

ORDINANCE NO. 2014-12-097

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 78 OF THE CODE OF ORDINANCES ENTITLED "PEDDLERS AND SOLICITORS;" TO GRANT THE CHIEF OF POLICE THE AUTHORITY TO ENFORCE REGULATIONS GOVERNING SOLICITATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of the Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City Council of the City of McKinney desires to amend its existing Chapter 78 regarding peddlers and solicitors to authorize the Chief of Police of the McKinney Police Department to oversee and enforce the Peddlers and Solicitors Ordinance; and

WHEREAS, the City Council finds that the regulation of such solicitation is in the best interest of the health, safety and welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS THAT:

Section 1. All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 78, entitled "Peddlers and Solicitors," is hereby amended to read as follows:

"Chapter 78 - PEDDLERS AND SOLICITORS

Sec. 78-1. - Purpose.

This chapter is and shall be deemed an exercise of the police powers of the state and of the city for the public safety, comfort, convenience, and protection of the city and the citizens thereof, and all of the provisions of this chapter shall be constructed for the accomplishment of that purpose.

Sec. 78-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Charitable purpose means the solicitation of money or property, for the benefit of a charity, philanthropy, or nonprofit organization or for the poor, underprivileged, needy, crippled, or handicapped persons; the teaching of patriotism or assistance to veterans or veteran's organizations; or for existing educational institutions or for the establishment or endowment of educational institutions. Nonprofit organizations shall include, but not be limited to, Multiple Sclerosis, American Heart Association, Muscular Dystrophy, American Cancer Society, Boy Scouts of America, Girl Scouts, etc.

Consumer means an individual who acquires real or personal property, services, money, or credit for personal, family or household purposes.

Parkway means the area between the edge of the designated street and the adjacent owner's property line.

Peddler, solicitor, or person means any individual, firm, company, partnership, corporation, association, trust, society, religious sect, organization, league, or other legal entity and includes any trustee, receiver, assignee, agent, or similar representative.

Religious organization means an organization that is dedicated to the support of a church, religious society, or any other religious sect, group, or order.

Sidewalk means any surface provided for the exclusive use of pedestrians.

Solicitation means conduct whereby a person or its agent, member, or representative:

- (1) Either orally or in writing, asks for a ride, employment, property, financial aid, money, or any article representing monetary value, for any purpose;
- (2) Whether orally or in writing, sells or offers to sell goods, services, publications, or subscriptions;
- (3) Distributes without remuneration goods, services, publications, or subscriptions; or
- (4) Solicits signatures on a petition or opinions for a survey.

The term "solicitation" shall include persons engaged in the delivery of handbills or circulars door to door for the solicitation of money, products, services or other items of pecuniary value. An offer of membership in any organization is expressly excluded.

Street means the portion of the street that is paved, designated, or used for vehicular traffic, and all areas dedicated to public use for public street purposes, which includes parkways, alleys, and sidewalks.

Traffic island means a barrier within a street or roadway to exclude vehicles, designated for the purpose of separating or directing streams of vehicular traffic.

Sec. 78-3. - Permits.

(a) *Required.*

- (1) It shall be unlawful for any person to attempt or to peddle, sell, solicit, canvass, or take orders for any services, wares, merchandise, or goods, or any article of value, including plants, flowers, paintings, novelties, painting house numbers on streets, firewood, books, magazines, photographs, or any articles for future delivery, on a sidewalk, parking lot or parkway within the city or from door to door without having first obtained a permit therefore from the city.
- (2) Each person engaged in peddling or soliciting or selling as described in subsection (a)(1) of this section must have a permit issued under the terms of this section, and such permit shall be personal to the applicant and shall not be reproduced nor assigned nor transferred to any other person. Any such attempted transfer or reproduction shall render the permit void.
- (3) Each permit shall expire as of the date noted thereon, which date shall be in accordance with the provisions of this chapter, and such permit shall indicate the hours when peddling, solicitation and selling within the city is permitted in accordance with the provisions of this chapter.
- (4) It shall be unlawful for any person who shall solicit funds in the city to represent in connection with such solicitation of funds that the issuance of a permit or

identification card by the city constitutes an endorsement thereof.

