

ORDINANCE NO. 1884

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTERS 13 AND 14 OF THE CODE OF THE CITY OF MESQUITE; PROVIDING DEFINITIONS; PROVIDING FOR THE POSSESSION AND DISPLAY OF A SOLICITOR'S PERMIT; PROVIDING AN APPLICATION PROCEDURE FOR A PERMIT; PROVIDING FOR THE DURATION OF A PERMIT; PROVIDING FOR HOME SOLICITATIONS; PROVIDING FOR A CONSUMER'S RIGHT TO CANCEL; PROVIDING PROCEDURES FOR CANCELLATION; PROVIDING FOR CERTAIN HOURS DURING WHICH SOLICITATION MAY OCCUR; PROVIDING FOR PROHIBITION OF SOLICITATION AT A RESIDENCE WHERE CARD IS DISPLAYED; PROVIDING FOR PROHIBITION OF STATIONARY VENDORS ON PUBLIC PROPERTY; PROVIDING FOR THE REGULATION OF MOBILE VENDORS; PROVIDING FOR THE REGULATION OF OUTDOOR SALES ON PRIVATE PROPERTY; PROVIDING EXCEPTIONS; PROVIDING A PENALTY NOT TO EXCEED \$200.00; PROVIDING A SAVING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE FIVE DAYS AFTER PASSAGE.

WHEREAS, the City Council of the City of Mesquite has found it necessary to the health, safety, and public welfare of the inhabitants of the City to regulate solicitation within the City; and,

WHEREAS, the existing provisions of the Code of the City of Mesquite do not adequately provide such regulation;

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

SECTION 1. That Ordinance Number 1020, sections 1 through 4, codified as Section 13-16 (Commercial Use of Telephone System) of the Code of the City of Mesquite, be hereby repealed.

SECTION 2. That Chapter 14 of the Code of the City of Mesquite (Peddlers and Transient Vendors) be and is hereby amended to read as follows, in all other respects, said Code to remain in full force and effect:

SOLICITORS, VENDORS, AND OUTDOOR SALES

ARTICLE I - IN GENERAL

Sec. 14-1. DEFINITIONS

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) "Business Day" means any calendar day except Saturday, Sunday, or any state or national holiday.

(b) "Consumer" means any individual who seeks or acquires real or personal property, services, money, or credit for personal or household purposes.

(c) "Consumer transaction" means a sales transaction in which one or more of the parties is a consumer.

(d) "Food item" means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(e) "Home solicitation transaction" means a consumer transaction for the purchase of goods, services, or realty, payable in installments or in cash, in which the merchant engages in a personal solicitation of the sale to the consumer at a residence, in person or by telephone, and the consumer's agreement or offer to purchase is given at the residence to the merchant either in person or by telephone. A home solicitation transaction shall not include a sale made pursuant to a preexisting revolving charge account or 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; or a sale of insurance or other commodity which the merchant is licensed to sell by the State of Texas and for which document forms are prescribed by the State of Texas; or a sale of miscellaneous used household items at an event commonly known as a garage sale, provided that the items sold were not purchased or made specifically for sale at that event, and further provided that no more than two (2) such garage sales lasting no more than three (3) days each are held at one residence during any calendar year; or a sale of common neighborhood services such as babysitting, lawn care, pet care, or swimming pool maintenance, provided that the merchant is under twenty-one (21) years of age, and

further provided that no person other than said merchant and the consumer receives any financial benefit from the consumer transaction.

(f) "Interstate commerce" means soliciting, selling, or taking orders for, or offering to sell or take orders for, any goods, wares, merchandise, or other personal property or services which, at the time the order is taken, are in a state other than Texas, or will be produced in a state other than Texas and shipped or introduced into this city in the fulfillment of such order.

(g) "Merchant" means a party to a consumer transaction other than a consumer.

(h) "Mobile vendor" means a merchant who initiates sales transactions from a motor vehicle on a public street, stopping in immediate response to a direct request from a potential consumer, for a period not to exceed fifteen (15) minutes. The term as used herein specifically excludes persons who sell transportation services only, such as taxi or bus service.

