

ORDINANCE NO. 2107

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 8, OFFENSES AND NUISANCES, SECTION 6: ADVERTISING; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:

SECTION I.

That Chapter 8, Offenses and Nuisances, Section 6: Advertising, shall be amended as follows:

Section 8-6. Advertising

(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.

(B) Permit Required for Distribution.

- (1) A person commits an offense if he throws, casts, distributes, scatters or deposits handbills, dodgers, circulars, booklets, posters, printed matter, advertising literature, samples or devices upon public or private property within the City of Terrell without a written permit from the City Secretary.
- (2) An application for a distribution permit must be made on a form provided by the City Secretary. The applicant must be qualified according to the provisions of this section.

(C) Issuance of Permit. The City Secretary shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless one or more of the following are found to be true:

- (1) An applicant is under 21 years of age;

- (2) An applicant or an applicant's spouse is overdue in the payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon real and/or personal property;
- (3) Any fee required by this section has not been paid;
- (4) The City Secretary, upon approving the issuance of a distribution permit shall send to the applicant written notice of that action and shall state where the applicant must pay the permit fee and obtain the permit. The City Secretary's approval of the issuance of a permit does not authorize the applicant to distribute material until the applicant has paid all fees required by this section and obtained possession of the permit.

(D) Fees. The following nonrefundable fees will be charged for each permit issued under the terms of this chapter:

- (1) The initial permit fee is \$100.00;
- (2) The annual permit renewal fee is \$75.00;
- (3) Fees shall be waived for:
 - (1) an agency of the federal, state or local government; or
 - (2) a public or private elementary school, secondary school, college or university; or
 - (3) a youth group, non-profit and charitable organizations.

(E) Hours of Distribution. All distribution of material under this section shall be limited to the following hours:

- (1) Monday through Saturday - 10:00 A.M. until 6:00 P.M.
- (2) Sunday - 2:00 P.M. until 5:00 P.M.

(F) Revocation of Permit. The City Secretary and/or the Chief of Police shall, subject to the provisions of sub-section G, revoke a permit if the City Secretary and/or the Chief of Police determines that one or more of the following is true:

- (1) A permit holder has given false or misleading information to the City Secretary during the application process;

- (2) A permit holder or employee has distributed or attempted to distribute any material under this section on or within ten (10) feet of the right-of-way of any street or highway within the city;
- (3) It is a defense to prosecution and/or revocation of a permit under this section if the alleged distribution on or within ten (10) feet of the right-of-way of any street or highway within the city if said distribution is conducted by
 - (1) an agency of the federal, state or local government; or
 - (2) a public or private elementary school, secondary school, college or university; or
 - (3) a youth group, non-profit or charitable organization.
- (4) When the City Secretary and/or the chief of police revoke a permit, the revocation will continue for a period of one year.

(G) Appeals. If the City Secretary denies the issuance or renewal of a permit or the City Secretary or Chief of Police revokes a permit, the City Secretary shall send to the applicant or permit holder written notice of the action and the right of an appeal. The aggrieved party may appeal the decision of the City Secretary and/or the Chief of Police to the City Council. The filing of an appeal and the posting of a cash bond in the amount of \$250 shall stay the action of the city secretary and or the Chief of Police in revoking a permit until the City Council makes a final decision. The City Council shall hear the appeal within 60 days of filing. If, after a hearing, the City Council denies the appeal or in the event the aggrieved party fails to fully prosecute the requested appeal to a conclusion, the \$250 cash bond previously posted shall be forfeited as costs and the remainder of any revocation shall be fully implemented. The decision of the City Council shall be final.

(H) Transfer or Assignment of Permit. A permit holder shall not transfer or assign to another.

(I) 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.

(J) United States Mail and Certain Newspapers Excepted.

- (1) This section 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.

- (2) The term “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.

(K) Penalty. Any person who violates any provision of this section, upon conviction, is punishable by a fine not to exceed \$500.00 per day for each occurrence.

SECTION II.

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

SECTION 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 judgement 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 IV.

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

PASSED AND APPROVED ON THIS THE 2nd DAY OF APRIL, 2002.
PASSED AND ADOPTED ON THIS THE 16TH DAY OF APRIL, 2002.

APPROVED:

HENRY C. MADGWICK, SR., MAYOR

ATTEST:

JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

MARY GAYLE RAMSEY, CITY ATTORNEY