

## ***ARTICLE III. SOLICITORS AND ITINERANT MERCHANTS<sup>1</sup>***

### ***DIVISION 1. GENERALLY***

#### **Sec. 16-71. Purpose.**

This entire article is and shall be deemed an exercise of the police power of the state and of the city for the public safety, comfort, convenience and protection of the city and its citizens, and all of the provisions of this article shall be construed for the accomplishment of that purpose.

(Ord. No. 2004-113, § 2, 4-6-04)

#### **Sec. 16-72. Definitions.**

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

*Agricultural vendor* means an individual engaged in selling only products which are planted and or naturally harvested including fruits, vegetables, plants, trees, nuts or honey.

*Conviction* means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned.

*Day labor site* means a designated portion of the property located at 221 W. Collins Street where soliciting employment is allowed without a permit. The day labor site shall not include any area within fifty (50) feet of the intersection of the day labor site driveway entrance and West Collins Street. Nor shall the day labor site include any area within twenty (20) feet of any curb-line of the city streets adjacent to the property at 221 W. Collins Street. Additionally, if any fencing, shrubbery, or other physical barrier is added to the property at 221 W. Collins Street, then the day labor site shall only include the area of the property inside of the physical barrier.

*Goods or merchandise* means any personal property of any nature whatsoever, except printed material.

*Handbill* means any printed or written matter, any sample or device, circular, flyer, leaflet, pamphlet, paper, booklet, or any other printed matter of literature which is not delivered by United States mail, including, but not limited to, those which:

- (1) Advertise for sale any merchandise, product, commodity, or thing;
- (2) Direct attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or

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<sup>1</sup>Editor's note(s)—Ord. No. 2004-103, § 1, adopted April 6, 2004, repealed art. III, §§ 16-71—16-77, 16-91—16-96, in its entirety. Section 2 of said ordinance enacted new provisions to read as herein set out. Prior to amendment, art. III pertained to similar subject matter and derived from Code 1966, §§ 20-51, 20-52, 20-60; Ord. No. 88-096, §§ I, I(20-53—20-63), adopted June 7, 1988.

Cross reference(s)—Soliciting business or charitable contributions on streets, § 25-5.

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- (3) Direct attention to or advertise any meeting, theatrical performance, exhibition, or event of any kind for which an admission fee is charged for the sole purpose of private gain or profit.

*Handbill distributor* means and includes any person engaging or engaged in the business for hire or gain of distributing handbills, other than newspapers distributed to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

*Handbill sponsor* means and includes any person, firm or corporation who utilizes handbills as a medium of advertising or spreading a message.

*Home solicitation transaction* means a transaction or the purchase of goods or services, payable in installments or cash, in which the home solicitor engages in a personal solicitation of a sale to a person at a residence. A home solicitation transaction shall not include a sale made pursuant to a preexisting retail charge agreement or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale or a sale of realty, in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.

*Home solicitor* means a person who goes from house to house or from place to place soliciting, selling or taking orders for or offering to sell or take orders for any goods, merchandise or services, this includes distribution of handbills left at any residence.

*Itinerant merchant* means a person who sets up and operates a temporary business within the premises of another business or location in the city soliciting, selling or taking orders for or offering to sell or take orders for any goods or services. An itinerant merchant does not include a person who operates a temporary business completely within a building of an existing business with the express permission of the owner or operator of that business or building.

*Multiunit complex* means two (2) or more dwellings in one or more buildings that are:

- (1) Under common ownership;
- (2) Managed by the same owner, agent, or management company; and
- (3) Located on the same lot or tract or adjacent lots or tracts of land.

*Police chief* means the chief of police or his designee of the city.

*Residence* means any separate living unit occupied for residential purposes by one (1) or more persons, contained within any type of building or structure.

*Soliciting* means any conduct or act whereby a person:

- (1) Either orally or in writing, asks for a ride, employment, goods, services, financial aid, monetary gifts, or any article representing monetary value, for any purpose in any public place;
- (2) Either orally or in writing, sells or offers for sale goods, services, or publications;
- (3) Distributes without remuneration goods or services.

Soliciting does not include requesting a ride, employment, goods, services, or financial aid from a friend or relative nor does it include panhandling—21-6.

*Solicitor* means a person who engages in soliciting.

(Ord. No. 2004-113, § 2, 4-6-04; Ord. No. 2004-207, § 1, 7-20-04)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

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### **Sec. 16-73. Hours for home solicitation.**

- (a) A person shall not go upon any residential premises and ring the doorbell or rap or knock upon the door or create any sound in a manner calculated to attract the attention of the occupant of the residence for the purpose of engaging in or attempting to engage in a home solicitation transaction:
  - (1) Before 9:00 a.m. or after the earlier of dusk or 9:00 p.m. Monday through Friday, or
  - (2) Before 10:00 a.m. or after the earlier of dusk or 9:00 p.m. Saturday or Sunday;
- (b) For purposes of subsection (a), dusk means thirty (30) minutes after sunset.
- (c) This section shall not apply to a visit to the premises as a result of a request or an appointment made by the occupant.

(Ord. No. 2004-113, § 2, 4-6-04; Ord. No. 2017-217 , § 1, 8-1-17)

### **Sec. 16-74. Prohibited conduct.**

It shall be unlawful for a person engaged in soliciting under this article to:

- (1) Misrepresent the purpose of the solicitation;
- (2) Continue efforts to solicit from an individual once that individual informs the solicitor that he does not wish to make a purchase from that solicitor;
- (3) Represent the issuance of any permit under this article as an endorsement or recommendation of the solicitation;
- (4) Fail to carry a valid driver's license or identification card issued by the State of Texas or the state in which the defendant resides;
- (5) Solicit operators or passengers in or on a motor vehicle on any public street.

(Ord. No. 2004-113, § 2, 4-6-04; Ord. No. 2004-207, § 2, 7-20-04)

### **Sec. 16-75. Exhibiting card prohibiting solicitors and/or handbill distributors.**

- (a) A person desiring that no merchant or other person engage in a home solicitation at his residence or at a multi-unit complex which he owns or manages shall exhibit in a conspicuous place upon or near the main entrance/entrances to the residence or multi unit complex a weatherproof card, or sign not less than two (2) inches by four (4) inches in size, containing the words, "No Solicitors" or No Handbills. "The letters shall be not less than two-thirds of an inch in height. Multi-unit complexes may also give notice of no soliciting by painting the words, "No Solicitors" or "No Handbills" on the curbs at major entrances to the multi-unit complex.
- (b) Every solicitor upon going onto any premises upon which a residence is located shall first examine the residence or multi unit complex to determine if any notice prohibiting soliciting or handbill distribution is exhibited upon or near the main entrance to the residence or multi unit complex. If notice-prohibiting soliciting is exhibited, the solicitor shall immediately depart from the premises without disturbing the occupant, unless the visit is the result of a request made by the occupant.
- (c) No person shall go upon any residential or multi unit complex premises and ring the doorbell or rap or knock upon the door or create any sound in a manner calculated to attract the attention of the occupant of the residence for the purpose of securing an audience with the occupant and engaging in or attempting to

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engage in a home solicitation transaction if a card as described in subsection (a) of this section is exhibited in a conspicuous place upon or near the main entrance(s) to the residence or multi-unit complex, unless the visit is the result of a request made by the occupant.

- (d) No person shall distribute handbills upon any residential or multi unit complex premises if notice as described in subsection (a) of this section is exhibited in a conspicuous place upon or near the main entrance(s) to the residence or multi-unit complex. It is prima facie evidence that the handbill sponsor is fully responsible for the placement or distribution of the handbills.

(Ord. No. 2004-113, § 2, 4-6-04)

### **Sec. 16-76. Soliciting on city property.**

- (a) It shall be unlawful for any person to solicit on property owned by the city, unless such person has entered into a license agreement with the city.
- (b) The city manager is authorized to execute and enter into license agreements with solicitors authorizing the use of a tract or portion thereof of city property where specific findings are made that the proposed use:
  - (1) Will not violate the provisions of the V.T.C.A., Transportation Code § 552.007 or V.T.C.A., Penal Code § 42.03;
  - (2) Will not cause or contribute significantly to congestion on the public sidewalks so as to render access to abutting private property unreasonably inconvenient.
- (c) The licensee shall pay a rental fee based upon square footage.

(Ord. No. 2004-113, § 2, 4-6-04)

Cross reference(s)—Streets, sidewalks and public places generally, Ch. 25.

### **Sec. 16-77. Additional requirements for itinerant merchants.**

- (a) Itinerant merchants shall not block fire lanes.
- (b) Itinerant merchants shall provide a portable toilet or obtain written permission from the property owner to use the rest room facilities.
- (c) Itinerant merchants shall not obstruct traffic site triangles.
- (d) Itinerant merchants shall not obstruct required parking spaces.
- (e) Itinerant merchants shall be set back from the edge of the right of way by at least fifteen feet.
- (f) Itinerant merchants shall meet all requirements of the Denton Development Code.

(Ord. No. 2004-113, § 2, 4-6-04)

### **Sec. 16-78. Exemptions.**

- (a) The provisions of this article shall not apply to sales made to dealers by commercial travelers or sales agents in the usual course of business calling upon or dealing with manufacturers, wholesalers, distributors or retailers at their places of business.
- (b) The provisions of this article shall not apply to anyone or any group who is required to get a special events permit through the city parks and recreation department or to the North Texas State Fair.