- (5) It shall be unlawful for any person to solicit funds for a purpose other than that set out in the registration statement or application upon which the permit was issued.
 - (6) A permit shall not be issued to any person under 13 years of age.
 - (7) Solicitation shall be deemed completed when made, regardless of whether the person making the solicitation receives any contribution or makes any sale.
- (b) *Application.* Every person desiring to solicit in the city shall, unless otherwise excepted, apply for a permit from the Police Department. Each application for a permit required by this section shall be in writing, under oath, notarized and shall set out the following:
- (1) The name of the applicant, with his permanent residence;
 - (2) Whether the person represents a partnership, corporation or association, and:
 - a. The business address and telephone number of the applicant;
 - b. If a partnership, the names of all partners and the principal business address and telephone number of each partner;
 - c. If a corporation, the person applying shall state whether it is organized under the laws of the state or is a foreign corporation, and must show the mailing address, business location, telephone number, name of the individual in charge of the city office of such corporation, and the names and addresses of all officers and directors or trustees of said corporation, and, if a foreign corporation, the place of incorporation; or
 - d. If an association, the application shall show the association's principal business address and telephone number, if any, and shall show names and principal business or residence addresses and telephone numbers of all members of the association unless they exceed ten in number, in which case the application shall so state and the person registering may alternatively list the names and principal business or residence addresses and telephone numbers of the officers and directors or trustees of the association. If the association is part of a multistate organization or association, the mailing address and business locations of its local office;
 - (3) The name and address of each person to solicit under the permit;
 - (4) The names mailing address and telephone number of all individuals who will be in direct charge or control of the solicitation of funds;
 - (5) The kind, type and character of goods or services he proposes to offer for sale, including the name

brand, manufacturer and distributor of goods and commodities and the name, publisher and distributor of all books, magazines or periodicals to be offered for sale;

- (6) Names and addresses of five persons as references, excluding relatives and persons living with the applicant;
 - (7) How often the applicant will solicit during the year;
 - (8) The time period within which the solicitation of funds is to be made, giving the date of the beginning of solicitation and its projected conclusion;
 - (9) A description of the methods and means by which the solicitation of funds is to be accomplished;
 - (10) The names of any cities where the applicant has worked within the previous six months;
 - (11) Whether the applicant, or any solicitor listed in the application, has ever been convicted of a felony or a misdemeanor involving moral turpitude;
 - (12) The state driver's license number or a state approved identification card number of the applicant and each solicitor; and
 - (13) The social security number of the applicant and each solicitor.
- (c) *Attachments.* In addition, there shall be attached to each application for a permit, the following:
- (1) Two recent photographic likenesses of the applicant's face, and any solicitor soliciting under said permit, which photographs shall not exceed one inch squared in size;
 - (2) A certificate or letter from the president, vice-president, general manager, sales manager, assistant sales manager or district or area manager of the company for which the applicant works, sells or solicits stating that the applicant is an employee and/or agent of such company;
 - (3) A reference to a recognized financial rating publication, which reference shall show the page on which the company's or firm's financial standing can be found; or a letter or a certificate from an association or organization which has as its purpose the protection of citizens of the United States against illegal or unsavory business practices stating that the firm or company is a member in good standing of such association or organization; and
 - (4) In the event that the applicant is an individual who is not canvassing, selling or soliciting for any firm or company, letters of recommendation from two citizens of the applicant's permanent residence shall be submitted.
- (d) *Application fee.* The application shall be accompanied by a fee as set forth in the Schedule of Fees in Appendix A, which may be amended from time to time by the city council, for the original solicitor or applicant, plus a fee as set forth in the Schedule of Fees in Appendix A, which may be amended from time to time by the city council, for each additional

solicitor, for the investigation and administration of the provisions of this chapter. This fee shall be paid to the Police Department. In addition, the applicant shall pay a fee as set forth in the Schedule of Fees in Appendix A, which may be amended from time to time by the city council, for each identification card issued.