(i) "Outdoor sales activity" means any sales activity in which items are displayed for sale outdoors; or in a truck, pickup, station wagon, or other motor vehicle or trailer, which is parked, stopped, or standing at a fixed location for a period of fifteen (15) minutes or more; or in a tent, shed or other temporary structure.

(j) "Person" means an individual, corporation, trust, partnership, association, or other legal entity.

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

(l) "Stationary Vendor" means a merchant who is engaged in, or who attempts to engage in, outdoor sales activity.

ARTICLE II - PERMIT TO SOLICIT

Sec. 14-2. POSSESSION AND DISPLAY OF PERMIT

(a) No person shall engage in or attempt to engage in any activity for which, under this code, a Solicitor's Permit is required unless he has in his immediate possession a valid Solicitor's Permit issued to him by the City Manager.

(b) It shall be unlawful for any person to state, maintain, imply, or represent that he has a Solicitor's Permit when he does not, in fact, possess a valid Solicitor's Permit issued to him by the City Manager.

(c) No person required by this code to possess a Solicitor's Permit shall fail to display or exhibit a valid Solicitor's

Permit issued to him by the city manager, upon request of any police officer, any code enforcement officer, any potential consumer, or any other person.

Sec. 14-3. APPLICATION FOR PERMIT

(a) An application for a Solicitor's Permit shall be made, under oath, on forms provided by the city. At a minimum, such application shall include the full name and date of birth of the applicant; his drivers license number, if any, together with any other identifiers required to establish his identity; his permanent address; the name and address of the person or firm he represents; and a statement of whether or not he has ever been convicted of a felony or a crime of moral turpitude, together with particulars of any such conviction.

(b) It shall be unlawful for any person to make a false statement on an application for a Solicitor's Permit. A false statement on the application shall be grounds for denial or revocation of a permit.

(c) The application fee for a permit shall be twenty-five dollars (\$25), which shall not be prorated and which shall not be returned to the applicant regardless of whether the permit is issued or denied. Persons engaged in interstate commerce may submit a request for waiver of the permit fee. Upon a determination by the City Manager that a person is engaged in interstate commerce, the application for permit shall be processed without fee. The City Manager may, at his discretion, reduce or waive the application fee for representatives of charitable, religious, philanthropic, or other not-for-profit organizations, or for persons desiring to sell home-grown produce.

(d) Upon a finding by the City Manager that the applicant has been convicted of a felony or a crime involving moral turpitude, the application for a Solicitor's Permit shall be denied. Such denial may be appealed to the City Council by giving written notice to the City Secretary within ten (10) days of said denial. The City Council shall hear an appeal within forty-five (45) days of such notice.

Sec. 14-4. DURATION OF PERMIT

A Solicitor's Permit shall be valid for one (1) year from the date of issue.

ARTICLE III - HOME SOLICITATIONS

Sec. 14-5. PERMIT REQUIRED

(a) No merchant shall engage in or attempt to engage in any home solicitation transaction unless that merchant has in his immediate possession a valid Solicitor's Permit issued to him under the provisions of this Code.

(b) No merchant shall engage in or attempt to engage in any home solicitation transaction involving a food item unless that merchant has in his immediate possession a valid Health Card issued to him by the city health department.

Sec. 14-6. SOLICITATIONS PERMITTED ONLY DURING CERTAIN HOURS.

No person shall go upon any residential premises and ring the door bell, 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, or by telephone contact the occupant of any residence, for the purpose of engaging in or attempting to engage in a home solicitation transaction, prior to 9:00 a.m. or after 9:00 p.m. of any day, Monday through Saturday, or at any time on a Sunday, New Years Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day. This section shall not apply to a visit to the premises as a result of a request made by the occupant.

Sec. 14-7. CONSUMER'S RIGHT TO CANCEL IF SOLICITATION IS IN PERSON.

(a) In addition to other consumer rights to revoke an offer or to rescind a transaction, or to any other remedy for a merchant's breach, the merchant shall provide to the consumer the right to cancel a home solicitation transaction made in person in which the consideration exceeds \$25.00, until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase in a home solicitation transaction.

