

## REGULAR CITY COUNCIL MEETING

March 17, 2015

7:00 P.M.

**A Regular City Council Meeting was held on Tuesday, March 17, 2015, at 7:00 p.m. in the City Council Chambers located at 201 East Nash Street, Terrell, Texas with the following members present:**

**COUNCILMEMBER #1 HAL RICHARDS  
COUNCILMEMBER #2 TOMMY SPENCER  
COUNCILMEMBER #3 SANDRA WILSON  
COUNCILMEMBER #4 CHARLES WHITAKER  
COUNCILMEMBER #5 D.J. ORY**

**1. Call to order.**

Mayor Hal Richards called the meeting to order.

**2. Invocation.**

Deputy Mayor Pro Tem Charles Whitaker, gave the opening prayer and lead the Pledge of Allegiance.

**3. Discuss and Consider approval of meeting minutes of the Special City Council Meeting and Workshop of February 12, 2015 and the Regular City Council Meeting of February 17, 2015.**

Mayor Pro Tem D.J. Ory, made a motion to approve Meeting Minutes of Special City Council Meeting and Workshop of February 12, 2015 and Regular City Council Meeting of February 17, 2015 and. Councilmember Sandra Wilson, seconded the motion. Ayes - All. Nays - None. Motion carried.

**4. Hear Remarks from Visitors.**

*This time is set aside on the agenda to invite any person to address the Council on issues not subject to a public hearing. Routine administrative matters are best discussed with the appropriate City Staff before bringing them to the Council. Speakers should limit their comments to 3 minutes and are asked to speak into the microphone provided, identifying themselves for the record. The total amount of time set aside for this place on the agenda is 15 minutes. Comments of a personal nature directed at the Council or Staff are inappropriate.*

Albert Rice Representing Southwestern Christian College announced Southwestern Christian College National Dinner Day "Pillars of the Community" recognition of Torry Edwards at Furlough Middle School on April the 11th at 6:00 pm

Mayor Hal Richards recognized Becky Dorrough attending the meeting.

## NEW BUSINESS

5. Discuss and Consider Developer's Agreement regarding the Residential Economic Incentive Program for Birdsong Street Project.

Terry Capehart, Municipal Development Director, presented to Council for discussion and consideration Developer's Agreement regarding the Residential Economic Incentive Program for Birdsong Street Project. Mayor Pro Tem D.J. Ory made a motion to authorize City Manager to execute Developer's Agreement regarding the Residential Economic Incentive Program for Birdsong Street Project. Deputy Mayor Pro Tem Charles Whitaker seconded the motion. Ayes - All. Nays - None.

6. Discuss and Consider Award of Agreement for Professional Services to Design the Replacement of Sanitary Sewer Mains in HARRISSE and ROSE STREETS.

Mike Mikeska, Assistant City Engineer, presented to Council for discussion and consideration Award of Agreement for Professional Services to Design the Replacement of Sanitary Sewer Mains in HARRISSE and ROSE STREETS. Mayor Pro Tem D.J. Ory made a motion to authorize City Manager to execute Agreement for Professional Services to Design the Replacement of Sanitary Sewer Mains in HARRISSE and ROSE STREETS not to exceed \$35,380.00. Deputy Mayor Pro Tem Charles Whitaker seconded the motion. Ayes - All. Nays - None.

7. Discuss and Consider Award of Agreement for Professional Services for a Wastewater Infrastructure Prioritization Study Phase 2.

Mike Mikeska, Assistant City Engineer, presented to Council for discussion and consideration Award of Agreement for Professional Services for a Wastewater Infrastructure Prioritization Study Phase 2. Councilmember Sandra Wilson made a motion to authorize City Manager to execute for a Wastewater Infrastructure Prioritization Study Phase 2 not to exceed \$181,681.00. Mayor Pro Tem D.J. Ory seconded the motion. Ayes - All. Nays - None.

8. Discuss and Consider Terrell Economic Development Incentive for the Madix, Inc. expansion project.

Danny Booth, President, Terrell Economic Development Corporation presented to Council for discussion and consideration Terrell Economic Development Incentive for the Madix, Inc. expansion project. Mayor Pro Tem D.J. Ory made a motion to approve Terrell Economic Development Incentive for the Madix, Inc. expansion project. Councilmember Sandra Wilson seconded the motion. Ayes - All. Nays - None.

9. Discuss and Consider Terrell Economic Development Corporation Contract with Enterprise Pipeline in Support of the VEKA, Inc. Expansion Project.

Danny Booth, President, Terrell Economic Development Corporation presented to Council for discussion and consideration Terrell Economic Development Corporation Contract with Enterprise Pipeline in Support of the VEKA, Inc. Expansion Project. Mayor Pro Tem D.J. Ory made a motion to table Terrell Economic Development Corporation Contract with Enterprise Pipeline in Support of the VEKA, Inc. Expansion Project until April 7, 2015. Deputy Mayor Pro Tem Charles Whitaker seconded the motion. Ayes - All. Nays - None.

- 10 Discuss and Consider Amendment to the Terrell Economic Development Corporation Contract with the Terrell Chamber of Commerce.