- (e) *Investigation of applicant.* It shall be the duty of the Chief of Police, or his or her authorized designee ("Chief of Police"), to secure a background check through any lawful means on each applicant, and all other persons listed on the application before issuance of a permit, which investigation may include, but is not necessarily limited to, personal interviews with named individuals, criminal history checks, verification of references and information contained within the application.
- (f) *Issuance.* A permit applied for under this chapter shall be issued by the Police Department within ten days after the application is completed and filed, unless it is determined that the applicant has provided false or incomplete information on his application. A permit requested under this chapter shall be issued for the length of time requested, not to exceed six months. An expired permit may be renewed under the same terms and conditions as the original application and subject to the same fees.
- (g) *Form.* Each permit shall be printed in black, except that the following shall be printed prominently thereon in red: "The issuance of the permit is not an endorsement by the city or any of its officers or employees." Each permit shall bear a permit number, which is the same as the file containing the application filed by the applicant.
- (h) *Permit to be displayed.* It shall be unlawful for any person to sell or solicit in the city without carrying the identification card and displaying the permit required, by this section on his person, in plain view, while engaged in such soliciting or selling.
- (i) *Exhibiting permit.* Every solicitor or peddler or seller shall identify himself as a salesman upon approaching a citizen in a public place or at a private dwelling and explain his purpose, whether it be direct sales, solicitation or orders of the demonstration of goods or merchandise, or any combination of purposes thereof, and shall produce for inspection, upon request by any person, the solicitor's permit issued by this city.
- (j) *Solicitors' identification cards.* Each identification card issued by the Police Department shall bear the name of the applicant, the application number, the name of the solicitor, or agent, and the expiration date of the permit, and it shall have printed prominently thereon in red: "This identification card is not an endorsement of the solicitation by the City of McKinney or any of its officers or employees. It is your duty to verify all information given to you by this solicitor." The applicant shall provide, by a separate list, the names and addresses of all agents or employees for whom identification cards are to be issued.
- (k) *Responsibility for acts of solicitors.* The recipient of a permit or named applicant shall be responsible for the acts of his authorized representatives or solicitors listed in permit application in connection with solicitation activities. In this regard, the recipient of the permit shall actively supervise all

persons listed in the permit application, which supervision shall include, but not be limited to, remaining within the corporate city limits during all solicitation activity and responding promptly (within ten minutes) to calls by city representatives relative to the solicitation activity which may include responding to an on-site complaint from a citizen.

(l) *Revocation of permit.*

- (1) If, after the permit required by this section has been issued, the Chief of Police finds that the permit was obtained by false representation in the application, or the permit has been reproduced or transferred or assigned to another person or the applicant has led someone to believe the permit is an endorsement of the applicant's product or service by the city, or in the event of fraud or misrepresentation by the permit holder, or in the event of conviction of the permit holder of a felony or a misdemeanor involving moral turpitude, or in the event the permit holder has failed to furnish the items required by this chapter, such permit may be revoked by the Chief of Police.
- (2) If the Chief of Police or a police officer has probable cause to believe that a solicitor has engaged in prohibited conduct as defined by this chapter, the officer may revoke the permit of the permit holder.
- (3) If more than one complaint of misconduct by a solicitor or group of solicitors working for the same company is received, the permit may be immediately revoked by the city.

