

CITY OF DRIPPING SPRINGS

ORDINANCE No. 1930.10

SOLICITATION ORDINANCE

AN ORDINANCE OF THE CITY OF DRIPPING SPRING, TEXAS, ENACTING VOLUME 1, ARTICLE 7, CHAPTER 6 OF THE DRIPPING SPRINGS CODE OF ORDINANCES; DECLARING CERTAIN UNLICENSED SOLICITATIONS BY ITINERANT VENDORS TO BE A NUISANCE AND ESTABLISHING REGULATIONS FOR SOLICITATION; ACTIVITIES BY ITINERANT VENDORS; AND RESTRICTING PANHANDLING; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; ENACTMENT PROVISIONS; RULES; STANDARDS; PROCEDURES; CRIMINAL PENALTIES; REPEALER; SEVERABILITY; PUBLICATION; EFFECTIVE DATE; PUBLIC NOTICE & MEETING; PROHIBITION; AND ENFORCEMENT, INCLUDING CRIMINAL FINES NOT TO EXCEED \$500 PER OFFENSE, CIVIL PENALTIES NOT TO EXCEED \$100 PER OFFENSE, AND INJUNCTIVE RELIEF.

WHEREAS, the Dripping Springs City Council finds that aggressive solicitation is disturbing and disruptive to residents and businesses and contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation, and disorder; and

WHEREAS, aggressive solicitation includes approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic; and

WHEREAS, the presence of individuals who solicit money from persons at or near banks, automated teller machines, public transportation facilities, and crosswalks is especially troublesome because of the enhanced fear of crime in a place that is confined, difficult to avoid, or where a person might find it necessary to wait; and

WHEREAS, this Ordinance is intended to protect citizens from the fear and intimidation accompanying certain kinds of solicitation, and not to limit a constitutionally protected activity.

NOW THEREFORE, BE IT ORDAINED by the City Council of Dripping Springs, Texas:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Volume 1, Article 7, Chapter 6 of the City of Dripping Springs Code of Ordinances is hereby established so to read in accordance with *Exhibit A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. HARMONY

This Chapter is enacted in addition to other regulations adopted by the City. When possible, ordinances addressing the same topic shall be read together in harmony. When City regulations conflict, the most stringent shall govern unless a variance is granted.

4. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

5. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

6. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

7. EFFECTIVE DATE

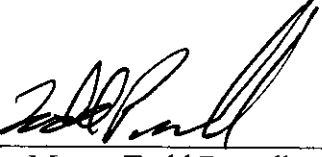
This Ordinance shall be effective immediately upon passage and publication as provided for by law.

8. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.


PASSED & APPROVED this, the 12th day of February 2008, by a vote of 5 (*ayes*) to 0 (*nays*) to 0 (*abstentions*) of the City Council of Dripping Springs, Texas.

CITY OF DRIPPING SPRINGS:

by: 

Mayor Todd Purcell

ATTEST:



Jo Ann Touchstone, City Secretary

APPROVED AS TO FORM:
Alan J. Bojorquez, City Attorney

City of Dripping Springs

CODE OF ORDINANCES

VOLUME: 1

ARTICLE 7: PUBLIC SAFETY

CHAPTER 6: SOLICITATION, INTENERENT VENDORS, & PANHANDLING

SECTION 1. ENACTMENT

1.1. Popular Name

This Chapter shall be commonly cited as the "Solicitation Ordinance."

1.2. Purpose

It is the intent and purpose of this Chapter to protect residents and other citizens of Dripping Springs from the threats posed to personal safety and property by unregulated merchants. This Chapter is not intended to proscribe a demand for payment for services rendered or goods delivered.

1.3. Scope

This Chapter provides regulatory standards throughout the City's incorporated municipal boundaries (i.e., city limits).

SECTION 2. DEFINITIONS

2.1 Interpretation

Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the

singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

2.2 Terminology

Aggressive Manner:

- a. intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
- b. following the person being solicited, if that conduct is:
 - i. intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - ii. intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- c. continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;
- d. intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;
- e. using obscene or abusive language or gestures toward the person being solicited;
- f. approaching the person being solicited in a manner that:
 - i. is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - ii. is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Automated Teller Machine: a device, linked to a bank's account records, which is able to carry out banking transactions. A device commonly referred to by the acronym, "ATM."

Automated Teller Facility: the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.

Bank: includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.