(b) Every merchant in a home solicitation transaction made in person in which the consideration exceeds \$25.00, shall furnish the consumer with a fully completed receipt or copy of any contract pertaining to the home solicitation transaction at the time of its execution, which shows the date of the transaction and contains the name, address and telephone number of the merchant, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt, if a contract is not used, and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(c) A merchant in a home solicitation transaction made in person in which the consideration exceeds \$25.00, shall furnish each consumer, at the time he signs the home solicitation transaction contract or otherwise agrees to buy realty,

(d) 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.

(e) Before furnishing copies of the "Notice of Cancellation" to the consumer, a merchant shall complete both copies by entering the name of the merchant, the address of the merchant's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation.

(f) A merchant shall not include in any home solicitation transaction contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under this article including specifically his right to cancel the transaction in accordance with the provisions of this article.

(g) A merchant in a home solicitation transaction in which the consideration exceeds \$25.00, shall inform each consumer orally, at the time the consumer signs the contract or purchases the realty, goods or services, of the consumer's right to cancel.

(h) A merchant shall not misrepresent in any manner the consumer's right to cancel.

(i) A merchant shall honor any valid notice of cancellation by a consumer and, within 10 business days after the receipt of the notice, a merchant shall:

- (1) refund all payments made under the contract or sale;
- (2) return any goods or property traded in, in substantially as good condition as when received by the merchant;
- (3) cancel and return any negotiable instrument executed by the consumer in connection with the contract of sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction; and
- (4) restore improvements on real property to the condition in which he found them unless requested otherwise by the consumer.

(j) No merchant shall negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a

finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(k) No merchant shall fail, within 10 business days of receipt of the consumer's notice of cancellation, to notify the consumer whether the licensee intends to repossess or to abandon any shipped or delivered goods.

Sec. 14-8. CONSUMER'S RIGHT TO CANCEL IF SOLICITATION IS BY TELEPHONE.

If a merchant engaged in a home solicitation transaction by telephone in which the consideration exceeds \$25.00, the provisions of Section 14-7 apply, except as follows:

(a) The merchant shall provide to the consumer the right to cancel a home solicitation transaction made by telephone until midnight of the third business day after the day on which the consumer receives the goods, services, or realty purchased in a home solicitation transaction.

(b) Every merchant in a home solicitation made by telephone shall furnish the consumer with a fully completed receipt or copy of any transaction pertaining to the home solicitation transaction at the time of the receipt by the consumer of the goods, services, or realty purchased in a home solicitation transaction.

(c) A merchant in a home solicitation transaction made by telephone shall furnish each consumer, at the time the consumer receives the goods, services, or realty purchased in the home solicitation transaction, the form required pursuant to Section 14-7(c). For purposes of a telephone solicitation, date of transaction means the day that the consumer receives the goods, services, or realty purchased in a home solicitation transaction.

(d) No merchant shall negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the consumer receives the goods, services or realty purchased in a home solicitation transaction made by telephone.

(e) This Section shall not apply to a home solicitation transaction if:

- (1) The consumer may within a reasonable time:
 - A. cancel the order;
 - B. refuse to accept the goods when delivered without obligation to pay for them; or

- C. return the goods to the seller and receive a full refund for any amount the consumer has paid; and
- (2) The consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge is clearly and legibly printed on the face or reverse side of the sales ticket or clearly and legibly printed in or on the package.

Sec. 14-9. EXHIBITING CARD PROHIBITING SOLICITORS.

(a) A person, desiring that no merchant or other person engage in a home solicitation at his residence, shall exhibit in a conspicuous place upon or near the main entrance to the residence, a weatherproof card, not less than three inches by four inches in size, containing the words, "NO SOLICITORS." The letters shall be not less than two-thirds of an inch in height.

(b) Every merchant upon going onto any premises upon which a residence is located shall first examine the residence to determine if any notice prohibiting soliciting is exhibited upon or near the main entrance to the residence. If notice prohibiting soliciting is exhibited, the merchant 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 premises and ring the door bell, 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 engage in a home solicitation transaction, if a card as described in subsection (a) above is exhibited in a conspicuous place upon or near the main entrance to the residence, unless the visit is the result of a request made by the occupant.