(m) *Appeal from denial or revocation of permit.* Should an applicant be denied a permit, or have a permit revoked, he may appeal that action to the city council by submitting a letter to the Chief of Police within ten days to complain of that action. A hearing of the denial will then be scheduled for the next regular meeting of the city council, or a special meeting of the city council, to be held within 15 days of the appeal. The city council shall render a decision on the appeal within one day of the date of the hearing. Such hearing shall be an administrative hearing. Adherence to formal rules of evidence shall not be required. The decision of the city council shall be final and binding. No new application for a permit will be considered for six months after denial or revocation, unless said denial or revocation is without prejudice or is conditional and the conditions have been satisfied as determined by the Chief of Police.

(n) *Exemptions.*

- (1) The following persons engaged in the activities set out in subsections (n)(1) through (n)(4) of this section in the city shall first register with the Police Department by filling out a form to be promulgated by the Police Department in accordance with the provisions of this chapter and by furnishing proof that he is actually engaged in such activity in the city, and the Chief of Police shall issue to such person a registration certificate exempting him from the terms and conditions of this section and from paying a fee therefore, namely:
 - a. Public utility companies or others operating under a franchise granted by the city;

- b. Commercial agents dealing with local business establishments in the usual course of business; and
 - c. Insurance salesmen, real estate salesmen and others licensed by the state.
- (2) Solicitations related to children's activities, including, but not limited to, Girl Scouts, Boy Scouts, and Big Brothers and Sisters, which may involve children under the age of 13. Children under the age of 13 may participate in such activities to the extent they are actively supervised by a parent, guardian or other adult person, at least 18 years of age, who is responsible for the well-being of the child.
- (3) Religious, political or nonprofit organizations and their representatives distributing handbills or pamphlets only for the purpose of communicating issues of general interest to the public need not register with the Police Department or pay a permit fee. A donation received from the distribution of handbills or pamphlets does not affect this exemption.
- (4) Ordinary commercial travelers who sell, or exhibit for sale, goods, wares or merchandise to persons selling and dealing in the same within the city.
- (o) *Bond.* Each person engaging in solicitation activities requiring cash deposits or taking orders on delivery purchases (COD) or who requires a contract of agreement to finance the sale of any goods, services or merchandise for future delivery, or for services to be performed in the future, shall furnish to the city a cash bond in the amount of \$5,000.00, naming the applicant for the permit as principal. The bond shall be in full force and effect for one year from the date of issuance of the permit, unless otherwise extended by demand of the city due to the revocation of the permit, or an anticipated delivery date beyond 12 months, in order to protect the citizens of the city from potential losses associated with such solicitations.

Sec. 78-4. - Prohibited location, activities and conduct.

- (a) It shall be unlawful for any person to peddle, solicit, hawk, sell or take orders for or offer to take orders for any item or service in the following places in the city:
 - (1) On any public street or alley or traffic island;
 - (2) Within 25 feet of the following facilities:
 - a. ATM machines;
 - b. Entrances and exits of banks, credit unions, or other financial institutions;
 - c. Exterior public pay telephones;
 - d. Self-service car washes;
 - e. Self-service fuel pumps;
 - f. Public transportation stops; or
 - (3) Any residence which shall exhibit in a conspicuous place upon or near the main entrance to the residence containing the words "NO SOLICITORS." The letters shall be not less than two-thirds of an inch in height and should be displayed on a weather proof card not less than three inches by four inches in size.

