

RESIDENTIAL TRESPASS, CANVASSING AND SOLICITATION ORDINANCE

Title V, Chapter 15 of the Milpitas Municipal Code Sections V-15-1.01 through V-15-3.11

To further secure a resident's right to choose who comes on their property, on September 17, 2024, the City Council of the City of Milpitas adopted a law that allows residents to take enforcement action against those who trespass on residential property in violation of properly posted signs or an order by the resident to leave.

Answers to frequently asked questions are listed below. These answers are meant to be informative, but staff cannot anticipate every question or the facts of your situation. This information is not legal advice; you should consult with an attorney about your particular case. This information is also a summary, and it is not a substitute for reading and knowing the law.

FREQUENTLY ASKED QUESTIONS (FAQ)

What is the Solicitation Ordinance?

It is a city ordinance that boosts Milpitas residents' privacy by empowering a resident's right to choose who comes on their property and allowing them to take legal action against those who violate their expressed choice.

When does this law take effect?

The City Council made this ordinance effective January 1, 2025.

How does it work?

The ordinance protects a resident's right to choose by allowing them to post three different signs depending on who they want to allow onto their property. Even if a resident does not post a sign, the law also allows residents to order unwanted visitors from their property. If a trespasser does not comply with a properly posted sign or a request by a resident to leave, they may be liable for a violation of this ordinance.

What are the three kinds of signs that can be posted?

- A "No Solicitors" sign would prohibit solicitors offering a good or service or seeking contributions
- A "No Canvassers" sign would prohibit canvassers distributing news, information, or views
- A "No Trespassing" sign would prohibit any uninvited stranger, including both solicitors and canvassers

Where should these signs be posted?

For the ordinance to apply, the sign must be posted in one of four locations:

1. Within five feet of any door or other entrance to any residential unit, structure, vestibule, or enclosed curtilage on the property;
2. 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. If the mailbox is detached from the primary residence and located adjacent to the sidewalk, upon the mailbox or mailbox post or holder.

What size must the sign be?

So long as the sign meets the other requirements of Section V-15-3.05 of the Milpitas Municipal Code, it can be of any form the resident chooses, including a placard, decal, sticker, banner, or graphic. Note that signs over a certain size or meeting other characteristics must comply with the City's Zoning Ordinance.

Besides the required language ("No Soliciting," "No Canvassing," "No Trespassing"), the signs must:

- Use letters at least two inches in height;
- Be conspicuous, visible, and unobstructed; and
- Be in one of four specified locations.

What if the sign is not visible?

The ordinance clearly describes where signs should be posted, so canvassers or solicitors can look for them, and requires the signs to be conspicuous, visible, and unobstructed. Signs that are not posted as the ordinance requires may not be enforceable, particularly if a visitor should not have reasonably known they were there.

Furthermore, if a sign is not visible from the sidewalk, then uninvited visitors are allowed to approach until the sign would become visible, but then must leave.

What if the resident does not put up a sign?

Even without a sign, uninvited visitors must follow a resident's order to stay or leave their property.

What if the resident changes their mind about a visitor after they initially welcomed them?

Even if residents post a sign, they can always give permission to enter and withdraw this consent at any time.

Residents may add exceptions or conditions to the sign to further specify exactly who they are willing to allow on their property.

What types of property does this ordinance protect?

This ordinance applies to all “residential property,” which means private property upon which a residential structure is located. It includes the entirety of that private property but does not include any public right of way or access easement over the property.

For multifamily residential properties with separately habitable units – such as apartment buildings, duplexes, or townhouse communities – each unit is separately considered its own “residential property.” Common areas in such multifamily properties – such as shared hallways, walkways, or communal parks or facilities – do not qualify as “residential property” under this ordinance.

Who is a “resident” allowed to post signs and refuse access to a Residential Property?

A “resident” authorized under the ordinance is any owner, occupant, or other person in lawful possession of a “residential property,” as defined. A “resident” includes all tenants, lessees, trustees, administrators, property managers, or anyone else lawfully residing at the property.

It does not matter if the resident owns, occupies, or possesses the property by themselves or jointly or severally with others. Similarly, it does not matter if the resident owns, occupies, or possesses only part of the property (such as a backyard accessory dwelling unit or ADU), although for multifamily properties with separate habitable units, each unit is considered its own “residential property” for the purpose of this ordinance and common area in such multifamily properties does not qualify as “residential property.”

What if I am a business, campaign or other organization sending people door-to-door?

Persons or entities sending people door-to-door on their behalf need to tell their canvassers or solicitors about this ordinance and make sure they know to follow it.

In addition to the person who trespasses, the person or entity on whose behalf an act of trespass, canvassing, or solicitation occurred can also be liable for the violation unless:

- a. They had no reason to know the person was going door-to-door on their behalf; or
- b. Before the person goes door-to-door, they provide them a copy of this ordinance and obtain a signed acknowledgement of receipt.

Are there exceptions?

Exceptions apply, including for neighbors, deliveries, and government entities. There are also exceptions for anyone entering the property under legal right, such as for service of legal process or a court order, or as part of a dispute where the parties have effective civil remedies, such as landlord-tenant or contractor disputes. See the ordinance itself for the complete list of exceptions.

If there is a violation, who do I call?

Residents, not the City, have the primary ability to enforce the ordinance against individual violations. It is the people who witness a violation that can testify firsthand about it. Moreover, this ordinance allows residents to sue and obtain damages for a violation or to prevent the likelihood of further violations.

In addition to all other remedies and actions allowed by law, this ordinance specifically empowers residents to bring a civil action (a lawsuit) against any person or entity that trespasses, solicits, or canvasses in violation of a proper posting on the premises.

Residents may also sue those that enter or remain upon residential property after being notified by a resident to stay away or leave. Under certain circumstances, residents can also sue the sponsoring person or organization that sent the trespasser door-to-door.

What if my homeowner's association (HOA) has rules against posting signs?

This ordinance provides a tool to residents for preventing unwanted trespass on their property, but it does not excuse residents from complying with other laws or the rules of their community. Before posting any signs, you should educate yourself about any rules or laws that are unique or applicable to your community. Even in those communities where posted signs are not allowed, a resident may still have the power to order someone from their residential property under the ordinance.