

ORDINANCE NO. 3886

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE BY DELETING SECTION 10-46 IN ITS ENTIRETY AND ADDING NEW SECTIONS 10-40 THROUGH 10-46 AND 10-51 THROUGH 10-57; THEREBY AMENDING REGULATIONS PERTAINING TO HANDBILLS; 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 handbills.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite is hereby amended by deleting Section 10-46 in its entirety and adding new Sections 10-40 through 10-46, and 10-51 through 10-57 to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

- A. *Sections 10-40 through 10-45.* Amend by adding new Sections 10-40 through 10-45 to read as follows:

ARTICLE II. HANDBILLS

Sec. 10-40. 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.

Sec. 10-41. 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:

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.

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:

- (a) Advertise for sale any merchandise, product, commodity or thing;
- (b) Direct attention to any business, mercantile or commercial establishment, or other activity for the purpose of either directly or indirectly promoting the interest thereof by sales; or
- (c) 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. A person is deemed to have caused the distribution, depositing or placing of a handbill if his name appears on the handbill as the solicitor of business or producer of a message or if he is the owner, manager or person in control of the business or organization for which the handbills are distributed.

Handbill sponsor means and includes any person, firm or corporation who utilizes handbills as a medium of advertising or spreading a message. A person is deemed to have caused the distribution, depositing or placing of a handbill if his name appears on the handbill as the solicitor of business or producer of a message or if he is the owner, manager or person in control of the business or organization for which the handbills are distributed.

Multi-unit complex means two or more dwellings in one or more buildings that are:

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

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.

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

Sec. 10-42. Hours for handbill distribution.

The distribution, placement and deposit of all handbills shall be after 9:00 a.m. or before 6:00 p.m. of any day, Monday through Saturday; and shall not take place at any time on a Sunday, New Year's Day, July 4th, Labor Day, Thanksgiving Day or Christmas Day.

Sec. 10-43. Prohibited conduct.

It shall be unlawful for a person engaged in the distribution, placement and deposit of all handbills under this article to fail to carry a valid driver's license or identification card issued by the State of Texas or the state in which the handbill distributor resides.

Sec. 10-44. Exhibiting card prohibiting solicitors and/or handbill distributors.

- (a) A person desiring that no handbills be deposited 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(s) to the residence or multi-unit complex a weatherproof card or sign not less than two inches by four 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 handbill distributor 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 handbill distribution is exhibited upon or near the main entrance to the residence or multi-unit complex. If a notice for prohibiting handbill distribution is exhibited, the handbill distributor 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 engage in a handbill distribution 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.

Sec. 10-45. Exemptions.

- (a) 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.
- (b) 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.
- (c) 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.

B. *Section 10-46.* Amend by deleting the section in its entirety and adding a new Section 10-46 to read as follows:

Sec. 10-46. Depositing on private property.

It shall be unlawful for any person to throw, deposit or distribute any commercial or noncommercial handbills in or upon private premises which are inhabited except by handing or transmitting any such handbill directly to the owner or occupant or other person then present in or upon such private property; provided, however, that such handbills may be placed or deposited in or upon such inhabited private property if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such property or sidewalk or street and other public places, and except that mailboxes may not be so used when so prohibited by the United States postal laws or regulations.

C. *Sections 10-51 through 10-57.* Amend by adding new Sections 10-51 through 10-57 to read as follows:

Sec. 10-51. Required.

It shall be unlawful for any handbill distributor to distribute handbills, including charitable, religious, philanthropic or other nonprofit organizations and their representatives, within the City without first obtaining a permit from the City.

Sec. 10-52. Application; duration renewal.

- (a) Any person who wishes to engage in handbill distribution 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 copy of the handbill(s) 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, the motor vehicle registration numbers of all the vehicles and the license plate numbers of all the vehicles;
 - (5) A description of the proposed location of the handbill distribution;
 - (6) The period of time the applicant wishes to distribute handbills in the City;
 - (7) The names of other communities in which the applicant has worked as a handbill distributor 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 10-52(b)(5)(a)(1) through (8) which is a felony level offense or criminal attempt of Sections 10-52(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 handbill distribution. 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 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.

Sec. 10-53. Duration.

The handbill distribution permit shall be valid for one year from the date of issue.

Sec. 10-54. Issuance.

It shall be the duty of the Police Chief or his designee to issue such applicant a permit to distribute handbills set forth in the applicant's application within five 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 Police Chief shall not issue the permit.

Sec. 10-55. Denial or revocation of permit to distribute handbills.

A permit to distribute handbills may be revoked and the handbill distributor 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 handbill distributor, while distributing handbills, is charged and subsequently convicted of theft or fraud or a violation of any city, state or federal law in connection with said distribution of handbills; or
- (c) A handbill distributor has made or caused to be made false statements or misrepresentations to any member of the public with regard to the distribution of such handbills; or

- (d) A handbill distributor violates any part of any provision of this article; or
- (e) A handbill distributor creates a traffic or safety hazard to themselves, the users of the roadway, property owner or occupant thereof.

Sec. 10-56. Appeal from denial or revocation of permit to distribute handbills.

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.

Sec. 10-57. Permit card.

- (a) The City shall prescribe the form of the permit. Each 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.
- (b) 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 the date of expiration.
- (c) It shall be unlawful for any handbill distributor to distribute handbills in the City without carrying the required permit card on his person and a driver's license or identification card.
- (d) It shall be unlawful for any person distributing handbills 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, Xerox or otherwise display a facsimile of a permit card issued pursuant to this division.

Secs. 10-58 – 10-65. Reserved.

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.

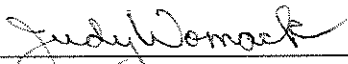
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 4th day of September, 2007.



David Paschall
Mayor Pro Tem

ATTEST:

APPROVED:



Judy Womack
City Secretary



B. J. Smith
City Attorney