

**AN ORDINANCE amending “§ 99.010 Prohibiting Use Of
Public Right- Of- Way For The Purpose Of Selling
Goods And Solicitations” in Chapter 99: Streets and
Sidewalks; Trees and Shrubs, of the Fort Wayne Municipal
Code of Ordinances**

WHEREAS, the Fort Wayne Fire Department and Fort Wayne Professional Firefighters Local 124 have historically operated and participated in the “Fill the Boot” charity fundraiser on or around Labor Day weekend; and

WHEREAS, the “Fill the Boot” charity fundraiser involves firefighters soliciting donations on a public right-of-way with said donations ultimately being donated to a charitable organization(s); and,

WHEREAS, the Fort Wayne Municipal Code of Ordinances (“Fort Wayne Code”) § 99.010 prohibits use of a public right-of-way for the purpose of soliciting from the driver or occupants of a motor vehicle; and,

WHEREAS, the City of Fort Wayne (“City”) has informed the Fort Wayne Fire Department and Fort Wayne Professional Firefighters Local 124 that the “Fill the Boot” charity fundraiser cannot operate in a manner that requires solicitation of donations while on a public right-of-way; and,

WHEREAS, the exceptions to the solicitation prohibitions on public rights-of-way in § 99.010 do not extend to drivers or occupants of motor vehicles; and

WHEREAS, the Fort Wayne Fire Department and Fort Wayne Professional Firefighters Local 124 desire to organize a “Fill the Boot” campaign this and every subsequent Memorial Day weekend for the purposes of charitable fundraising.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,

SECTION 1. That § 99.010: “Prohibiting Use of Public Right-of-Way for the Purpose of Selling Goods and Solicitations” be amended and shall read as follows:

§ 99.010 PROHIBITING USE OF PUBLIC RIGHT-OF-WAY FOR THE PURPOSE OF SELLING GOODS AND SOLICITATIONS.

(A) No street, sidewalk, space between the sidewalk and curbing (commonly known as “parkstrip”), curbing, or the commonly traveled portion of any street in the city, including any median (the portion of a divided highway separating the traveled ways for traffic in opposite directions), shall be utilized by any person for the purpose of sale or distribution without charge

1 of any goods or materials, and/or the solicitation of donations for charitable purposes from the
2 drivers or occupants of any motor vehicle.

3
4 (B) For the purposes of this section **SALE** or **DISTRIBUTION** shall mean the physical exchange
5 of goods or materials with or without remuneration.

6
7 (C) Nothing in this section shall prohibit the sale or distribution without charge to, and/or the
8 solicitation of donations for charitable purposes ("Charitable Solicitation") from persons other
9 than the drivers or occupants of motor vehicles, which persons are not on the travelled portion of
10 any street or median in the city.

11
12 (D) The prohibitions of this section shall only apply to major arterial streets as that classification
13 is utilized in the Office of Traffic Engineering of the city.

14
15 (E) The prohibitions on solicitation in § 99.010 (A) and Charitable Solicitation in § 99.010 (C)
16 do not apply to charitable organizations or persons and organizations acting on their behalf or for
17 their benefit which have been issued a permit under this subparagraph § 99.010 (E) and who are
18 in compliance with all other provisions of § 99.010. A charitable organization or an organization
19 acting on their behalf wishing to perform Charitable Solicitation while standing on a parkstrip,
20 curbing, or the commonly traveled portion of any street in the city, including any median, must
21 comply with the following requirements in order to be excepted from the prohibition listed in §
22 99.010 (A):

23
24 (1) Not less than 14 days prior to the date desired for Charitable Solicitation, submit a
25 complete application to the _____ **[NAME OF OFFICE]**, with a copy sent to
26 the Chief of Police, for a Charitable Solicitation permit ("Charitable Solicitation
27 Permit"). The application shall require the charitable organization or organization
28 acting on their behalf to provide its full name, a point of contact for the organization,
29 the desired date(s), time(s) and specific location(s) for soliciting, the name, mailing
30 address and phone number of the group which will be engaging in solicitation
31 activities on behalf of the charitable organization, and an agreement by the
32 organization indemnifying the city and holding the city harmless from any and all
33 claims, suits, demands, damages, and attorney fees arising out of or related to the acts
34 or omissions of persons soliciting for the organization. The form may require further
35 information that is reasonably necessary to the direct enforcement of this section and
36 the purposes of this article.

37
38 (2) At the time of submitting a completed application, the charitable organization shall
39 also submit the following and failure to do so shall render the application incomplete:

- 40
41 (a) Written proof of liability insurance in the amount of at least \$1,000,000 per
42 occurrence that insures the applicant and all persons who will be soliciting. The
43 policy must include the City of Fort Wayne as an additional insured.
44 (b) An application permit fee of \$_____. This fee will be used to defray the city's
45 cost of processing the application and compliance monitoring on the street. This
46 fee is nonrefundable, unless the permit is denied.

(c) Written proof that the organization benefiting from the collection is a charitable organization that is qualified under Section 501(c)(3) of the Internal Revenue Code.

(3) Additional solicitation activity restrictions:

- (a) No more than one permit per calendar year may be issued to an organization.
- (b) Street soliciting under a permit shall be authorized for no more than three consecutive calendar days, and shall be limited to the period of 9:00 a.m. and until one half hour prior to sunset, at the approved location(s) specified in the application.
- (c) All solicitors must be eighteen years of age or older and must be an employee of the City of Fort Wayne.
- (d) No solicitor may impede traffic at any time.
- (e) All solicitors must wear an identification badge which identifies the charitable organization soliciting contributions and allows motorists to verify the organization's authenticity.
- (f) A safety plan must be submitted with the application for the permit. This plan must include a description of collection notification signs to be used and safety equipment and procedures to be used by those individuals collecting for the charitable organization.
- (g) No solicitor may touch or knock upon any part of any motor vehicle while soliciting.

SECTION 2. That the City is directed to take all action necessary and proper for the implementation of this Ordinance, including notifying all city departments, divisions, or city-operated utilities of the Ordinance and its requirements.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Russ Jehl, Council Member

APPROVED AS TO FORM AND LEGALITY

Joseph G. Bonahoom, Attorney for City Council