

ORDINANCE NO. 2646

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY TEXAS AMENDING CHAPTER 5, BUSINESS REGULATIONS, SECTION 6, VENDORS AND SOLICITORS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, 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. Purpose.

The primary purpose of the public streets, sidewalks, and other public ways is for use by vehicular and pedestrian traffic. Vending on such public ways promotes the public interest by contributing to an active and attractive pedestrian environment. Reasonable regulation of vending on public ways and in public places is necessary to protect the public health, safety and welfare and to protect local residents against trespassing by Vendors and Solicitors in the event they have given reasonable notice that they do not wish to be solicited by such persons or do not desire to receive merchandise or services. The regulations contained in this ordinance are not intended in any way to prohibit or hamper speech that is protected by the constitution of both the United States and the State of Texas but merely to regulate specific activities which are commercial in nature. This entire ordinance is and shall be deemed an exercise of the police power of the State of Texas and of the City of Terrell for the process set forth above.

B. Definitions.

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

3. *Vendor and Solicitor* shall mean any person firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a business of selling or offering for sale, pre-packaged food, beverages, goods, services, wares and merchandise or engages in soliciting orders for the sale of goods, services, wares and merchandise for future delivery and who, in furtherance of such purposes, hires, leases, uses or occupies any stand, motor vehicle, tent, or from his or her person.

2. *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.

3. *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.

4. *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.

5. *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.

6. *“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.

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

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

9. *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.

10. *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 in-tangible, 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.

11. “*Aggressive solicitation*” shall mean:

- a. Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person’s consent;
- b. Following the person being solicited if that conduct is:
 - (1) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person’s possession; or
 - (2) intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- c. Continuing to solicit a person within five (5) feet of the person being solicited after the person has made a negative response;
- d. Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;
- e. Using obscene or abusive language or gestures toward the person being solicited;
- f. Approaching the person being solicited in a manner that:
 - (1) is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person’s possession; or
 - (2) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

12. Automated Teller Machine means a device, linked to a bank’s account records which is able to carry out banking transactions.

13. Automated Teller Facility means the area comprised of one or more automatic teller machines together with any adjacent space that is made available

to banking customers.

14. Bank includes a bank, savings bank, savings and loan association, credit union, trust company or similarly financial institution.

C License Required

It shall be unlawful for any vendor or solicitor to engage in the business of selling, displaying, or offering for sale any pre-packaged food, beverage, goods or merchandise at any public place within the City of Terrell without first obtaining a license from the City Secretary.

No vendor 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 pre-packaged food, beverage, goods, services or merchandise at any Special Event without first seeking approval for the same from the Sponsoring Organization.

D. Application

Every person desiring to engage in the business of a vendor as defined in Section A above shall apply for a license from the City Secretary. The application must include the following:

1. The full name, home address, permanent business address (if any), telephone number, driver's license number, and proof of identity;
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.

E. Health Permit Not Required

This section does not apply to any vendor engaged in the sale or distribution of prepared and/or cooked food or beverages that require the issuance of a health permit.

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 month period, One Hundred Seventy Dollars (\$170.00) for a period of from three to six months and Two Hundred Twenty Six Dollars (\$226.00) for a period of twelve 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 continue so long as the licensee is conducting business in the city. Such license shall be prominently displayed in a conspicuous place on the premises where business is being conducted. Said license shall include the effective date and ending date of the license.

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 vendors are exempt from the fee provisions of Sections E, H and I of this article but shall otherwise be required to comply with all other provisions.

11. Religious, non-profit, philanthropic and/or charitable organizations including, but not limited to, public or private schools as provided in Section N below
2. Any individual selling newspapers or magazines, or distributing free samples from his or her person.
3. The vending of pre-packaged food or drinks from a motor vehicle or other non-stationary means (i.e. push carts).

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 pre-packaged 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 pre-packaged 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 emergency vehicles.

M. 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 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.
1. 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.

N. 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.

- i. It shall be unlawful for any person to solicit:
 - (1) in an aggressive manner in a public area;
 - (2) at a bus station or at a facility operated by a transportation authority for passengers;
 - (3) within twenty five (25) feet of
 - (a) an automated teller facility;
 - (b) the entrance or exit of a bank;
 - (c) the entrance or exit of a check cashing business or at a marked crosswalk;
 - (4) on either side of the street on a block where a school attended by minors or a child-care facility has an entrance or exit;
 - (5) at a sidewalk café or the patio area of a bar or restaurant.

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.

O. 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.

P. 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 6th day of October, 2015.

PASSED AND ADOPTED THIS the 20th day of October, 2015.

Hal Richards, Mayor

ATTEST:

John Rounsavall, City Secretary

APPROVED AS TO FORM:

Mary Gayle Ramsey, City Attorney