

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 8 OF THE CODE OF THE CITY OF MESQUITE BY DELETING SECTIONS 8-196, 8-211(a), 8-212 AND 8-227 IN THEIR ENTIRETY AND ADDING NEW SECTIONS 8-195, 8-196, 8-211(a), 8-211(d), 8-212, 8-214, 8-215 AND 8-227; THEREBY AMENDING REGULATIONS PERTAINING TO SOLICITORS, VENDORS AND OUTDOOR SALES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council of the City of Mesquite, Texas, has determined that it is in the best interest of the City and its citizens to revise regulations relating to solicitors, vendors and outdoor sales.

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

SECTION 1. That Chapter 8 of the Code of the City of Mesquite is hereby amended by deleting Sections 8-196, 8-212 and 8-227 in their entirety and adding new Sections 8-195, 8-196, 8-211(d), 8-212, 8-214, 8-215 and 8-227 to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

A. *Section 8-195.* Amend by adding a new Section 8-195 to read as follows:

ARTICLE III. SOLICITORS, VENDORS AND OUTDOOR SALES

Sec. 8-195. 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.

B. *Section 8-196.* Amend by deleting the section in its entirety and adding a new Section 8-196 to read as follows:

Sec. 8-196. 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:

Business day means any calendar day except Saturday or Sunday, or any State or national holiday.

Charitable purpose means the use of money or property for philanthropic, religious, educational, civic, patriotic or other nonprofit objectives.

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

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

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. Conviction specifically includes being placed on probation, deferred adjudication or deferred disposition.

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

Home solicitation transaction means a consumer transaction for the purchase of goods, services or realty, payable in installments or cash, in which the merchant engages in a personal solicitation of a 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 amount, 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, 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 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 such garage sales lasting no more than three 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 18 years of age and further provided that no person other than said merchant and the consumer receives any financial benefit from the consumer transaction.

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.

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 the City of Mesquite in the fulfillment of such order.

Merchant means a party to a consumer transaction other than a consumer.

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 15 minutes. The term, as used herein, specifically excludes persons who sell transportation services only such as taxi or bus service.

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 15 minutes or more, or in a tent, shed or other temporary structure.

Person means any individual, corporation, trust, partnership, association or other legal entity.

Police Chief means the Chief of Police or his designee of the City of Mesquite.

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

Soliciting means any conduct or act whereby a person:

- (a) 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;
- (b) Either orally or in writing, sells or offers for sale goods, services or publications; or
- (c) Distributes without remuneration goods or services.

Soliciting does not include requesting a ride, employment, goods, services or financial aid from a friend or relative.

Solicitor means a person who engages in soliciting.

Stationary vendor means a merchant who is engaged in, or who attempts to engage in, outdoor sales activity.

C. *Section 8-211(a)*. Amend by deleting the section in its entirety and adding a new Section 8-211(a) to read as follows:

- (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 and a valid driver's license or identification card issued by the State of Texas or the state in which the solicitor resides.

D. *Section 8-211(d)*. Amend by adding a new Section 8-211(d) to read as follows:

(d) *Exemptions.*

- (1) 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.
- (2) 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.
- (3) The provisions of this article shall not apply to organizations whose membership consists primarily of persons less than 18 years of age such as Girl Scouts, Boy Scouts, school organizations, youth sports organizations and charitable or religious youth organizations.
- (4) The provisions of this article shall not apply to the distribution of United States mail nor to newspapers, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or any other public place or upon private property.

E. *Section 8-212*. Amend by deleting the section in its entirety and adding a new Section 8-212 to read as follows:

Sec. 8-212. Application, duration renewal.

- (a) Any person who wishes to engage in home solicitation 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) If employed by another, the name and business address of the person, firm, association, organization or corporation;
 - (3) For any and all motor vehicles which are to be used, a description of all the vehicles, the motor vehicle registration numbers of all the vehicles and the license plate numbers of all the vehicles;
 - (4) A description of the proposed location of the solicitation;

- (5) The period of time the applicant wishes to solicit in the City;
 - (6) The names of other communities in which the applicant has worked as a solicitor in the past 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, 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 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;
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 Sections 8-212(b)(5)(a)(1) through (8) which is a felony level offense or criminal attempt of Sections 8-212(b)(5)(a)(1) through (8) for which the required time period provided by this article has elapsed, may qualify only if the Police Chief or his designee determines that the applicant is presently fit to engage in solicitation. In determining present fitness under this section, the Police 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 Police Chief or his designee the evidence required to determine present fitness under Subsection E of this section.

- g. The applicant shall present written proof of his authority to represent the company or individual he states he represents.
- h. The application shall be accompanied by a nonrefundable \$25.00.00 application fee to cover the cost of processing an application. The City shall waive the application fee for charitable, religious, philanthropic or other not-for-profit organizations, their representatives and for persons desiring to sell homegrown produce.
- i. A permit applied for under this article shall be issued by the City Police Department within 10 working days after the application is completed and filed unless it is determined that the applicant has provided false or incomplete information on its application.
- j. The City shall prescribe the form of the permit. Each such permit shall be printed in black except that the following shall be printed prominently thereon in red: "The issuance of this permit is not an endorsement by the City of Mesquite 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 same applicant.

F. *Section 8-214.* Amend by adding a new Section 8-214 to read as follows:

Sec. 8-214. Denial or revocation of permit to solicit for commercial purpose.

A permit to solicit for commercial purpose may be revoked and the solicitor may be prohibited from reapplying for the period covered by the original application or an application to solicit may be denied when it has been determined that:

- (a) An applicant has knowingly given false or misleading information on an application; or
- (b) A solicitor, while soliciting, is charged and subsequently convicted of theft or fraud or a violation of any city, state or federal law in connection with said solicitation; or
- (c) A solicitor or the entity has made, or caused to be made, false statement or misrepresentations to any member of the public with regard to the solicitation; or
- (d) A solicitor or the entity violates any part of any provisions of this article; or
- (e) A solicitor creates a traffic or safety hazard to themselves, the users of the roadway, property owner or occupant thereof.

G. *Section 8-215.* Amend by adding a new Section 8-215 to read as follows:

Sec. 8-215. Appeal from denial or revocation of permit to conduct commercial solicitation.

Should an applicant be denied a permit or have a permit revoked, the applicant may appeal that action to the City Manager or his designee by submitting a letter to the City Secretary within 10 days of the action complained of. A hearing on the denial will then be scheduled within seven days of the receipt of the appeal to be held within 15 days. The City Manager or his designee shall render a decision on the appeal within three days of the date of the hearing. The decision of the City Manager or his designee shall be final.

H. *Section 8-227.* Amend by deleting the section in its entirety and adding a new Section 8-227 to read as follows:

Sec. 8-227. Hours for home solicitation.

- (a) A person shall not go upon any residential premises and ring the doorbell, 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 6:00 p.m. of any day, Monday through Saturday; or
 - (2) At any time on a Sunday, New Year's Day, July 4th, Labor Day Thanksgiving Day or Christmas Day.
- (b) Subsection (a) of this section shall not apply to a visit to the premises as a result of a request or an appointment made by the occupant.


SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punishable by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

SECTION 5. That this ordinance shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,
on the 4th day of September, 2007.



David Paschall
Mayor Pro Tem

ATTEST:

APPROVED:



Judy Womack
City Secretary



B. J. Smith
City Attorney