

REGULAR

NUMBER: 314

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 15 ("RESIDENTIAL TRESPASS, CANVASSING AND SOLICITATION") TO TITLE V ("PUBLIC HEALTH, SAFETY AND WELFARE") OF THE MILPITAS MUNICIPAL CODE, RELATING TO THE TRESPASS OF CANVASERS, SOLICITORS, AND OTHERS ON RESIDENTIAL PROPERTY

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of September 3, 2024, upon motion by Vice Mayor Chua and was adopted (second reading) by the City Council at its meeting of September 17, 2024, upon motion by Councilmember Lien. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

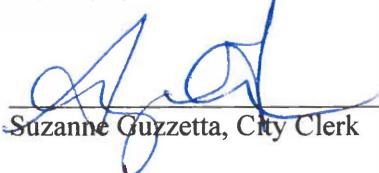
AYES: (5) Mayor Montano, Vice Mayor Chua, Councilmembers Barbadillo, Lien, and Phan

NOES: (0) None.

ABSENT: (0) None.

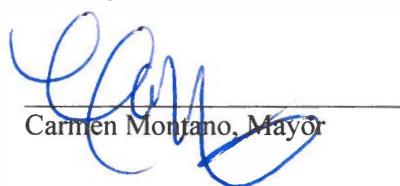
ABSTAIN: (0) None.

ATTEST:



Suzanne Guzzetta, City Clerk

APPROVED:



Carmen Montano, Mayor

APPROVED AS TO FORM:



Michael Mutalipassi, City Attorney

RECITALS AND FINDINGS:

WHEREAS, persons and entities have been visiting and continue to visit private residential properties for various uninvited purposes, including peddling goods, wares, merchandise, or services, canvassing for support, polls, volunteers, or other purposes, soliciting for orders, donations, or alms, or preaching, proselytizing, or otherwise discussing or distributing news, information, or views; and

WHEREAS, residents are concerned that some of these uninvited visitors are going door-to-door to gather information and scrutinize their homes for future burglaries or other crimes; and

WHEREAS, residents complain that they have been harassed, intimidated, threatened, or scared while in their own homes by some canvassers and/or solicitors going door-to-door; and

WHEREAS, uninvited door-to-door canvassing and solicitation of unwilling residents for any purpose jeopardizes the right of residents in the city to enjoy the privacy of their homes in tranquility and security; and

WHEREAS, property owners and occupants have the right to reasonably control and peacefully enjoy their residential property, including by preventing unlawful trespass upon that property; and

WHEREAS, the interests of residents in the privacy and the quiet enjoyment of residential premises are protected by reasonable regulation of unwanted and uninvited door-to-door visitors; and

WHEREAS, the City has the power and legitimate interest to secure to residents their ability to self-determine and control the ability of trespassers to intrude upon their residential property, including by prohibiting unwanted canvassers and solicitors; and

WHEREAS, the distribution of canvassing or solicitation materials upon residential property in the city creates a serious police problem and a threat to public safety and welfare including that residential property can become cluttered with an accumulation of such material or otherwise or in addition inadvertently advertise the absence of the owner or occupant and increase the likelihood of criminal activities on the property; and

WHEREAS, such practices, if not in compliance with the reasonable regulation thereof, are injurious and inimical to the public health, safety, and welfare of residents of the city, create a public nuisance, and should therefore be regulated by the city; and

WHEREAS, the City has limited resources and staff with which to remedy violations of this Chapter, and that the enforcement of this Chapter will be enhanced—and the public peace, health and safety will be protected—if the owner, occupant, or other person in charge of or lawfully in possession of the property is given a civil remedy against parties violating this Chapter.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. ENACTMENT OF MILPITAS MUNICIPAL CODE TITLE V (“PUBLIC HEALTH, SAFETY AND WELFARE”), CHAPTER 15 (“RESIDENTIAL TRESPASS, CANVASSING AND SOLICITATION”)

Title V (“Public Health, Safety and Welfare”), Chapter 15 (“Residential Trespass, Canvassing and Solicitation”) of the Milpitas Municipal Code is hereby added to read as follows:

Chapter 15 – RESIDENTIAL TRESPASS, CANVASSING AND SOLICITATION

Section 1 – Legislative Findings and Declaration of Intent

V-15.1.01

The City finds and declares that persons and entities have been visiting and continue to visit private residential properties for various uninvited purposes, including peddling goods, wares, merchandise, or services, canvassing for support, polls, volunteers, or other purposes, soliciting for orders, donations, or alms, or preaching, proselytizing, or otherwise discussing or distributing news, information, or views. The City recognizes the traditional use of such door-to-door visitations for the purpose of communication and commercial pursuits, particularly among grassroot or community organizations and small or local businesses. The City also recognizes that property owners and occupants have the right to control and peacefully enjoy their residential property, and some residents find these activities to be intrusive upon their quiet and privacy. As such, the City enacts this Chapter for the purpose of securing to residents the power to self-determine and choose whether to allow such unsolicited visitors upon their property, including by posting appropriate signs. This Chapter is not intended to prevent or limit entry upon residential property for lawful and legitimate purposes as opposed to permissive entries that a resident may legally choose to limit or refuse.

Section 2 – Definitions

For the purpose of this Chapter only, and not for the purpose of construing any other part of this Code, the following words and phrases shall have the meaning respectively ascribed to them by this Section.

V-15-2.01 – Canvas, Canvasing, and Canvasser

“Canvas” or “Canvasing” shall mean the act of entering or otherwise intruding upon residential property in the city for the purpose of acquiring or disseminating news, information, writings, or views, whether for profit or not, including polling, surveying, preaching, proselytizing, or seeking support for or opposition to any person, cause, organization, philosophy, or venture. A “Canvasser” shall mean any person engaged in or attempting or assisting in canvasing.

V-15-2.02 – Resident

“Resident” shall mean the owner, occupant, or other person in lawful possession of a residential property, in whole or in part, jointly or severally. “Residents” include tenants, lessees, trustees, administrators, property managers, and any person lawfully residing at the property.

V-15-2.03 – Residential Property

“Residential Property” shall mean private property upon which a residential structure is located. “Residential Property” includes the entirety of the private property but does not include any public right of way or access easement over that property. For the purpose of multi-family properties with separately

habitable units, each unit shall be separately considered its own residential property and common areas shall not be considered residential property.

V-15-2.04 – Sign

“Sign” shall mean any form of signage otherwise meeting the requirements of Section V-15-3.05, including any placard, decal, sticker, banner, or graphic.

V-15-2.05 – Solicit, Solicitation, and Solicitor

“Solicit” or “Solicitation” shall mean the act entering or otherwise intruding upon residential property in the city for the purpose of offering or acquiring a good, service, investment, or venture, or seeking contributions, gifts, donations, or any other thing of value or compensation of any kind, for whatever purpose or cause whether for profit or not. A “Solicitor” shall mean any person engaged in or attempting or assisting in solicitation.

Section 3 – No Trespass Upon Residential Property

V-15-3.01 – Trespass on Residential Property Prohibited

Unless exempt pursuant to Section V-15-3.06, no person shall enter or remain upon any residential property after being notified by a resident to stay away or leave. No person shall enter or reenter residential property they have been so asked to stay away from or leave without receiving express permission to enter from a resident.

V-15-3.02 – Solicitation on Posted Residential Property Prohibited

No person shall solicit upon any residential property posted with a “No Soliciting” or other similar sign unless exempt pursuant to Section V-15-3.06.

V-15-3.03 – Canvassing on Posted Residential Property Prohibited

No person shall canvass upon any residential property posted with a “No Canvassing” or other similar sign unless exempt pursuant to Section V-15-3.06.

V-15-3.04 – Trespass on Posted Residential Property Prohibited

No person shall enter or remain upon any residential property posted with a “No Trespassing” or other similar sign, including for the purpose of soliciting or canvassing therein, unless exempt pursuant to Section V-15-3.06.

