

**BARTOW COUNTY SOLICITATION ORDINANCE**

AN ORDINANCE OF THE COUNTY COMMISSIONER OF BARTOW COUNTY SITTING FOR COUNTY PURPOSES FOR THE PURPOSE OF **ADOPTING A SOLICITATION ORDINANCE; PROVIDING FOR PERMITS FOR STREET SOLICITATION; CONTROLLING LOCATION AND REQUIREMENTS FOR SOLICITORS; PROVIDING FOR ENFORCEMENT AND PENALTIES;** AND FOR OTHER PURPOSES AT THE REGULAR MEETING OF THE COMMISSIONER OF BARTOW COUNTY HELD ON THE 7th DAY OF MAY, 2004.

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**WHEREAS**, under O.C.G.A. §§40-6-97 and 40-6-97.1, and under the general powers vested by law, Bartow County has the authority to regulate solicitation on roadsides and elsewhere in the County; and

**WHEREAS**, unlicensed solicitation by unregistered solicitors is a health and safety hazard to the solicitors, drivers and other pedestrians, and also exposes the citizens of Bartow County to fraudulent solicitors, and harms legitimate charities; and

**WHEREAS**, the Commissioner deems it to be in the best interests of the citizens of the County that a Solicitation Ordinance be enacted in accordance with law;

**NOW THEREFORE, BE IT ORDAINED**, and IT HEREBY IS ORDAINED, pursuant to Georgia law and the powers vested in the Commissioner, that the Bartow County Solicitation Ordinance is adopted as follows:

**BARTOW SOLICITATION ORDINANCE**

**ARTICLE I  
GENERAL PROVISIONS**

**SECTION 101      PURPOSE**

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, and general welfare by regulating road-side solicitation and other charitable events where contributions are sought. Solicitors are put at risk by entering the roadway and also put drivers and other pedestrians at risk. The citizens of Bartow County are subject to unregulated solicitation by sometimes questionable organizations, or solicitations in a hazardous manner or location. It is the purpose of this Ordinance to regulate solicitation on streets and highways and other public areas of the County, to protect the public health, safety and welfare.

**SECTION 102      DEFINITIONS**

- A. Definitions. The following words as used in this Ordinance shall have the following meanings:
1. *Applicant* shall mean the charitable organization seeking a permit.
  2. *Charitable Organization* means organizations which is qualified under Section 501(c) of the Internal Revenue Code of 1986, as amended; Georgia registered non-profit corporations; churches; and public and private schools. Charitable organizations must also either be registered with the Secretary of State under O.C.G.A. § 43-17-5 or be exempt from such registration under O.C.G.A. § 43-17-9.
  3. *Event* means any charitable solicitation within the County.
  4. *Event Permit* means a permit issued pursuant to this Ordinance to conduct an event.
  5. *Organizer* means the person responsible for organizing the event and whose name shall be on the application.
  6. *Permit* shall mean an event permit.
  7. *Sheriff* means Sheriff of Bartow County or his or her designee.
  7. *Solicitor* means any person who engages in solicitation.
  8. *Solicitation* or *Charitable Solicitation* means the act of asking for employment, business or contributions on a public road, street, highway, right-of-way, sidewalk or other public property from the occupant of any vehicle or any pedestrian.
  9. *Travel Lanes* means the marked lanes on a road or highway, or the lanes of travel for vehicles, including turn lanes, access lanes, and acceleration or deceleration lanes.

**SECTION 103      RESTRICTIONS**

- A. Solicitation Restricted. Pursuant to O.C.G.A. § 40-6-97(b), Bartow County prohibits any person from standing or entering on a highway or public street of the County for the purposes of soliciting employment, business solicitations, and/or contributions from the occupant of any vehicle or any

pedestrian without a permit. Solicitation shall only be allowed by charitable organizations with a permit, under the terms of this Ordinance. It shall be a violation of this Ordinance to engage in solicitation without a permit, or otherwise not in accordance with the terms of this Ordinance and the permit.

- B. Permit Required. No charitable organization is allowed to engage in solicitation on any public street or highway in the County without first obtaining an event permit. Persons, businesses and organizations that are not charitable organizations as defined in this Ordinance are not eligible to receive a permit for solicitation. An event permit shall be obtained from the Sheriff. An event permit is not required for any event sponsored or conducted by Bartow County or its departments and agencies, nor by any municipality or government agency in the County, such as fire-fighter “boot drives” and similar collections.

#### **SECTION 104 PERMIT REQUIREMENTS**

- A. Permit Application. All requests for a permit must be provided to the Sheriff at least five (5) business days but no more than sixty (60) calendar days prior to the date of the requested activity. The Sheriff shall issue a decision within three business days of the application being filed. The Sheriff, for good cause shown, shall have the authority to consider any application under this section which is filed less than five business days before the date such event is proposed to be conducted, provided the Sheriff shall have adequate time to conduct the investigation. An application and permit shall be required for each event, provided however only one (1) application and permit shall be required for each proposed event.
- B. Required Information. All applications for permits must include at a minimum the following information, and shall be signed by the Organizer(s):
1. Name and address of charitable organization, including headquarters address and address of the Bartow County office, or the address of the closest branch office if there is no Bartow County office;
  2. Type of organization and certification, if listed below. The organization must be one of the following types to apply for a permit:
    - a. Organization qualified under Section 501(c) of the Internal Revenue Code of 1986, including certification from IRS;
    - b. Non-profit corporation registered in Georgia, including certification from Secretary of State;
    - c. Church; or

- d. Public or private school;
  3. Name of Organizer(s), and address, height, weight, age, sex, race, and social security number of each organizer for background check purposes;
  4. Photocopy of driver's license or other official photo identification of each Organizer;
  5. Proposed solicitation activity, and purpose for activity (i.e., use of funds);
  6. Specific location(s) for solicitation activity, including specific intersections, and number of solicitors at each such location;
  7. Dates and times of solicitation activity;
  8. Names of all participants proposed to be solicitors, and their ages;
  9. If any solicitors are under 18, the names and addresses of adult supervisors; one adult supervisor per four solicitors under age 18 is required;
  10. If the event is to be held on behalf of any person or organization other than the applicant, a communication in written form from that person or organization authorizing the applicant to apply for the permit;
  11. The application shall contain a statement that the submission of the application shall be considered to be consent by the organizer(s), the charitable organization, and the officers of the organization for a background check to be run by the Sheriff at his discretion on any person named on the application, and a statement that all information contained thereon is true and correct; and
  12. Any additional information the Sheriff may find reasonably necessary for a fair determination as to whether the proposed event will endanger public health, safety or welfare.
- D. Organizer. A minimum of one organizer is required for an event. No more than five persons shall be designated organizers for any event. The organizer(s) are required to be at the event in person at all times. There shall be one organizer for each location where solicitation is occurring. All events shall be conducted under the supervision of a person or persons making

application for same (the organizer) and shall be conducted in a peaceable and orderly manner in compliance with the laws and ordinances applicable thereto.

- E. Permit Onsite. The signed permit is to be kept on-site in the possession of an organizer at all times that solicitation is underway. If multiple locations are involved, a permit copy shall be kept at each location by each organizer. Permits shall be displayed at the request of any citizen or law enforcement personnel.
- F. Fees. An application shall be accompanied by an application fee of \$50 to cover the cost of investigation and an additional \$50 permit fee (\$100 total). If the permit application is denied, the \$50 permit fee shall be refunded. These fees may be raised from time to time by the Commissioner of Bartow County. The Sheriff shall have the authority to waive or reduce the fees on a case-by-case basis.

#### **SECTION 105            INVESTIGATION AND ISSUANCE**

- A. Investigation. The Sheriff shall review the application for completeness and compliance with the terms of this Ordinance. The Sheriff shall check if the charitable organization is registered with the Secretary of State, or is exempt under O.C.G.A. § 43-17-9. The Sheriff shall determine whether there are any records of complaints against the applicant or organizers in the records of the Sheriff's Department or the GCIC/NCIC crime database system. The Sheriff may, at his discretion, conduct a background check of the organizers or corporate officers, or any other person named on the application. The Sheriff may, at his discretion, make any other inquiries he deems necessary for the investigation of the applicant or the organizers.
- B. Decision. The Sheriff may grant, deny, or grant a restricted permit. The Sheriff shall issue a permit as provided in this Ordinance from a consideration of the application and from such information as may otherwise be obtained, unless he finds that any or all of the following apply:
  - 1. The conduct of the event will substantially interrupt the safe and orderly movement of traffic;
  - 2. The conduct of the event will substantially interrupt the safe and orderly movement of fire fighting equipment en route to a fire, or other emergency services;

3. The applicant or any organizers or participants have any criminal complaints pending against them, or have a criminal record involving crimes of theft, fraud, or other moral turpitude;
4. The applicant is not a qualifying charitable organization or is otherwise not a legitimate organization;
5. The Sheriff has reasons to believe the event is a fraud or sham;
6. If a charitable organization required to be registered with the Secretary of State under O.C.G.A. § 43-17-5, it is not so registered;
7. The conduct of the event is contrary to the public's health, safety or general welfare; or
8. The application was not complete, or the application or permit requested are not fully in compliance with the requirements of this Ordinance.

The Sheriff shall indicate on the application review form all reasons for rejection of the application.

- C. Restrictions. The Sheriff shall indicate on the permit the permitted activities, locations, and times of the event. The Sheriff may approve a smaller or shorter event than requested, may reduce the number of solicitors, may approve a different location, or may generally make any other adjustments he believes necessary to the application to serve the public health, safety and welfare.
- D. Non-Content Based Review. The content of the message of any applicant, their beliefs, the identification of the participants, or any other matter which does not directly impact on the public health, safety, and welfare, shall not be relevant to the determination of whether to grant or deny a permit.

## **SECTION 106 APPEALS**

- A. Appeals. Any person aggrieved by the denial or restriction of a permit shall have the right to appeal the denial or restriction to the Magistrate Court of Bartow County. A written appeal shall be filed with the Court.
- B. Procedure. The Sheriff shall appear and present his case and evidence as to why the application was denied. The applicant shall have the opportunity to

present its case and evidence in support of the application. The hearing shall be conducted as a magistrate court proceeding.

- C. Standard of Review. The Magistrate Court judge, keeping in mind the purpose of this Ordinance, the substantive provisions, and giving deference to the judgment of the Sheriff, shall make a determination as to whether the denial or restriction was lawful and in the interests of the public health, safety and welfare, or whether the permit should be issued or modified. If the latter, the Court shall enter an order providing guidance as to the location, time, persons, and other criteria of this Ordinance.

#### **SECTION 107 SOLICITATION REGULATIONS; LOCATIONS AND TIMES**

- A. Prohibited Times. No solicitation shall be allowed during the following times:
1. Before 9:30 a.m. or after 4:00 p.m. Monday through Friday;
  2. Between the hours of 11:30 a.m. and 1:30 p.m. Monday through Friday;
  3. Before 7:00 a.m. or after 6:00 p.m. on Saturday or Sunday; and
  4. At any time after sunset or before sunrise.
- B. Locations. Solicitation shall only be allowed at intersections on U.S. Highway 41, outside of any municipal corporate boundary, if the intersection has a median strip at least four feet wide where the solicitors can be located. At the discretion of the Sheriff, solicitation may be allowed at intersections of U.S. Highway 411 or Georgia Highways 20, 113 or 140 where there is a median strip at least five feet wide. Solicitors are required to stay on median strips, sidewalks or otherwise out of the street. Solicitation from travel lanes is not permitted. When all vehicles are stopped at an intersection, solicitors may approach cars to receive donations if the occupants have indicated they seek to make a donation. Walking along a line of cars shall only be permitted if the solicitor stays out of the travel lanes. No more than one organization may solicit at the same intersection at the same time. An event may occur at more than one location or intersection on the same day.
- C. Duration. An event may last no longer than two days. A separate permit shall be required for each additional event (i.e., six days would require three permits).

- D. Solicitors under 18. All charitable organizations which are permitted to solicit funds must have one adult supervisor over the age of twenty-one for every four persons under the age of eighteen.
- E. Peddling. Peddling shall not be allowed under a peddler's license. A separate peddler's license is required. See the Bartow County Peddling Ordinance.

**SECTION 108 VIOLATIONS, ENFORCEMENT**

- A. Persons soliciting without a permit or in violation of the permit shall be cited with a citation for prosecution in the Magistrate Court, in accordance with the requirements of law for such citations. Any sheriff's deputy shall be authorized to issue such citations.
- B. Any person, organization, business or entity violation the provisions of this Ordinance is subject to a fine of up to one thousand dollars (\$1,000.00) per day per violation per individual participant. The minimum fine shall be \$100.00 per day per violation per individual participant.
- C. Any violation of this Ordinance shall immediately revoke the permit. The Sheriff shall also have the discretion to revoke the permit upon charge of violation being made, or upon awareness of illegal or unauthorized activity, if revocation is required in the best interests of public health, safety and welfare.
- D. Any person, organization, business or entity found guilty of violating this Ordinance may not be issued a permit for a two-year period from the date of the violation. Upon second offense, the person, organization, business or entity found guilty of violating this Ordinance shall be banned from further solicitation in Bartow County.
- E. The County Attorney shall be authorized to seek injunctive relief and other relief in Superior Court if necessary to effectuate the intent of this Ordinance. The County shall be entitled to seek civil fines in the amounts specified above, and shall be entitled to its attorney's fees for any successful action.

**SECTION 109 SEVERABILITY**

If any paragraph, subparagraph, sentence, clause, phrase or any portion of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, or if any provision of any part of this Ordinance as applied to any particular situation or set of circumstances be declared invalid, or unconstitutional, such invalidity shall



not be construed to affect the remaining portions of this Ordinance not so held to be invalid, or the application of this Ordinance or other circumstances not so held to be invalid. It is hereby declared to be the intent of the Commissioner to provide for separable and devisable parts and he does hereby readopt any and all parts hereof as may not be held invalid for any reason.

**SECTION 110 REPEALER**

This Ordinance repeals any prior ordinance or resolution in conflict herewith, except to the extent that said ordinance or resolution is more restrictive than this Ordinance, in which case that ordinance or resolution shall control.

**SO ADOPTED** this 7<sup>th</sup> day of May, 2004, to be effective immediately, the public health, safety, and general welfare demanding.

ATTEST:

BARTOW COUNTY, GEORGIA

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Kathy Gill, Deputy County Clerk

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Clarence Brown, Commissioner