(d) No person, other than the occupant of the residence, shall remove, deface, or render illegible, a card placed by the occupant pursuant to subsection (a) above.

(e) Any merchant who has gained entrance to a residence, or audience with the occupant, whether invited or not, shall immediately depart from the premises without disturbing the occupant further when requested to leave by the occupant.

ARTICLE IV - SOLICITATIONS ON PUBLIC STREETS
OR OTHER PUBLICLY-OWNED PROPERTY

Sec. 14-10. STATIONARY VENDORS

No merchant shall engage in or attempt to engage in any sales transaction or product display on any public right-of-way, street, median, or other publicly-owned property, except as provided herein.

(a) This section shall not apply to a mobile vendor who stops his motor vehicle on a public street, in immediate response to a direct request from a potential consumer, for a period not to exceed fifteen minutes.

(b) This section shall not apply to a merchant operating pursuant to specific authorization of the City Council, including but not limited to sales operations at public parks, municipal buildings and facilities, municipal golf courses, municipal tennis facilities, and municipal airports.

(c) This section shall not apply to a merchant operating pursuant to an authorization of the Board of Trustees of the Mesquite Independent School District, the Commissioner's Court of Dallas County, or any other governmental entity with authority to control publicly-owned property within the city limits of Mesquite, on property controlled by that governmental entity.

Sec. 14-11. MOBILE VENDORS

(a) No merchant shall engage in or attempt to engage in any mobile vending operation unless that merchant has in his immediate possession a valid Solicitor's Permit issued to him under the provisions of this code.

(b) No merchant shall engage in or attempt to engage in any mobile vending operation involving a food item unless that merchant has in his immediate possession a valid Health Card issued to him by the city health department.

(c) No merchant shall engage in or attempt to engage in any mobile vending operation on any public street which is not residential in character, or on any street which includes four or more marked traffic lanes.

(d) If bells, music boxes, radios, or any other mechanical or electronic sound-producing device is employed to attract patrons, such device shall be operated as to be inaudible at a distance of two hundred (200) feet in every direction. Such sound-producing devices shall not be used during the hours from 12:00 noon until 3:00 p.m., nor from 9:00 p.m. until 9:00 a.m.

(e) Merchants engaged in mobile vending operations shall comply with all traffic laws and parking regulations. Sales and deliveries of products shall not be made from any part of the vehicle away from the curb.

ARTICLE V - OUTDOOR SOLICITATIONS ON PRIVATE PROPERTY

Sec. 14-12. COMPLIANCE WITH ZONING REGULATIONS

No merchant shall engage in or attempt to engage in any outdoor sales activity unless such sales activity is consistent with the zoning regulations prescribed for the district in which the activity takes place.

Section 14-13. CERTIFICATE OF OCCUPANCY REQUIRED

(a) No merchant shall engage in or attempt to engage in any outdoor sales activity unless such activity is incidental to the normal conduct of business operated by the same merchant or his employer in an on-site building for which a valid certificate of occupancy exists.

(b) This section shall not apply to home solicitations; to mobile vending operations; to sales of newspapers, candy, gum, cigarettes, or other items from vending machines; to coin-operated kiddie rides; to coin-operated telephones; to sales of prepackaged food, drink and snack items at construction sites from vehicles commonly known as catering trucks; to sales of real estate; or to sales events of no more than three (3) days duration conducted by and for the benefit of charitable, religious, philanthropic, or other not-for-profit organizations.

(c) This section shall not apply to the sale or display of a personally owned motor vehicle wherein not more than one vehicle is displayed for sale by the owner for a temporary period of less than twenty-four (24) hours or for an indefinite period at the owner's residence. Provided, however, this article shall not permit the engaging in the business of buying and selling of motor vehicles at other than a lawfully zoned location.

(d) The City Manager may, at his discretion, authorize a Temporary Outdoor Sales Permit for up to twenty-one (21) days for outdoor sales activities conducted by and for the benefit of a charitable, religious, philanthropic, or other not-for-profit organization.

(e) The City Council may authorize a Temporary Outdoor Sales Permit for up to twenty-one (21) days for an outdoor sales activity conducted by a profit-motivated merchant.