V-15-3.05 – Sign Placement and Standards

- a. For Sections V-15-3.02, V-15-3.03, or V-15-3.04 to apply, the residential property must be posted with at least one sign with letters at least two-inches in height stating “No Soliciting,” “No Canvassing,” “No Trespassing,” or other words to similar effect, as prescribed by the applicable section, conspicuously posted, visible, and unobstructed at one or more of the following locations:
 1. Upon or within five feet of any door or other entrance to any residential unit, structure, vestibule, or enclosed curtilage on the property;

- 2. At or within five feet of the beginning of the walk, driveway, or other path of travel into the property;
 - 3. If the property is enclosed by a fence, upon or within five feet of any gate or other opening in the fence through which people or vehicles could enter; or
 - 4. Upon the mailbox or mailbox post or holder for the property, if the mailbox is detached from the primary residence and located adjacent to the sidewalk.
- b. The sign may provide conditions to entry or exceptions to any prohibition against entry.
 - c. If at least one such sign is not visible from the sidewalk or other public way adjacent to the property, then without violating Sections V-15-3.02, V-15-3.03, or V-15-3.04, a person otherwise permitted upon the property may enter and directly follow the path of ordinary travel until such time as the sign would become visible and then immediately and without delay leave. In no event may a person so enter the property if he or she knows or reasonably should have known that the property is posted in substantial compliance with Sections V-15-3.02, V-15-3.03, or V-15-3.04.
 - d. A sign posted in substantial compliance with this Section shall be sufficient to sustain a violation. Where a sign does not strictly comply with this Section, however, there shall be no violation if a defendant can prove by a preponderance of the evidence they neither knew nor reasonable should have known that the property was posted in attempted compliance with Sections V-15-3.02, V-15-3.03, or V-15-3.04.

V-15-3.06 – Authorization of Police Department to Act

By posting a sign stating “No Soliciting,” “No Canvassing,” “No Trespassing,” or other words to similar effect, the residents of the property shall have authorized any law enforcement officer authorized to enforce a violation of this Chapter to act as their agent for the purpose of enforcement, including warning and forbidding persons from trespassing upon the residential property.

V-15-3.07 – Exception for Residents, Tenants, Occupants, Invitees, Licensees, and Others with Legal Right to Enter

The following persons or entities are exempt from violations of this Chapter:

- a. Any resident of the property.
- b. A neighbor who enters upon the residential property of another neighbor on an intermittent and infrequent basis for purposes common in the community.
- c. Persons delivering mail and shipments through a governmental, common, or private carrier.
- d. Any person who has express permission to enter or remain upon the property from any resident of the property. The resident who gave this permission may revoke this permission and tell the individual to leave in conformity with Section V-15-3.01 at any time. This exception includes:
 - i. Deliveries including newspaper deliveries a resident has requested.
 - ii. Good or service providers a resident has requested.
 - iii. Neighbors, relatives, and other persons who have been invited to the property, including on an open or standing basis.
- e. The City of Milpitas, or any other government entity, including any governmental employee, officer, official, agent, contractor, volunteer, or other person or entity acting on a government entity’s behalf.
- f. Any person who is upon another’s residential property under claim or color of legal right.

- g. Any person who is upon another's residential property pertaining to a dispute with a resident of the property where the participants have available to them practical and effective civil remedies, including the following situations:
- i. Marital and post-marital disputes;
 - ii. Child custody or visitation disputes;
 - iii. Disputes regarding title to or rights in real property;
 - iv. Landlord-tenant disputes;
 - v. Disputes between members of the same family or between persons residing upon the property concerned up until the time of the dispute;
 - vi. Employer-employee or contractor-contractee disputes;
 - vii. Business disputes, including between business partners;
 - viii. Debtor-creditor disputes;
 - ix. Service of legal process; and
 - x. Instances wherein the person has a bona fide claim of right to be present pursuant to an order, decree, or process of any court or any executive, administrative, judicial, or quasi-judicial official or body.

V-15-3.08 – Calling on to Property, Knocking, Disturbing Peace Also Trespass

Even if they do not physically enter upon the property, a person or entity shall have trespassed, canvassed, or solicited in violation of Sections V-15-3.01, V-15-3.02, V-15-3.03, and V-15-3.04 if they otherwise intrude upon the quiet enjoyment of the property in violation of the relevant notification or sign, including by hawking or otherwise making noise, depositing a writing, or otherwise trespassing upon the property or causing or conveying an unwanted act of canvassing or solicitation upon the property.