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- (c) The provisions of this article shall not apply to a person soliciting employment at the day labor site.
  - (d) Sections 16-77(b), 16-91, 16-95 shall not apply to agricultural vendors not engaging in any home solicitation or to organizations whose membership consists primarily of persons under 18 years of age, such as Girl Scouts, Boy Scouts, school organizations, youth sports organizations, and charitable or religious youth organizations. See Denton Code of Ordinances, chapter 25. However, any agricultural vendor who engages in any home solicitation must comply with the permit requirements and all other sections of this article.

(Ord. No. 2004-113, § 2, 4-6-04; Ord. No. 2007-098, § 1, 5-15-07)

**Secs. 16-79—16-90. Reserved.**

***DIVISION 2. PERMIT***

**Sec. 16-91. Required.**

It shall be unlawful for any itinerant merchant, handbill distributor, solicitor or home solicitor to distribute handbills or engage in soliciting within the city without first obtaining a permit from the city. If the solicitation is for charitable, religious or educational purposes, these solicitations shall be governed by sections 25-5, 25-5.1, and 25-5.2.

(Ord. No. 2004-113, § 2, 4-6-04; Ord. No. 2004-207, § 3, 7-20-04)

**Sec. 16-92. Affirmative defenses to permit requirement.**

The following shall be an affirmative defense to prosecution under section 16-91 of this article:

That the solicitor is on the property by invitation of the person residing on such premises.

(Ord. No. 2004-113, § 2, 4-6-04)

**Sec. 16-93. Application; duration renewal.**

- (a) Any person who wishes to engage in soliciting, home solicitation, handbill distribution or any itinerant merchant who wishes to solicit within the city shall file a written application with the police chief, which application shall show the following:
  - (1) Proof of the identity and home address of the applicant and the name and address of the employer or firm that such applicant represents;
  - (2) A brief description of the nature, character and quality of the goods to be sold, or a copy of the handbills to be distributed;
  - (3) If employed by another, the name and business address of the person, firm, association, organization or corporation;
  - (4) For any and all motor vehicles which are to be used, a description of all the vehicles, together with the motor vehicle registration numbers of all the vehicles, and the license numbers of all the vehicles;
  - (5) A description of the proposed location of the solicitation or handbill distribution;
  - (6) The period of time the applicant so wishes to solicit, sell, take orders or distribute handbills in the city;

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- (7) The names of other communities in which the applicant has worked as a solicitor or handbill distributor in the past twelve (12) months, and, if he was employed by a different company in those communities, the name of those companies shall also be stated;
- (b) The applicant or any agent of the applicant must meet the following criteria:
- (1) Be currently authorized to work full-time in the United States;
  - (2) Hold a valid driver's license or identification card issued by the State of Texas or the state in which the defendant resides;
  - (3) Be able to communicate in the English language;
  - (4) Not be afflicted with a physical or mental disease or disability that is likely to endanger the public health or safety;
  - (5) Not have been convicted or placed on probation or deferred adjudication for a crime:
    - a. Involving:
      1. Criminal homicide as described in V.T.C.A., Penal Code Chapter 19;
      2. Kidnapping as described in V.T.C.A., Penal Code Chapter 20;
      3. A sexual offense as described in V.T.C.A., Penal Code Chapter 21;
      4. An assaultive offense as described in V.T.C.A., Penal Code Chapter 22, other than a Class C misdemeanor;
      5. Robbery as described in V.T.C.A. Penal Code, Chapter 29;
      6. Burglary as described in V.T.C.A., Penal Code Chapter 30;
      7. Theft as described in V.T.C.A., Penal Code, Chapter 31, but only if the violation is punishable as a felony;
      8. Fraud as described in V.T.C.A., Penal Code Chapter 32;
      9. Tampering with a governmental record as described in V.T.C.A., Penal Code Chapter 37;
      10. Public indecency (prostitution or obscenity) as described in V.T.C.A., Penal Code Chapter 43;
      11. The transfer, carrying, or possession of a weapon in violation of V.T.C.A., Penal Code, Chapter 46, but only if the violation is punishable as a felony;
      12. A violation of V.T.C.A., Health and Safety Code Chapter 483, Dangerous Drugs, of the that is punishable as a felony;
      13. A violation of the Controlled Substances Act, V.T.C.A., Health and Safety Code Chapter 481 that is punishable as a felony; or
      14. Criminal attempt to commit any of the offenses listed in 1. through 13. of this subsection;
    - b. For which:
      1. If the applicant was convicted for a misdemeanor offense, less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date;
      2. If the applicant was placed on probation or deferred adjudication for a misdemeanor offense, less than two years have elapsed since the date of successful completion of probation or deferred adjudication;

