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City Clerk

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October 17, 2017

**To: City Council Members, Mayor Marlin**  
**RE: Solicitation Ordinance repeal**

### **Introduction**

This proposed Code amendment will repeal Chapter 17 and amend Chapter 15 to regulate garage sales.

### **Background**

Urbana City Code Chapter 17 regulates peddlers, solicitors, and transient merchants. On-street and door-to-door solicitation are forms of free speech protected by the First Amendment. Chapter 17 implicates First Amendment rights because it distinguishes between different types of solicitation based upon the solicitors' messages. It exempts persons involved in charitable or political solicitation from obtaining a license but requires those engaged in commercial activities to comply with the chapter's licensing requirements. Because the necessity for a license depends entirely on the subject of the message to be expressed, Chapter 17 imposes content-based restrictions on free speech. In *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015), the United States Supreme Court held that such restrictions are presumptively unconstitutional. Accordingly, the proposed amendment will repeal Chapter 17.

Repealing this chapter will eliminate Section 17-3, which prohibits solicitors from (1) entering a private residence after the occupant asks the solicitor to leave; or (2) disobeying a "no solicitors" sign. Nevertheless, the Police Department will be able to address complaints of these kinds using Urbana City Code Section 15-35, which generally deals with criminal trespass. Section 15-35 prohibits any person from (1) remaining on the land of another after receiving notice to depart; or (2) entering upon the land of another in violation of a sign stating that entry is forbidden.

Repealing Chapter 17 also will abolish Section 17-2, which regulates garage sales. As such, the proposed amendment will add a section to Chapter 15 to allow no more than six garage sales on residential premises within a 12-month period.

### **Fiscal Impact**

Approval of the proposed amendment will have no direct fiscal impact because the City Council eliminated the solicitor licensing fee in July. Non-approval will allow Urbana City Code provisions that are inconsistent with the First Amendment to remain in effect and will hinder the City's ability to regulate garage sales.

### **Recommendation**

Approve the ordinance repealing Urbana City Code Chapter 17 and amending Chapter 15 regarding garage sales.



**ORDINANCE NO. 2017-10-064**

**AN ORDINANCE REPEALING URBANA CITY CODE CHAPTER 17 AND  
AMENDING CHAPTER 15 REGARDING GARAGE SALES**

**WHEREAS**, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

**WHEREAS**, the City Council heretofore enacted Urbana City Code Chapter 17 to regulate peddlers, solicitors, and transient merchants in the City; and

**WHEREAS**, the First Amendment to the United States Constitution prohibits the government from restricting free expression because of its message, ideas, subject matter, or content; and

**WHEREAS**, the restrictions Chapter 17 places upon free speech are contrary to the rights protected by the First Amendment; and

**WHEREAS**, the City Council, after due consideration, finds that repealing Chapter 17 is necessary to comply with the First Amendment; and

**WHEREAS**, the City Council further finds that amending Urbana City Code Chapter 15 to regulate garage sales in the City, as herein provided, will protect the public health, safety, and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Urbana, Illinois, as follows:

**Section 1.** Urbana City Code Chapter 17, “Peddlers, Solicitors and Transient Merchants,” is hereby repealed upon the effective date of this Ordinance.

**Section 2.** Urbana City Code Chapter 15, “Miscellaneous Offenses and Provisions,” Article I, “In General,” is hereby amended by the addition thereto of a new section to be known and designated as Section 15-6, “Garage sales,” and to read as follows:

Sec. 15-6. - Garage sales.

- (a) For the purposes of this section, a “garage sale” is any occasion in which tangible personal property is offered for sale to the public on or from a residential premises, including without limitation all sales entitled “garage,” “yard,” “tag,” “lawn,” “attic,” “basement,” “rummage,” “estate,” “flea market,” or any similar casual sale of tangible personal property.

- (b) No person, shall operate, conduct, manage, allow, or permit to be conducted more than six (6) garage sales on any such premises within a twelve (12) month period or any garage sale exceeding three (3) consecutive calendar days. No person, shall operate, conduct, manage, allow, or permit to be conducted a garage sale except as permitted by this section.
- (c) This section does not apply to persons selling tangible personal property pursuant to process or order of a proper court of competent jurisdiction.

Secs. 15-7—15-15. - Reserved.

**Section 3.** Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

**Section 4.** This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

**Section 5.** The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

**PASSED BY THE CITY COUNCIL** this \_\_\_ day of \_\_\_\_\_, 2017.

AYES:

NAYS:

ABSTENTIONS:

\_\_\_\_\_  
Charles A. Smyth, City Clerk

**APPROVED BY THE MAYOR** this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Diane Wolfe Marlin, Mayor