V-15-3.09 – Sponsoring Person or Entity Liable

In addition to the principal violator, a person or entity on whose behalf an act of trespass, canvassing, or solicitation in violation of this Chapter is done shall be jointly and severally liable for each such violation unless the person or entity can prove by clear and convincing evidence either:

- a. The person or entity had no actual or constructive knowledge that the principal violator would be going door-to-door on their behalf; or
- b. The person or entity provided the principal violator with a written advisement about the requirements of this Chapter, including a copy of this Chapter, which the principle violator signed acknowledging receipt prior to going door-to-door.

For the purpose of the affirmative defense in Section V-15-3.09(a), there shall be a rebuttable presumption that a person or entity has actual or constructive knowledge of all actions of their employees, agents, officials, contractors, and assigns. The affirmative defense in Section V-15-3.09(b) shall not be available if the person or entity cannot produce a genuine original or copy of the signed written advisement.

V-15-3.10 – Enforcement

- a. In addition to all other remedies and actions allowed by law, any violation of this Chapter may be enforced by administrative citation, pursuant to Title I, Chapter 21 of this Code, or criminal prosecution, pursuant to Section I-1-4.09 of this Code.
- b. At the City Attorney's discretion, violations of this Chapter may be charged as a misdemeanor, punished by a fine not to exceed the sum of five hundred dollars (\$500) or by imprisonment in the County Jail not to exceed six (6) months or by both such fine and imprisonment, or an infraction, punished by a fine not exceeding one hundred dollars (\$100) for a first violation, a fine not exceeding two hundred dollars (\$200) for a second violation within one year, or a fine not exceeding five hundred dollars (\$500) for each additional violation within one year.

V-15-3.11 – Private Right of Action Permitted

- a. In addition to all other remedies and actions allowed by law, any resident of a property upon which an act of trespass, solicitation, or canvassing has occurred in violation of this Chapter may bring a civil action against any person or entity that has violated Sections V-15-3.01, V-15-3.02, V-15-3.03, V-15-3.04, and/or V-15-3.09.
- b. If the resident prevails in that action, the Court shall award:
 - a. Injunctive relief sufficient to prevent the defendant(s) from violating this Chapter or engaging in acts that aid, abet, operate, conceal, or allow violations of this Chapter;
 - b. Disgorgement of profits or other monies or value unlawfully obtained in violation of this Chapter;
 - c. Compensatory damages;
 - d. A statutory penalty up to one thousand dollars (\$1,000.00) per violation;
 - e. Treble damages and/or treble penalties for a second or subsequent violation in any two-year period; and
 - f. Reasonable attorney's fees and costs of suit and investigation.
- c. No award of attorney's fees against the resident shall be allowed in that action unless the Court determines, upon a duly noticed motion, that the action was not brought in good faith and with reasonable cause.
- d. The remedies described in this Section are in addition to any other remedy available at law and do not limit, preclude, or restrict any other right, remedy, or action otherwise available.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City Council finds and determines that the adoption of this ordinance is not a project and is not subject to CEQA review because it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change, particularly in that it does not alter the use of land or does a most does not do so inconsistently with uses already authorized, prohibited, or regulated by law. (Cal. Code Regs., tit. 14, § 15378.) This ordinance also is not a project because it amounts to general policy and procedure making that does not relate to the enactment or amendment of zoning ordinances or the other activities identified as potential “projects.” (Cal. Code Regs., tit. 14, § 15378(b)(2).) Furthermore, even if considered a project, this amending ordinance is categorically exempt from CEQA review in that it comprises of non-land use regulations or at most minor alterations in land use limitations that do not result in any changes in land use or density (Cal. Code Regs., tit. 14, § 15305, 15378(a)(1)) and by common sense can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment particularly in consideration of the activities already permitted, prohibited, or regulated by law (Cal. Code Regs., tit. 14, § 15061(b)(3)). This amending ordinance is also exempt because it does not affect development density established by existing zoning and the City’s General Plan, for which an Environmental Impact Report was already certified, and does not have any project-specific significant environmental effects peculiar to the project or any site. (Cal. Code Regs., tit. 14, § 15183.)

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. Notwithstanding this effective date, however, the provisions of this Ordinance shall not become operative until January 1, 2025. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.