Danny Booth, President, Terrell Economic Development Corporation presented to Council for discussion and consideration Amendment to the Terrell Economic Development Corporation Contract with the Terrell Chamber of Commerce. Mayor Pro Tem D.J. Ory made a motion to approve Terrell Economic Development Corporation recommendation, Amendment to the Terrell Economic Development Corporation Contract with the Terrell Chamber of Commerce. Deputy Mayor Pro Tem Charles Whitaker seconded the motion. Ayes - All. Nays - None.

### **CONSENT AGENDA**

Councilmember Sandra Wilson made a motion on consent agenda to adopt on Second Reading Ordinance No. 2627. Mayor Pro Tem D.J. Ory seconded the motion. Ayes - All. Nays - None.

11. Discuss and Consider on Second Reading Adoption of Ordinance No. 2627; An Ordinance Of The City Council Of The City Of Terrell, Texas, Amending Chapter 5, Section 2 Sale Of Alcoholic Beverages Pursuant To The Texas Alcoholic Beverage Code; Prohibiting The Sale Of Alcoholic Beverages In Residential Areas; Prohibiting The Sale Of Alcoholic Beverages Near Public And Private Schools, Churches, Day-Care Centers And Child-Care Facilities; Establishing A Local Permit Fee; Regulating Billboards, Electric Signs And Outdoor Advertising Of The Sale And Consumption Of Alcoholic Beverages, Providing An Enforcement Provision; Repealing Prior Ordinances; Providing A Severability Clause And An Effective Date.

### **ORDINANCE NO. 2627**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, AMENDING CHAPTER 5, SECTION 2 SALE OF ALCOHOLIC BEVERAGES PURSUANT TO THE TEXAS ALCOHOLIC BEVERAGE CODE; PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES IN RESIDENTIAL AREAS; PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES NEAR PUBLIC AND PRIVATE SCHOOLS, CHURCHES, DAY-CARE CENTERS AND CHILD-CARE FACILITIES; ESTABLISHING A LOCAL PERMIT FEE; REGULATING BILLBOARDS, ELECTRIC SIGNS AND OUTDOOR ADVERTISING OF THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES, PROVIDING AN ENFORCEMENT PROVISION; REPEALING PRIOR ORDINANCES; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 51.001 of the Texas Local Government Code authorizes the governing body of a municipality to adopt an ordinance, rule or police regulation that is for the good government, peace or order of the municipality or for the trade and commerce of the municipality; and

**WHEREAS**, Section 51.072 of the Texas Local Government Code recognizes that a home rule municipality has full power of local self-government; and

**WHEREAS**, the City of Terrell, Texas, is a home rule municipality which possess the full power of local self-government under Section 1.03 of its Charter; and

**WHEREAS**, Section 109.32 of the Texas Alcoholic Beverage Code authorizes an incorporated city by ordinance to prohibit the sale of beer in a residential area; and

**WHEREAS**, Section 109.33 of the Texas Alcoholic Beverage Code authorizes an incorporated city by ordinance to prohibit the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public or private school or public hospital, unless: (1) the dealer also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or (2) holds a license or permit covering a premise where minors are prohibited from entering under Section 109.53 of the Texas Alcoholic Beverage Code and that is located within 300 feet of a private school; and

**WHEREAS**, Section 109.331 of the Texas Alcoholic Beverage Code authorizes an incorporated city by ordinance to prohibit the sale of alcoholic beverages within 300 feet of a day-care or child-care facility as defined by Section 42.002, Texas Human Resources Code, by holders of a license or permit under Chapter 25, 28, 32, 69 or 74 of the Texas Alcoholic Beverage Code unless: (1) the dealer also holds a food and beverage certificate; (2) the dealer's place of business and the day-care or child-care facility are located on different stories of a multistory building; or (3) the dealer's place of business and the day-care or child-care facility are located in separate buildings and either the dealer's place of business or the day-care or child-care facility is located on the second story or higher of a multistory building; and

**WHEREAS**, Section 11.38 of the Texas Alcoholic Beverage Code authorizes a city to levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the City, but prohibits the levy or collection of any other fee; and

**WHEREAS**, Section 108.55 of the Texas Alcoholic Beverage Code prohibits a person from erecting or maintaining a billboard, electric sign or any outdoor advertising in violation of an ordinance of the City; and

**WHEREAS**, Section 216.901 of the Texas Local Government Code authorizes a home rule municipality to license, regulate, control or prohibit the erection of signs or billboards by ordinance and Section 216.901 authorizes a municipality to extend its outdoor sign regulatory ordinance within its extra-territorial jurisdiction; and

**WHEREAS**, Section 105.03(b) of the Texas Alcoholic Beverage Code provides that a mixed beverage permit holder may sell and offer for sale mixed beverages between 7 a.m. and midnight on any day except Sunday; and on Sunday, he may sell mixed beverages between midnight and 1:00 a.m. and between 10 a.m. and midnight, except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to the customer; and

**WHEREAS**, Section 105.03(d) of the Texas Alcoholic Beverage Code provides that a city may adopt an ordinance to extend the hours of sale of mixed beverages by a holder of a mixed beverage late hours permit to allow the sale and offer for sale of mixed beverages between midnight and 2 a.m. on any day.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL  
OF THE CITY OF TERRELL TEXAS**

THAT, the Sale of Alcoholic Beverages, set forth in Chapter 5 Section 2 and recorded in the City of Terrell Code of Ordinances is hereby amended and the following provisions shall be and constitute the City of Terrell Sale of Alcoholic Beverages Ordinance.

**ARTICLE I**

**SCOPE AND DEFINITIONS**

Section 1.1 Scope

(a) This Ordinance applies to the sale of Alcoholic Beverages within the City of Terrell, Texas. Nothing contained in this Ordinance shall be construed to authorize the sale of any Alcoholic Beverage which is prohibited by State or Federal law or other Ordinance of the City of Terrell, Texas.

(b) Section 3.2 prohibiting advertising of Alcoholic Beverages applies in the City and in the extraterritorial jurisdiction of the City.

Section 1.2 Definitions

(a) Alcoholic Beverage means alcohol or any beverage containing more than one half of one percent of alcohol by volume which is capable of use for beverage purposes either alone or when diluted.

(b) Beer means a malt beverage containing one half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight.

(c) Billboard means a structure directly attached to the land, a house or a building having one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale or distribution of alcoholic beverages, whether or not the structure is artificially lighted. "Billboard" does not include a bench or a wall or other part of a structure used as a building, fence, screen, front or barrier.

(d) Brewpub License means a license issued by the Texas Alcoholic Beverage Commission authorizing the sale of malt liquor, ale and beer pursuant to Chapter 74 of the Alcoholic Beverage Code.

(e) Church means a building owned or maintained by an organized religious organization the purpose for which persons regularly assemble for worship.

(f) Child-Care Facility means a facility licensed, certified or registered by the Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment or supervision for a child who is not related by blood, marriage or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(g) City means the City of Terrell, Texas.

(h) Day Care Center means a Child-Care Facility that provides care at a location other than the residence of the director, owner or operator of the Child-Care Facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

(i) Dealer means a Person who holds a permit or license issued by the Texas Alcoholic Beverage Commission to sell an Alcoholic Beverage.

(j) Electric Sign means a structure or device other than an illuminated Billboard by which artificial light produced by electricity is used to advertise the Alcoholic Beverage business by a Person who manufactures, sells or distributes Alcoholic Beverages or to advertise an Alcoholic Beverage.

(k) Food and Beverage Certificate means a certificate issued by the Texas Alcoholic Beverage Commission pursuant to Sections 25.13,28.18,32.23, or 69.16 of the Alcoholic Beverage Code.

(l) Mixed Beverage Permit means a permit issued by the Texas Alcoholic Beverage Commission authorizing the sale of mixed beverages pursuant to Chapter 28 of the Alcoholic Beverage Code.

(m) Mixed Beverages shall have the same meaning as set forth in Section 1.04 of the Texas Alcoholic Beverage Code.

(n) Outdoor Advertising means a sign, including but not limited to a Billboard or Electric Sign, bearing a word, mark, description or other device used to advertise an Alcoholic Beverage that is displayed outside the walls or enclosure of a building or structure where the sale or consumption of an Alcoholic Beverage is permitted or displayed inside a building or structure where the sale or consumption of an Alcoholic Beverage is permitted, so that it is visible by a person of ordinary vision from outside the building or structure.

(o) Person means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization or the manager, agent, servant or employee of any of them.

(p) Premises means the grounds and all buildings, vehicles and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

(q) Private School means a school that is not a public school and that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and has more than 100 students enrolled and attending courses at a single location.

(r) Private Club Registration Permit means a permit issued by the Texas Alcoholic Beverage Commission authorizing the sale of Alcoholic Beverages belonging to members of the club pursuant to Chapter 32 of the Alcoholic Beverage Code.

(s) Public Hospital means a hospital, clinic or other facility for the provision of health care or dental care that is owned, operated or leased by the federal government, the state, a political subdivision of the state, including a hospital district or authority, Kaufman County or the City.

(t) Public School means an educational institution or organization that is entitled by law to be supported in whole or in part by state, county, school district or other municipal corporation funds, including but not limited to the Terrell Independent School District and Trinity Valley Community College District.

(u) Residential District means all of the City lying within the corporate limits thereof shall be construed and is hereby designated as residential sections of the City, save and except those areas designated by the Zoning Ordinance, and amendments thereto, as Retail District (R), Central Business District (CBD), Highway Corridor District (HC), Commercial District (C) and Light Industrial District (LI).

(v) Retail Dealers On -Premise License means a license issued by the Texas Alcoholic Beverage Commission authorizing the sale of Beer pursuant to Chapter 69 of the Alcoholic Beverage Code.

(w) Wine and Beer Retailers Permit means a permit issued by the Texas Alcoholic Beverage Commission authorizing the sale of wine, Beer, malt liquors, traditional port or sherry pursuant to Chapter 25 of the Alcoholic Beverage Code.

## ARTICLE II

### AREAS WHERE SALE OF ALCOHOLIC BEVERAGES ARE PROHIBITED

Section 2.1 Sale of Alcoholic Beverages Prohibited near Churches, Public Schools, Private School and Public Hospitals

(a) A Person or Dealer, who does not hold a food and beverage certificate, shall not sell Alcoholic Beverages at a place of business which is located within 300 feet of a Church, Public or Private School, or Public Hospital. This section does not apply to a Dealer who also holds a Food and Beverage Certificate for the place of business.

(b) The measurement of the distance between the place of business where Alcoholic Beverages are sold and the Church or Public Hospital shall be along the property lines of the street fronts and from front door to front door and in direct line across intersections.

(c) The measurement of the distance between the place of business where Alcoholic Beverages are sold and the Public or Private School shall be in a direct line from the property line of the place of business and in a direct line across intersections.

#### Section 2.2 Sale of Alcoholic Beverages Prohibited near Day Care Center and Child Care Facility

(a) The holder of a Wine and Beer Retailers Permit, Mixed Beverage Permit, Private Club Registration Permit, Retail Dealers on Premise License or Brewpub License, who does not hold a Food and Beverage Certificate, shall not sell Alcoholic Beverages at a place of business which is within 300 feet of a Day-Care Center or Child-Care Facility.

(b) This section does not apply to a foster group home, foster family home, family home, agency group home or agency home as those terms are defined by Section 42.002 of the Texas Human Resources Code.

(c) The measurement of the distance between the place of business where Alcoholic Beverages are sold and the Day-Care Center or Child-Care Facility shall be in a direct line from the property line of the Day-Care Center or Child-Care Facility to the property line of the place of business and in a direct line across intersections.

#### Section 2.3 Sale of Beer and Other Alcoholic Beverages Prohibited in Certain Residential Areas

A Person or Dealer shall not sell Beer or other Alcoholic Beverage from a lot zoned in a Residential District, regardless of whether the lot or tract is used as a residence.

### **ARTICLE III**

#### **HOURS OF THE SALE OF CERTAIN ALCOHOLIC BEVERAGES**

Section 3.1 Mixed beverages shall not be sold, offered for sale, or delivered at any time not permitted by this section.

(a) Mixed beverages may be sold, offered for sale or delivered between 7 a.m. and 2:00 a.m. on any day.

(b) A person commits an offense if the person sells or offers for sale an alcoholic beverage during the prohibited hours or consumes or permits the consumption of an alcoholic beverage on the person's licensed or permitted premises during the prohibited hours.

Section 3.2. Unless specifically provided otherwise in a special use permit at the time of issuance or renewal, each valid and unexpired special use permit for on-premises consumption of alcoholic beverages granted prior to the adoption of this Ordinance shall be deemed amended to authorize the sale of mixed beverages for on-premises consumption during the extended hours authorized by this Ordinance if the permit holder thereof obtains a late hours permit for that location from the Texas Alcoholic Beverage Commission.

## ARTICLE IV

### PERMIT FEE AND ADVERTISING

#### Section 4.1 Permit Fee

(a) Except as otherwise provided in this section, the City shall levy and collect a fee equal to one-half (1/2) the state fee for each permit issued for premises located within the City.

(b) A permit fee shall not be levied or collected for a permit that is exempt from the authority granted to the City to levy and collect a local permit fee pursuant to Section 11.38(d), including but not limited to a temporary Wine and Beer Retailer's Permit and a Mixed Beverage Permit during the three year period following the issuance of the permit.

#### Section 4.2 Prohibited Advertising

A person shall not erect or maintain a Billboard, Electric Sign or any Outdoor Advertising for the sale or consumption of an Alcoholic Beverage in the City or in the extraterritorial jurisdiction of the City.

## ARTICLE V

### ENFORCEMENT

#### Section 5.1 Criminal Offense

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

(a) Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding Two Hundred Dollars (\$200.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C Misdemeanor.

#### Section 5.2 Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring action to enforce the provisions of this Ordinance and to seek remedies allowed by law, including but not limited to, the following:

(a) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and

(b) A civil penalty of up to One Hundred Fifty Dollars (\$150.00) per day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and other available relief.

## ARTICLE VI

### SAVINGS CLAUSE, REPEAL OF PRIOR ORDINANCES, AND EFFECTIVE DATE

Section 6.1 All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 6.2 It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any

phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 6.3 This Ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 3rd day of March, 2015.

PASSED AND ADOPTED THIS the 17th day of March, 2015.

Councilmember Sandra Wilson made a motion on consent agenda to adopt on Second Reading Ordinance No. 2628. Mayor Pro Tem D.J. Ory seconded the motion. Ayes - All. Nays - None.

12. Discuss and Consider on Second Reading Adoption of Ordinance No. 2628; An Ordinance Of The City Of Terrell, Texas, Amending Chapter 5, Business Regulations, Section 6, By Repealing Ordinance 2107 Chapter 8 Section 6 Advertising And Adding Advertising To Vendors And Solicitors; Providing For Repeal Of Conflicting Ordinances; Providing For Severability; And Providing An Effective Date.

#### **ORDINANCE NO. 2628**

**AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING CHAPTER 5, BUSINESS REGULATIONS, SECTION 6, BY REPEALING ORDINANCE 2107 CHAPTER 8 SECTION 6 ADVERTISING AND ADDING ADVERTISING TO VENDORS AND SOLICITORS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, many citizens of this community expect their local government to assist them in preserving their privacy and avoiding petty annoyances that disrupt their quiet enjoyment of their homes, and

**WHEREAS**, other persons often desire to interrupt the quiet enjoyment of one's home to solicit donations for causes believed to be worthy of support or to canvas for support for particular religious, ideological or political causes or for reasons of prompting commerce, and

**WHEREAS**, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular and to engage others in debate without government interference, and

**WHEREAS**, the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved, and

**WHEREAS**, it is the responsibility of all units of government to balance these competing interests in a manner consistent with the Constitution of the United States and of Texas, while attempting to minimize fraud, prevent crime and protect the privacy of our citizens.

**THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, THAT:**

**ARTICLE I.**

That Chapter 5, Business Regulations, Section 6, Vendors and Solicitors shall be amended in its entirety as follows:

**SECTION 5-6: VENDORS AND SOLICITORS**

**A. Definitions.**

For the purposes of this article the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. "Peddler" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service. A "peddler" does NOT include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a time different from the time of visit. Such a person is a "solicitor."

2. "Solicitor" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: (1) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service, or (2) distributing a handbill or flyer advertising a commercial event or service.

3. "Canvasser" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a handbill or flyer advertising a non-commercial event or service.

4. "Itinerant Vendor" or "Hawker" is a person who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the City, soliciting, selling, or taking orders for, or offering to sell or take orders for any goods or services. A

temporary business is one that continues for forty-five (45) days or less and exists whether solicitation is from a stand, vehicle or freestanding.

5. *Motor Vehicle* shall mean any vehicle used for the displaying, storing, or transportation of articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles. This term is to include, but not be limited to, trailers, trucks, buses and automobiles.

6. *Stand* shall mean any newsstand, table, bench, booth, rack, handcart, pushcart, or any other fixture or device which is not required to be licensed and registered by the department of motor vehicles, and is used for the display, storage or transportation of articles offered for sale by a vendor.

7. *Special Event* shall mean any occasion including, but not limited to, fairs, shows, exhibitions, city-wide celebrations, festivals, etc., within a specifically defined area of the City for a period of time not to exceed five (5) days.

8. *Public Place* shall mean any public road, street, alley, park, building or other property of the City or any other place to which people commonly congregate for the purpose of business, recreation or amusement.

9. *“Door-to door selling”* shall mean going to one or more residences within the City in person or by the agent for the purpose of vending or soliciting, who engages in a business of selling or offering for sale, food, beverages, goods, services, wares and merchandise or engaging in soliciting order for the sale of goods, services, wares and merchandise for future delivery.

10. *Merchandise* is used in its broadest sense and shall include property of every kind.

11. *Services* is used in its broadest sense and shall include property of every kind.

12. *Charitable purpose* shall mean any philanthropic, religious or other non-profit objectives including the benefit of the poor, needy, sick, refugee, handicapped persons; the benefit of a patriotic or veterans' association or organization; the benefit of any fraternal, social or civic organization or the benefit of any educational institution.

13. *Solicit funds or Solicitation of funds* shall mean any request for the donation of money, property or anything of value, or the pledge of a future donation of money, property or anything of value; or the selling or offering for sale of any property, real or personal, tangible or intangible, whether of value or not, including, but not limited to, goods, books, pamphlets, tickets, publications or subscriptions to publications or brochures upon the representation, express or implied, that the proceeds of

such sale will be used for a charitable purpose as such term is defined herein. Expressly excluded from the meaning of “solicit funds” or “solicitation of funds” are any offer of membership in any organization and any solicitation of funds covered by this definition are limited to a solicitation communicated in the physical presence of any individual on public property within the corporate limits of the City.

14 *Newspaper* as used herein shall be construed to mean any newspaper of general circulation within the city as defined in Article 28a of Vernon’s Annotated Revised Civil Statutes, as amended.

## **B. License Required**

No person shall act as a peddler, hawker, canvasser or solicitor within the City without first obtaining a license from the City Secretary.

No peddler, hawker, canvasser or solicitor having acquired a license from the City of Terrell shall be allowed to engage in the business of selling, displaying or offering for sale any food, beverage, goods, services or merchandise at any Special Event without first seeking approval for the same from the Sponsoring Organization.

## **C. Application**

Every person desiring to engage in the business of a peddler, hawker, canvasser or solicitor as defined in Section B above shall apply for a license from the City Secretary. The application must include the following:

1. The full name, permanent home address and the local address of each applicant (if any), the permanent business address (if any), telephone number, driver’s license number and proof of identity; the name, physical description and photograph of each person for which a card is requested. In lieu of this information, a driver’s license, state identification card, passport or other government-issued identification card (issued by a government within the United States) containing this information may be provided and a photocopy taken.
2. A brief description of the nature, character and quality of the food, beverages, goods or merchandise to be sold;
3. The specific location, if any, in which the vendor intends to conduct business;
4. If the vendor is employed by or is an agent of another, the name and business address of the principal/hiring person, firm, association, organization, company or corporation;
5. If a motor vehicle is to be used in the vending business, a description of the vehicle, together with the motor vehicle registration number, license number and a copy of the vehicle’s current proof of liability insurance;

6. A copy of the vendor's current State of Texas Sales Tax Permit together with written documentation from the State Comptroller that all sales taxes that may be due and owing by the vendor have been fully paid;
7. A complete listing of any other licenses or permits issued to applicant by the City of Terrell within the past five (5) years;
8. A written statement from the property owner consenting to applicant's use of his/her property for the sales activities indicated in the permit application.

**D. Distribution of Handbills and Commercial Flyers.**

a. *Posting Unlawful.* A person commits an offense if he sticks, paints, stamps or posts any handbill, poster (including any political poster), sign, circular, advertisement or other notice upon any public or private property, specifically including utility poles, without the permission of such property owner. If the owner of such property is unknown or cannot be located, it shall be presumed that the city shall be the owner of such property for the purposes of this section. This does not apply to the distribution of the United States Mail nor the delivery of any newspaper to any subscriber thereof nor to any person who has requested the delivery of same.

b. *Distribution on or in Automobiles Unlawful Without Permission.* A person commits an offense if he throws, distributes or places in or on any automobile or other vehicle within the city any handbill, dodger, circular, or other printed material without first having obtained the permission of the owner or the person in possession thereof.

4. Any person observed distributing handbills or flyers shall be required to identify himself/herself to the Police (either by producing a license and other form of identification as required). This is for the purpose of knowing the likely identity of the perpetrator if the City receives a complaint of damage caused to private property during the distribution of handbills or flyers.

**E. Health Permit**

The application of any vendor engaged in the sale or distribution of food or beverages shall also be referred to the local health department for approval of a valid health permit. The health permit shall be required in addition to the vending license required by this article. Such vendor's equipment shall be subject to inspections by the health department at the time of application and at periodic intervals thereafter.

**F. Issuance of License and Payment of Fees**

Not later than thirty (30) days after the filing of a completed application for a vendor's license, the applicant shall be notified by the City Secretary of the decision on the issuance or denial of the license. If it is found that the applicant has fully complied with all provisions of this article, said applicant will be required to pay a license fee in the amount of One Hundred Twelve Dollars (\$112.00) for a three (3) month period; One

Hundred Seventy Dollars (\$170.00) for a period of from three to six (3-6) months and Two Hundred Twenty Six Dollars (\$226.00) for a period of twelve (12) months for such license.

**G. License not transferable**

The license provided for in this article shall not be transferrable nor give authority to more than one (1) person to sell or exhibit food, beverages, goods, wares and merchandise either by agent or clerk or in any other way than his own proper person but any person having obtained such license may have the assistance of one (1) or more persons in conducting the sale or exhibit who shall have the authority to aid that principal but not to act for or without him.

**H. Duration of license; display required**

The license provided for in this article shall be valid within the meaning of this ordinance for the period specified on the license and shall not exceed a period one (1) year from the issuance date. Such license shall be prominently displayed in a conspicuous place on the premises where business is being conducted or carried by the individual for whom it was issued and displayed to anyone who makes a request to view the permit.

**I. Insurance or Bond Required**

Before any license shall be issued under the provisions of this article, the application shall be accompanied by a bond or insurance policy in an amount not less than fifty thousand and no/100 dollars (\$50,000.00) acceptable to the City Secretary to cover any and all property damage, injuries, including injury resulting in death, or wrongful fraudulent or illegal conduct of the vendor while conducting business in the City. The bond or insurance policy shall remain in full force and effect during the entire duration of the license as provided in this article and one (1) year thereafter.

**J. Exemptions**

The following Peddlers, Solicitors, Canvassers and or Hawkers are exempt from the fee provisions of Sections F and I of this article but shall otherwise be required to comply with all other provisions.

1. Patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate.
2. Any individual selling newspapers or magazines or distributing free samples from his or her person.
3. The vending of food or drinks from a motor vehicle or other non-stationary means (i.e. push carts).
4. Federal, state or local government employee or a public utility employee in the performance of his/her duty for his/her employer.

**K. Restrictions Applicable to all Vendors**

1. Stands. Vendor stands shall not:
  - a. Exceed 20 feet in length, 10 feet in width or 13 feet in height;
  - b. Impede access to the entrance/driveway of any adjacent building;
  - c. Occupy more than half of the available sidewalk width or 20 feet of such sidewalk, whichever is less.
2. Hours of Operation. - Except for the vending of food or drinks from a motor vehicle or other non-stationary means within construction, manufacturing or similar areas in the manner specified in subsection 8 below, vendors shall be allowed to engage in the business of vending only between the hours of 8:00 A.M. to 10:00 P.M. All vending stands must be removed during non-vending hours.
3. Handicapped Areas - No vendor shall conduct business within 20 feet of any handicapped parking space or access ramp.
4. Removal of Trash - All trash or debris accumulating within 50 feet of any vending stand shall be collected by the vendor and deposited in an authorized trash container. All vendors selling food or beverages must provide trash receptacles adjacent to or as a part of their stands.
5. Prohibited Areas. A vending license issued pursuant to this ordinance is valid only on specified public ways or in public places of the City of Terrell. The City shall prohibit vendors from selling on specified public ways or in public places if it determines such prohibitions are necessary for the protection of public health and safety. Vendor stands and motor vehicles are prohibited within 20 feet of a fire hydrant, fire escape, loading zone or the driveway of a fire station, police station or hospital.
6. Noise - No vendor may sound any device which produces an unreasonably loud and raucous noise to attract public attention.
7. Monthly Reports - All vendors shall provide a copy of their monthly report of sales tax receipts to the City Secretary.
8. Motor Vehicles - No vendor vending from a motor vehicle shall:
  - a. Stop, stand or park the vehicle within 20 feet of any intersection, within any other prohibited area, or during prohibited hours;
  - b. Conduct business in such a way as would increase traffic congestion or delay, constitute a hazard to life or property, interfere with an abutting property owner, or obstruct access to emergency vehicles.

**L. Denial, Suspension or Revocation of License**

1. Any license issued under this Ordinance may be denied, suspended or revoked for any of the following reasons:

- a. Fraud or misrepresentation in the application;
    - b. Fraud or misrepresentation in the course of conducting the business of vending;
    - c. Conducting the business of vending in any way contrary to the provisions of this ordinance;
    - d. Conducting the business of vending in such a manner as to create a public nuisance or constitute a danger to the public health, safety or welfare;
    - e. Conviction of any felony offense or any misdemeanor offense involving moral turpitude while holding a vending license from the City of Terrell or for a period of five (5) years prior to the date of the application for a vending license;
    - f. Suspension or cancellation of health department authorization for a food and beverage vending unit.
  - g. Failure to submit monthly reports of sales tax receipts to the City Secretary.
2. Upon denial, suspension or revocation, the City shall deliver written notice to the applicant/license holder stating the action taken and the reasons supporting such action. The written notice shall be delivered to the applicant/license holder's place of business or mailed to the applicant/license holder's last known address.

## **M. Charitable Solicitations**

1. Unlawful Solicitation on Public Property
  - a. It shall be unlawful for any person, directly or through an agent or employee, to solicit funds for charitable purposes within the corporate limits of the City unless such person shall have first obtained a certificate of registration from the City Secretary as hereinafter provided.
  - b. It shall be unlawful for any individual, as the agent or employee of another, to solicit funds for charitable purposes in the City unless his principal or employer has received a certificate of registration as hereinafter provided.
  - c. It shall be unlawful for any individual, as agent or employee of another, to solicit funds for charitable purposes in the City without a facsimile copy of the certificate of registration in his or her possession. Such facsimile copy of the certificate of registration shall be shown upon request to all persons solicited and to any Police officer or public official of the City.
  - d. It shall be unlawful to solicit for charitable purposes within the City between the hours of 8:00 p.m. and 8:00 a.m.
  - e. It shall be unlawful for any person, directly or through an agent or employee, to solicit funds for charitable purposes within the corporate limits of the City after the expiration of any certificate of registration issued as hereinafter provided.

f. It shall be unlawful for the person registering or the agents or employees thereof to solicit funds in the City for a charitable purpose other than that set out in the registration statement upon which the certificate of registration was issued.

g. It shall be unlawful for any person who shall solicit funds for charitable purposes in the City to represent, in connection with such solicitation of funds, that the issuance of a certificate of registration by the City constitutes an endorsement or approval of the purposes of such solicitation of funds by the City or any department, officer or employee thereof.

h. It shall be unlawful for any person issued a certificate of registration hereunder to fail to file any financial statement that this article requires to be filed with the City Secretary.

## 2. Registration - Statement

a. All persons desiring to solicit funds for charitable purposes in the City shall file with the City Secretary a registration statement on forms provided by the City Secretary, containing the following:

(1) The name of the person registering and desiring to solicit funds for charitable purposes.

(2) Whether the person registering is an individual, partnership, corporation or association; and

(a) If an individual, his or her business or residence address and telephone number.

(b) If a partnership, the names of all partners and the principal business address and telephone number of the partnership.

(c) If a corporation, whether it is organized under the laws of Texas, or is a foreign corporation, its mailing address, business location, telephone number and the names of the officers and directors of the corporation.

(d) If an association, the association's principal business address and telephone number, along with the names of the association's officers directors or trustees. If the association is part of a multi-state organization or association, the mailing

address and business location of its principal headquarters shall also be given.

(3) A brief description of the charitable purpose for which the funds are to be solicited, and an explanation of the intended use of the funds toward that purpose.

(4) The names of all individuals authorized to incur expenses related to the solicitation or to disburse any proceeds of the solicitation.

(5) The name, mailing address and telephone number of the individual who will have organizational responsibility for the solicitation of funds.

(6) The time period within which the solicitation of funds is to be made, giving the dates of the beginning of solicitation and its projected conclusion, not to exceed four (4) months.

(7) A description of the methods and means by which the solicitation of funds is to be accomplished.

(8) The total amount of funds proposed to be raised.

(9) A projected schedule of salaries, wages, fees, commissions, expenses and costs that the person registering reasonably believes will be expended and paid in connection with the solicitation of funds or in connection with their disbursement together with an estimated percentage of the total projected collections which the cost of solicitation will comprise. These figures shall cover the entire time period during which the solicitation is to be made.

(10) A statement to the effect that if a certificate of registration is granted, such certificate will not be used as or represented to be an endorsement by the City of any of its officers or employees.

(11) The signature of an individual on behalf of the person registering.

### 3. Fees

a. Every registration statement, except as exempt as exempted herein, shall be accompanied by a registration fee of ten dollars (\$10.00). Such fee will be nonrefundable, irrespective of whether a certificate of registration is issued.

b. Any public or private school sanctioned group, religious or philanthropic group shall be exempt from the requirement to provide the ten dollar (\$10.00) registration fee.

4. Certificate of Registration - Issuance

Within ten (10) working days from the receipt of the registration statement, the City Secretary shall either issue a certificate of registration, as provided above, or notify the person registering that the registration does not comply with the requirements of section a. above, and specifically point out what information or explanation has not been furnished that is required before a certificate of registration can be issued.

5. Form

The City Secretary shall prescribe the form of the certificate of registration, which shall include a statement that "The issuance of the Certificate of Registration is not an endorsement by the City of Terrell or any of its departments, officers or employees.

6. Expiration; filing of financial statements within the specified time of termination of solicitation.

a. Each certificate of registration issued by the City Secretary shall expire at the termination of the solicitation period specified in the registration statement or four (4) months from the date of issuance, whichever is less.

b. No later than thirty (30) days from the expiration of its certificate of registration, each person registering shall file a closing statement with the City Secretary. The closing statement shall be a financial statement that is on a form provided by the City Secretary for this purpose and shall be signed by the appropriate individual on behalf of the person registering.

c. The closing statement shall indicate the total funds collected or pledged from the solicitation of funds, the purpose or purposes (with the amount of funds for each purpose) for which such funds have been or will be disbursed by the person registering, any incurred but unpaid expenses resulting from the solicitation of funds, and all other anticipated disbursement of collected or pledged funds. The monetary value represented by any property or goods that have been collected or pledged shall be estimated to the nearest multiple of ten dollars (\$10.00) to satisfy the requirement to indicate total funds collected or pledged.

7. Public Disclosure

All registration statements and closing statements filed with the City Secretary, whether or not a certificate of registration has been issued, shall be public records and shall be available for inspection by members of the public during the City Secretary's regular business hours. Copies may be obtained at the fees prescribed by law for copies of city records.

8. Exceptions

The solicitation of funds for charitable purposes by any organization or association from its members shall be exempt from the operation of Subsections 1 through 7 above.

9. Solicitation from occupant of motor vehicle

a. It shall be unlawful for any person or organization to solicit funds for charitable or welfare purposes from an occupant of any motor vehicle which is on a public street or on a street, roadway or parking area of any City park, whether or not the person or organization soliciting funds is or is not on a public street or other public property.

b. It shall be unlawful for any person to cause, aid, solicit, engage or direct a minor to engage in conduct prohibited by this section.

**N. Appeals**

Any person who is denied a license or whose license has been suspended or revoked may appeal same by filing a written notice of appeal to the Terrell City Council. All appeals must be filed with the City Secretary within ten (10) days after notice of denial, suspension or revocation of a license. The appeal shall be heard by the Terrell City Council within thirty (30) days after receipt. At least five (5) days notice of the date of the hearing shall be given to the applicant, license holder. Based on the hearing of the appeal and the facts relative thereto, the City Council will either sustain or reverse the decision to deny, suspend or revoke the license. The decision of the City Council shall be final.

**O. Civil and Criminal Penalties**

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

1. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding Five Hundred Dollars (\$500.00). Each day that a provision of this

Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C Misdemeanor.

2. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring action to enforce the provisions of this Ordinance and to seek remedies allowed by law, including but not limited to, the following:

a. Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and

b. A civil penalty of up to One Hundred Fifty Dollars (\$150.00) per day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and other available relief.

**ARTICLE II.**

All Ordinances or parts of Ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

**ARTICLE III.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**ARTICLE IV.**

This Ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 3rd day of March, 2015.

PASSED AND ADOPTED THIS the 17th day of March, 2015.

Councilmember Sandra Wilson made a motion on consent agenda to adopt on Second Reading Ordinance No. 2630. Mayor Pro Tem D.J. Ory seconded the motion. Ayes - All. Nays - None.

13. Discuss and Consider on Second Reading Adoption of Ordinance No. 2630; An Ordinance Amending The City Of Terrell, Texas Code Of Ordinances' Amending

Chapter 1 General Provisions By Adding Section 25 Fee For Payment By Credit Card Or Electronic Means.

**ORDINANCE No. 2630**

**AN ORDINANCE AMENDING THE CITY OF TERRELL, TEXAS CODE OF ORDINANCES' AMENDING CHAPTER 1 GENERAL PROVISIONS BY ADDING SECTION 25 FEE FOR PAYMENT BY CREDIT CARD OR ELECTRONIC MEANS**

**WHEREAS**, Texas Local Government Code Chapter 132 allows the governing body of a municipality to authorize the collection of fees, fines, court costs, or other charges by acceptance of payment by credit card,

**WHEREAS**, Chapter 132 further allows the governing body of a municipality to authorize the collection of a fee for processing payment by credit card and sets rules governing such collection and fees, and

**WHEREAS**, the City Council of the City of Terrell, Texas finds it in the best interest and efficient operation of the City to allow the acceptance of payment by credit card and to differ the cost of processing such payment through the collection of a fee for such,  
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS, THAT:**

Chapter 1 Section 25 of the City of Terrell, Texas – Code of Ordinances shall be added as follows:

**ARTICLE I**

“Section 1-25 Payment by Credit Card and Electronic Means

(A) Under the direction and oversight of the City Secretary, payment of fees, fines, court cost, or other charges may be accepted through credit card or other electronic processing.

(B) The fee for processing of such payment shall be in an amount equal to 2% of the payment amount.

(C) Exclusions Animal Adoption and Animal Registration shall be exempt from credit card processing fees.

(D) The fee for a returned, reversed or otherwise unfunded payment processed under this Chapter shall be thirty five dollars (\$35.00) in addition to the original amount not paid.”

**ARTICLE II.**

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

**ARTICLE III.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**ARTICLE IV.**

This ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

PASSED AND APPROVED THIS the 3rd day of March, 2015.

PASSED AND ADOPTED THIS the 17th day of March, 2015.

**END OF CONSENT AGENDA**

14. Adjourn.

There were no other matters discussed or acted on at this meeting. There being no further business the meeting was adjourned.

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**Hal Richards, Mayor**

**Attest:**

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**John Rounsavall, City Secretary**