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3. If the applicant was convicted for a felony offense, less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction or the date of release from parole, whichever is the later date;
  4. If the applicant was placed on probation or deferred adjudication for a felony offense, less than five years have elapsed since the date of successful completion of probation or deferred adjudication;
  5. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses; or
  6. Less than five years have elapsed since the date of the successful completion of probation or deferred adjudication for the last offense, whichever is the later date, if, within any 24-month period, the applicant has been placed on probation or deferred adjudication two or more times for any misdemeanor offense or combination of misdemeanor offenses;
- c. Not be addicted to the use of alcohol or narcotics;
  - d. Be subject to no outstanding warrants of arrest;
  - e. An applicant who has been sentenced for an offense listed in Subsection (b)(5)(a.) 1-8 which is a felony level offense or criminal attempt of (b)(5)(a) 1-8 for which the required time period provided by this article has elapsed, may qualify only if the chief of police or his designee determines that the applicant is presently fit to engage in solicitation or handbill distribution. In determining present fitness under this section, the chief or his designee shall consider the following:
    1. The extent and nature of the applicant's past criminal activity;
    2. The age of the applicant at the time of the commission of the crime;
    3. The amount of time that has elapsed since the applicant's last criminal activity;
    4. The conduct and work activity of the applicant prior to and following the criminal activity;
    5. Evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release; and
    6. Other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police or his designee in the community where the applicant resides; and any other persons in contact with the applicant.
  - f. It is the responsibility of the applicant, to the extent possible, to secure and provide to the chief or his designee the evidence required to determine present fitness under subsection e. of this section.
  - g. Proof of a sales tax permit issued by the state or proof that the goods sold are not subject to such sales tax; and
  - h. An itinerant merchant who makes application to offer his goods for sale upon private property shall provide written proof that he has permission to use such property from the owner or the owner's agent.
  - i. The applicant shall present written proof of his authority to represent the company or individual he states he represents.

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- j. The application shall be accompanied by a fee in an amount established by the city council and on file in the office of the city secretary, and no permit shall be issued until such fee has been paid by such applicant.
  - k. A permit requested under this article shall be issued for the length of time requested, not to exceed thirty (30) days for solicitors and not to exceed fourteen (14) days for itinerant merchants.
  - l. Upon expiration of a permit, the solicitor or itinerant merchant may not apply for a new permit for a period of thirty (30) days for the same business and/or location. Application for a subsequent permit must be made in the manner prescribed by this section.

(Ord. No. 2004-113, § 2, 4-6-04; Ord. No. 2004-207, § 4, 7-20-04)

#### **Sec. 16-94. Issuance.**

It shall be the duty of the chief of police or his designee to issue such applicant a permit to solicit or sell or take orders for such goods, services or merchandise set forth in the applicant's application within five (5) working days of the receipt of a completed application and prescribed fee, unless it has been determined that the application contains false information or the person does not meet the criteria set forth in this article. If the application contains false information or the person does not meet the criteria set forth in this article, the chief shall not issue the permit.

(Ord. No. 2004-113, § 2, 4-6-04)

#### **Sec. 16-95. Permit card.**

- (a) Upon issuance of a permit required under this division, the permittee shall be issued a card which shall contain the name of the permittee, the permit number and date of expiration.
- (b) It shall be unlawful for any home solicitor or itinerant merchant to solicit in the city without carrying the required permit card on his person and a driver's license or identification card.
- (c) It shall be unlawful for an itinerant merchant to solicit at locations other than those listed in his application for a permit.
- (d) It shall be unlawful for any person soliciting to fail or refuse to display such permit card upon the request of any person demanding the card.
- (e) It shall be unlawful for any person to duplicate or xerox or otherwise display a facsimile of a permit card issued pursuant to this division.

(Ord. No. 2004-113, § 2, 4-6-04)

#### **Sec. 16-96. Solicitation in selected public rights-of-way prohibited.**

- (a) It shall be unlawful for any person to solicit, at any time in the public rights of ways, with or without a permit, on the following streets:
  - (1) Bell Avenue.
  - (2) Bonnie Brae.
  - (3) Carroll Boulevard.

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- (4) Colorado Boulevard.
  - (5) Dallas Drive.
  - (6) Eagle Drive.
  - (7) Elm Street.
  - (8) Ft. Worth Drive.
  - (9) Hickory Street.
  - (10) Interstate Highway 35, 35 East, 35 West and all service roads.
  - (11) Lillian Miller Parkway.
  - (12) Locust Street.
  - (13) Loop 288.
  - (14) McKinney Street.
  - (15) Oak Street.
  - (16) Teasley Lane.
  - (17) University Drive/Highway 380.
  - (18) Woodrow Lane.

**Secs. 16-97—16-125. Reserved.**