- (b) It shall be unlawful for any person to block or obstruct or hinder the free flow of traffic in the lawful use of the street or free passage of pedestrians in the lawful use of the sidewalk. No solicitations, sales, or distribution of merchandise, products, or service shall be offered or made to occupants of motor vehicles moving or stopped in traffic on a public street or alley.
- (c) It shall be unlawful for a person engaged in solicitation to:
 - (1) Misrepresent the purpose of the solicitation;
 - (2) Misrepresent the affiliation of those engaged in the solicitation;
 - (3) Continue efforts to solicit from an individual once that individual informs the solicitor that he does not wish to give anything to or buy anything from that solicitor;
 - (4) Represent the issuance of any permit or registration under this chapter as an endorsement or recommendation of the solicitation;
 - (5) Remove, deface, or render illegible a card placed by the occupant of a residence pursuant to subsection (a)(3) of this section;
 - (6) Go on property upon which the owner of the property or the person controlling the property has posted signs prohibiting solicitation; or
 - (7) Remain on property after the property owner, or the property owner's designee, representative or agent, has instructed the solicitor to leave.
- (d) No solicitor, or person working on his behalf, shall shout, make an outcry, blow a horn or whistle, or use any sound device, including any sound amplifying system, upon any of the streets, avenues, alleys, parks or other public places of the city, or otherwise be in violation of the city's noise ordinance.
- (e) No person shall engage in solicitation through the delivery of handbills or circulars by placing said handbills or circulars on motor vehicles, public utility posts, or other location such that the same constitutes littering under V.T.C.A., Health and Safety Code ch. 365. It is presumed that the person or business whose address or telephone number is listed in the notice, poster, paper, or device, or who is otherwise named, described, or identified in the notice, poster, paper, or device, is the person or business who committed the violation, either personally or through an agent or employee.
- (f) It shall be unlawful for any person to use children 13 years of age or younger for solicitation activities, unless otherwise expressly permitted herein, unless such children are actively supervised by a parent, guardian or other adult person at least 18 years of age who is registered as provided herein. For purposes of this section, actively supervised means that the adult person shall be within 100 feet of all children 13 years of age or younger for whom the adult person is responsible at all times when the children are engaged in solicitation activities.
- (g) It shall be an affirmative defense to prosecution under this chapter if the person is occupying the public right-of-way for the purpose of selling newspapers or publications or other printed material which deal with the dissemination of information or opinion; however, this defense is not available

if said act occurred upon the paved surface or shoulder of any public street, highway or road.

Sec. 78-5. - Times when soliciting prohibited.

No person shall peddle, solicit, hawk, sell or take orders for or offer to take orders for any item or service at a private residence in the city after sunset on any day until 9:00 a.m., Monday through Saturday, unless the transaction is the result of a request made to such person by the occupant of such private residence. The term "sunset" means the time of day identified by the National Weather Service as the time for sunset for that day for the city. There shall be no solicitations on Sunday, New Years Day, Fourth of July, Memorial Day (observed), Labor Day (observed), Thanksgiving, or Christmas Day.

Sec. 78-6. - Consumers right to cancel.

- (a) The merchant, peddler, or seller shall provide to the consumer in writing the right to cancel a solicitation transaction made in person or by telephone in which the consideration exceeds \$5.00, until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase in a solicitation transaction. For purposes of a telephone solicitation, date of transaction means the day that the consumer receives the goods, services, or realty purchased in a solicitation transaction.
- (b) If the consumer chooses to cancel the solicitation transaction, notification by mail shall be considered given at the time mailed as evidenced by the postmark; notification by telegram shall be considered given at the time filed for transmission; and notification by any other writing shall be considered given at the time delivered to the merchant's designated place of business.
- (c) It shall be unlawful for a merchant, peddler, or seller to refuse to allow the customer to cancel the solicitation transaction.
- (d) Cancellations authorized, and the procedure and notice requirements set forth in V.T.C.A., Business and Commerce Code ch. 39, as it may be amended, are applicable to this section, for transactions applicable thereunder.

Sec. 78-7. - Penalty.

Any person violating any of the provisions or terms of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed the sum of \$500.00 for each offense, and each and every day such violation shall continue be deemed to constitute a separate offense. Allegation and evidence of a culpable mental state is not required for proof of any offense defined by this chapter.

Sec. 78-8. - Public disclosure.

All applications, whether or not a permit has been issued, shall be a public record and shall be available for inspection by members of the public during regular business hours, and copies may be obtained at cost."

Section 3. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not

be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 4. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 16th DAY OF DECEMBER, 2014.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney