

VILLAGE OF DOWNERS GROVE
Report for the Village
9/17/2019

SUBJECT:	SUBMITTED BY:
Ordinance Repealing Section 15.33 of the Downers Grove Municipal Code	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared repealing Section 15.33 of the Downers Grove Municipal Code.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Exceptional Municipal Services*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the September 17, 2019 active agenda.

BACKGROUND

On February 5, 2019, the Village Council enacted Section 15.33 of the Downers Grove Municipal Code entitled, “Solicitation on Public Rights-of-Way and Highways” to regulate the use of Village rights-of-way and highways for purposes of solicitation. The ordinance was adopted pursuant to Section 5/11-1006 of the Illinois Motor Vehicle Code which authorizes municipalities to adopt ordinances authorizing solicitations on Village rights-of-way and highways and to “determine when where and when solicitations may take place based on the safety of the solicitors and the safety of motorists,” as well as the “orderly flow of traffic, and may not allow interference with the operation of official traffic control devices.” (625 ILCS 5/11-1006). This section of the State law also limits a municipality’s authorization to a soliciting agency which is registered with the Illinois Attorney General, and engaged in a statewide fundraising activity. Section 15.33 of the Downers Grove Municipal Code implements the State statute and sets forth the limitations required by the State statute.

On August 20, 2019, the Village, Robert Berlin, DuPage County State’s Attorney and Brendan Kelly, Director of the Illinois State Police were named federal lawsuit entitled, *Dumiak and Simmons v. Village of Downers Grove, et al.*, challenges the constitutionality of Section 15.33 of the Downers Grove Municipal Code and Section 5/11-1006 of the Illinois Motor Vehicle Code. The Village has ceased enforcement of this ordinance since March of 2019, when we were first notified by the ACLU. The repealing of this ordinance will simply formalize this direction until the constitutionality of Section 5/11-1006 of the Illinois Motor Vehicle Code has been resolved.

Since this ordinance did not appear on a first reading agenda, per Village Council Rule 37 a vote to approve this item shall be deemed to include a motion to waive the first reading.

ATTACHMENTS

Ordinance

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: September 17, 2019
(Name)

RECOMMENDATION FROM: _____ FILE REF: _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE REPEALING SECTION 15.33 OF THE DOWNERS GROVE MUNICIPAL CODE", as presented.



SUMMARY OF ITEM:

Adoption of the attached ordinance shall repeal Section 15.33 of the Downers Grove Municipal Code.

RECORD OF ACTION TAKEN:

Repeal - Solicitation

ORDINANCE NO. _____

**AN ORDINANCE REPEALING SECTION 15.33
OF THE DOWNERS GROVE MUNICIPAL CODE**

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

WHEREAS, on February 5, 2019, the Village Council enacted Section 15.33 of the Downers Grove Municipal Code entitled, “Solicitation on Public Rights-of-Way and Highways” (Ordinance # 5750) to regulate the use of Village rights-of-way and highways for purposes of solicitation; and

WHEREAS, Section 5/11-1006 of the Illinois Motor Vehicle Code authorizes municipalities to adopt ordinances authorizing solicitations on Village rights-of-way and highways and to “determine when where and when solicitations may take place based on the safety of the solicitors and the safety of motorists,” as well as the “orderly flow of traffic, and may not allow interference with the operation of official traffic control devices.” (625 ILCS 5/11-1006). This Section of the Illinois Motor Vehicle Code also limits a municipality’s authorization to a soliciting agency which is registered with the Illinois Attorney General, and engaged in a statewide fundraising activity. (625 ILCS 5/11-1006); and

WHEREAS, Section 15.33 of the Downers Grove Municipal Code implements the State statute and sets forth the limitations required by the State statute; and

WHEREAS, on August 20, 2019, a federal lawsuit entitled, *Dumiak and Simmons v. Village of Downers Grove, et al.*, was filed in the United States District Court for the Northern District of Illinois challenging the constitutionality of Section 15.33 of the Downers Grove Municipal Code and Section 5/11-1006 of the Illinois Motor Vehicle Code; and

WHEREAS, the Village Council is sensitive to the need to protect the First Amendment rights of its citizens in a manner consistent with evolving interpretations of the law; and

NOW, THEREFORE BE IT ORDAINED by the Village Council of the Village of Downers Grove as follows:

Section 1. That Section 15.33 of the Downers Grove Municipal Code entitled, “Solicitation on Public Rights-of-Way and Highways” shall be deleted and repealed as follows:

15.33. Reserved.**Solicitation on Public Rights-of-Way and Highways.**

- (a) ~~Registration Required.~~ No person shall engage in charitable solicitation on any public right-of-way or street/highway within the Village without first having registered for and obtained a certification of registration therefor. The application for a permit to solicit on a public right-of-way or street/highway shall be made only by the charitable organization on behalf of all of the individuals who shall be soliciting. Such application shall include the names and addresses of all such individuals.
- (b) ~~Duration of Registration Limited.~~ Certificates of registration issued pursuant to this section shall be limited to no more than three (3) consecutive days.
- (c) ~~Hours.~~ No person shall engage in charitable solicitation on any public right-of-way or street/highway within the Village between sunset and sunrise.

Repeal - Solicitation

~~(d) *Locations.* Charitable Solicitation on public streets/highways within the Village shall be allowed only at intersections at which all traffic is required to come to a full and complete stop. Neither the solicitor nor the business or organization represented by the solicitor shall engage in charitable solicitation at any more than four (4) such intersections at one time within the Village. The Village Manager or his/her designee shall have the power to limit the number of solicitors to be active at any one time and at any one location, this shall be done on a first come first serve basis.~~

~~(e) *Minimum Age.* Persons engaged in the act of charitable solicitation for such agency shall be at least sixteen (16) years of age and shall wear a high visibility safety vest.~~

~~(f) *State Registration.* Every business or organization represented by a solicitor engaged in charitable solicitation on any public right of way or street/highway within the Village shall be registered with the Illinois Attorney General as a charitable organization pursuant to the Illinois Solicitation for Charity Act, 225 ILCS 460/0.01 et seq.~~

~~(g) *Statewide Activity.* Every business or organization represented by a solicitor engaged in charitable solicitation on any public right of way or street/highway within the Village shall be engaged in statewide fundraising activities.~~

~~(h) *Liability.* Every solicitor engaged in charitable solicitation on any public right of way or street/highway within the Village, and the business or organization represented by the solicitor, shall be liable for all injuries to any person or property that occurs during or as a result of the solicitation and that is casually related to an act of ordinary negligence of the solicitor or the business or organization the solicitor represents.~~

~~(i) *Insurance.* Prior to engaging in any charitable solicitation a certificate of insurance demonstrating proof of insurance in at least the following amounts and naming the Village of Downers Grove as an additional insured must be submitted to the Village:~~

~~_____ a. _____ Personal injury coverage of at least one million dollars (\$1,000,000.00) per occurrence and five hundred thousand dollars (\$500,000.00) per person; and~~

~~_____ b. _____ Property damage coverage of at least one hundred thousand dollars (\$100,000.00).~~

Section 2. The Village shall cease all enforcement of Section 15.33 of the Downers Grove Municipal Code. The Village shall also cease enforcement of Section 5/11-1006 of the Illinois Motor Vehicle Code pending resolution of the litigation entitled, *Dumiak and Simmons v. Village of Downers Grove, et al.*,

Section 3. If any section, paragraph, subdivision or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain in full force and effect.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk