling down a public street or sidewalk, or from a sidewalk, alley or driveway immediately adjacent thereto. These regulations are content-neutral and are not intended, and do not restrict the rights of free speech or alternative channels of communication, and are intended to ensure the compelling state interest of protecting both pedestrians and the operators of vehicles, and generally furthering the public's health, safety and general welfare.

Section 2. Definitions

(1) Business shall mean and include, any type of product, goods, services, performance or activity which is provided or performed or offered to be provided or performed, in exchange for money, labor, goods, or any other form of consideration.

(2) Commercial parking area shall mean privately owned property open to the public and used primarily for the parking of vehicles of customers, guests, and/or employees of nearby businesses establishments, and the area within twenty-five (25) feet surrounding such parking area owned by the same person.

(3) Employment shall mean and include, services, industry or labor performed by a person for wages, or other compensation or under any contract of hire, written or oral, expressed or implied.

(4) Multi-family structure shall mean a structure for two (2) or more dwelling units which are attached or the use of a lot for two or more dwelling units excluding mobile homes, including but not limited to, duplexes, triplexes, apartment buildings and complexes, and residential condominiums.

(5) Occupant shall mean a person who occupies a vehicle.

(6) Owner shall mean the free owner of commercial parking area, the lessee of an entire commercial parking area, or the property manager or agent of such fee owner or lessee.

(7) Pedestrian shall mean any individual who is utilizing a public street, sidewalk, roadway, alley, or public or private parking area while traveling without the benefit of any vehicle or while traveling on a bicycle.

(8) Person shall mean any individual, company, corporation, association, business or legal entity.

(9) Solicit or solicitation for employment shall mean and include, any request, offer, enticement, or action which announces the availability for, or of employment or any request, offer, enticement or action which seeks to secure employment. Examples of behavior which constitutes solicitation or attempted solicitation includes, but is not limited to, waiving arms, making hand signals, shouting at someone in a vehicle, jumping up and down, waiving signs pointed so as to be readable by persons in vehicles, quickly approaching or rushing to vehicles, standing in the public right-of-way or immediately adjacent thereto while facing vehicles in the roadway, or entering the roadway portion of a public right-of-way. Solicitation as defined herein, shall be deemed complete when made, whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money takes place.

(10) Street shall mean the area dedicated to public use for vehicular traffic purposes and shall include, but not limited to, roadways, highways, and other ways and places as the terms "street or highway" are defined in the Florida Uniform Traffic Control Law, as amended.

(11) Traveling along a public right-of-way shall mean a vehicle being operated on a public street, roadway, or highway, excluding vehicles lawfully parked at the edge of a street, roadway or highway or temporarily, lawfully stopped at a marked loading, standing or stopping zone.

(12) Vehicles means any vehicle as defined in the Florida Uniform Traffic Control Law, as amended.

(13) Public right-of-way shall mean a strip of land dedicated or deeded to the perpetual use of the public.

Section 3. Prohibition of Solicitation of Employment from Public Rights-of-Way.

(1) It is unlawful for any person, while standing in or upon any portion of a public right-of-way, including, but not limited to public streets or highways, or a sidewalk, alley, or driveway, immediately adjacent thereto, to solicit, or attempt to solicit, employment or business from any person traveling in a vehicle along a public street or highway.

(2) It is unlawful for any person, while the occupant of any vehicle traveling along a public street or highway, to solicit, or attempt to solicit, employment from

a person who is standing within any street, or highway, or any sidewalk, alley or driveway, which is immediately adjacent thereto.

(3) This section shall not apply to public property or any portion of any street or right-of-way, which may from time to time, be designated by a resolution of the Town Council, as a location where the solicitation of employment is permitted, and where notice has been conspicuously posted at the location by the Town, in English or English and Spanish.

(4) This section shall not be construed so as to prohibit a business or property owner from soliciting or hiring employment at or on its premises. For the purposes of this section, vehicles, recreational vehicles, trailers, and other similar types of mobile locations shall not be considered a business establishment or premises.

Section 4. Prohibition of Solicitation of Employment in Commercial Parking Areas and certain Multi-Family Residential Areas.

(1) No person shall solicit employment from a commercial parking area or from the common areas, service areas or parking and other areas of any multi-family structure, such as an apartment complex, duplex, or residential condominium, where the owner or person in lawful possession of the commercial parking area or multi-family structure(s) has posted a sign on the premises giving notice of the prohibition.

(2) The sign shall comply with each of the following requirements:

(a) Be posted in a conspicuous place where it is easily viewable by persons entering upon, or standing in, the commercial parking area, or in the case of residential property, posted in a conspicuous place in at least one location upon the premises of a multi-family structure(s). Where necessary to be easily viewable due to the size or configuration of the area, more than one sign shall be posted.

(b) Has a size of not less than eighteen by twenty-four (18x24) inches, and not exceeding a total area of six (6) square feet.

(c) Contains a notice with lettering not less than one (1) inch in height substantially the following form:

“IT IS PROHIBITED AND ILLEGAL TO ENGAGE IN THE SOLICITATION OF EMPLOYMENT ANYWHERE IN THIS PRIVATE PARKING AREA AND THE SURROUNDING TWENTY-FIVE (25) FEET.”

For duplexes, triplexes, apartment buildings and complexes, residential condominiums and other multi-family structures, the notice shall be in substantially the following form:

“IT IS PROHIBITED AND ILLEGAL TO ENGAGE IN THE SOLICITATION OF EMPLOYMENT ANYWHERE IN OR UPON THIS PRIVATE PROPERTY AND THE SURROUNDING TWENTY-FIVE (25) FEET.”

This notice may be written in English or in English and Spanish at the owner’s discretion.

(3) Where a sign (or signs) is posted in a commercial parking area and/or upon the premises of a multi-family structure(s), and upon complying with this section, there shall be a presumption the sign was posted by the owner and/or person in lawful possession.

(4) An owner or person in lawful possession, who has posted such a sign in a commercial parking area(s) and/or upon the premises of a multi-family structure(s), shall send written notification of the prohibition to the Town Clerk containing a map showing the legal boundaries of the subject property, and the commercial parking area or multi-family structure(s), and the name, address and telephone number of the owner or the owner’s property manager.

Section 5. Violation; Penalty.

Violations of the above Sections of this Code is hereby deemed to be a violation of the Town Code, and shall be enforced according to the provisions of Section 1-11 of the Town Code, as may be amended from time to time..

Section 3. Codification. The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of the Town of Loxahatchee Groves.

Section 4. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Repeal of Laws in Conflict. All ordinances or parts of ordinances of the Town of Loxahatchee Groves, Florida, which are in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Effective Date. The provisions of this Ordinance shall become effective upon adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 22 DAY OF January, 2008.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS 5th DAY OF February, 2008.

TOWN OF LOXAHATCHEE GROVES,
FLORIDA

ATTEST:

Matthew Lynn
TOWN CLERK or Authorized Representative

David Browning
Mayor David Browning

Marge Herzog
Vice Mayor

Shirley Lynn
Council Member

APPROVED AS TO LEGAL FORM:

DNT
Office of the Town Attorney

[Signature]
Council Member

[Signature]
Council Member

DNT:js
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