Bus: a vehicle operated by a transit authority for public transportation.

Business Area: a location within the city limits that is zoned for retail, commercial, offices, or industrial purposes, and upon which improvements have been constructed or an enterprise is operating.

Check Cashing Business: a person in the business of cashing checks, drafts, or money orders for consideration.

City: the City of Dripping Springs, an incorporated municipality located in Hays County, Texas.

Garage Sale: includes the sale of anything of value on any premises not considered a retail business establishment and licensed to do business in the City of Dripping Springs, and/or the State of Texas. For purposes of this Chapter, the term includes and is synonymous with estate sales, patio sales, rummage sales, and yard sales.

Goods: means tangible chattels of every kind and character.

Itinerant vendor: means a retailer who does not operate any “place of business” as defined by the Texas Administrative Code, as may be amended. The term expressly includes the following:

- a. Commercial traveler – a person who is employed by or who represents a manufacturer, wholesaler, or importer who sells or exhibits goods to parties who engage in the business of purchasing such goods for the purpose of resale to the general public.
- b. Itinerant merchant – a person who moves stocks of goods or samples of goods into the City for the purpose of selling or offering for sale or taking orders for the sale of such goods with the intention of removing such samples or the unsold portion of goods away from the City before the expiration of one month and who has no fixed place of business within the City or county for which definite arrangements have been made for the use, occupancy, hire, rental, or lease of such place for a term of at least one month.
- c. Peddler – a person who carries goods upon a truck or other vehicle on the streets of the City for the purpose of exhibiting, selling, or offering for sale such goods from such truck or other vehicle or who within the City goes from door to door of residences, public facilities, or businesses to display, sell, offer for sale, or take orders for the sale of goods or to exhibit brochures, sales literature, or price lists for the purpose of taking orders for the sale of goods or who within the City exhibits, sells, offers for sale, or takes orders for the sale of goods from a vacant lot, parking lot, tent, boat, storage bin, stall, or unenclosed structure.
- d. Transient Vendor – a person who within the City engages in the temporary business of exhibiting, delivering, selling, or offering for sale any goods or exhibiting brochures, sales literature, or price lists for the purpose of taking orders for the sale of goods and who has no fixed place of business within the City or county that is used, occupied, hired, rented, or leased for a period of at least one month for the purpose of operating or conducting such business thereon.

Person: means an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.

Place of business: means an established outlet, office, or location operated by a retailer, the retailer's agent, or the retailer's employee for the purpose of receiving orders for taxable items. The term "place of business" includes any location at which three or more orders are received by the retailer in a calendar year. A location such as a warehouse, storage yard, or manufacturing plant is not a "place of business," unless at least three orders for taxable items are received by the retailer at the location during a calendar year.

Public Area: means an outdoor area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.

Retailer: means a person who sells tangible goods by small quantities, in broken lots or parcels (e.g., not in bulk) directly to the consumer, in contrast to a sale for further sale or processing.

Solicit: to request, by the spoken, written, or printed word, or by other means of communication an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

SECTION 3. SOLICITATION PROHIBITED

3.1 Offense

A person commits an offense if the person solicits:

- a. in an aggressive manner in a public area; or
- b. within 25 feet of:
 1. an automated teller facility;
 2. the entrance or exit of a bank; or
 3. the entrance or exit of a check cashing business; or
- c. at a marked crosswalk; or
- d. on either side of the street on a block where a school attended by minors or a child-care facility has an entrance or exit;
- e. at the sidewalk or patio area of a bar or restaurant; or
- f. in a business area between 7:00 p.m. and 7:00 a.m.

3.2 Mental State

A culpable mental state is not required, and need not be proved, for an offense under Subsection (3.1) (b), (c), or (d).

SECTION 4. PROHIBITIONS ON ITINERANT VENDORS

4.1 Rights of Way

No person shall display, sell, solicit orders for any goods, or leave behind signs or indicators displaying, selling, or soliciting orders for any goods, within six (6) feet of any public street or state, federal, or local roadway.

4.2 Hours of Operation

No person may make solicitations to private residences, public facilities, or businesses except between the hours of 9:00 a.m. and 7:00 p.m., unless otherwise posted by the private property owner or by someone with apparent authority to act for the owner. This section does not apply where the person is on the property by express prior invitation of the person residing on the premises.

4.3 Property Owners

No property owner shall knowingly allows the owner's property to be used or occupied by an itinerant vendor who conducts thereon a business operation or who exhibits or offers for sale goods without first obtaining a license as required by the provisions of this Chapter .

SECTION 5. ITINERANT VENDOR ADMINISTRATION

5.1 License Required

No itinerant vendor shall operate within the City of Dripping Springs without first applying for and receiving a license from the City. Licenses are nontransferable and may not be assigned or conveyed to other persons. This section shall not apply to any of the following:

- a. Sales or exhibits at fairs, festivals, rodeos, conventions, or events sponsored by the City or one (1) or more City civic organization, school, church or chamber of commerce.
- b. Charitable solicitations by incorporated charitable, fraternal, educational or religious institutions.

5.2 Interstate Commerce

This Chapter **does** apply to transient vendors, itinerant merchants, and peddlers involved in interstate commerce, as the City Council finds the license procedure and fee does not unduly burden interstate commerce.

5.3 Application

An application for a license required by this Chapter shall be made in person by the persons requesting such license upon forms available in the office of the City Inspector. Applications may be submitted to the City Inspector. A separate license and application shall be required for each person who engages in the activities of an itinerant vendor,

including each employee, agent, or consignee who engages in such activity. Such application form shall provide a space for the following information which must be furnished by the applicant:

- a. The name, current and former residence and business address, current residence and business telephone number, and occupation of applicant. If applicable, the local address and telephone number where the applicant may be reached.
- b. The social security number and birth date of the applicant, valid driver's license number, expiration date and state issuing it.
- c. A physical description of the applicant which includes race, gender, height, weight, hair and eye color.
- d. Two recent photographic likenesses of the applicant's face, which photographs shall not be less than one inch square or larger than two inches square in size. One photograph shall be kept with the application and one photograph shall be attached to the license.
- e. Positive photo identification issued to the applicant by a governmental agency.
- f. A description of the goods to be sold, including brand name, if any. If the goods are to be shipped, the name, address, and telephone number of the manufacturing location and/or shipping location.
- g. The address of the location from which such goods shall be displayed to the public or offered for sale or a statement that the applicant will travel from door-to-door for the purpose of exhibiting or offering goods for sale.
- h. The name, address, and telephone number of the owner of the property at such location.
- i. If the goods to be sold are transported in or displayed from a vehicle, the vehicle owner's name, address and telephone number and the vehicle's make, model color, description, identification number and license number.
- j. Statement that the applicant has not been convicted within the last five (5) years of a felony offense.
- k. Such other information as may be required to complete an investigation as to the fitness of the applicant to conduct such business operation.

5.4 Consent From Property Owner

If the applicant proposes to display goods to the public or to offer such goods for sale from a designated location, the application shall be accompanied by a written permit signed by the owner or the duly authorized agent of the owner of the property at the

location from which the applicant proposes to display or to offer for sale any goods. Such permit shall state that said owner consents that the applicant may use and occupy such property for the purpose of selling or offering for sale such goods.

5.5 Tax Collection

If state law and/or City ordinances/regulations require that sales tax must be paid upon the purchase of such goods as the applicant proposes to offer for sale, the application for license shall be accompanied by a valid sales tax permit issued by the Office of the Comptroller of Public Accounts of the state.

5.6 Other Authorities

Each applicant who proposes to sell or offer for sale goods intended in whole or in part for human consumption shall secure on the application form for license hereunder the signature of the public health officer of the County and/or City indicating that such goods meet minimum food standards of the state.

5.7 Grounds to Revoke or Deny

The City Inspector or the City Council's designated representative may deny or revoke a license for an itinerant vendor for any of the following reasons:

- a. The applicant does not complete the application form and procedure;
- b. The applicant or the proposed activity of the applicant does not comply with applicable City ordinances and codes, including building codes and the county or state health codes;
- c. The applicant makes false or fraudulent statements on the application form;
- d. The applicant or licensee is found after investigation to be misrepresenting or making false statements in regard to his authority to sell such goods;
- e. Within the last five (5) years the applicant has been convicted of a felony;
- f. Within the last five (5) years the applicant or licensee has been convicted in a court of proper jurisdiction of violating this Chapter at any time;
- g. Upon recommendation from a licensed peace officer of the City, County, State or Federal government, stating that the license be revoked because the conduct of the licensee or the manner in which the licensee is conducting his business operation endangers the health or safety of a citizen of the City or a visitor within the City.

5.8 Appeal

If the applicant for a license under this Chapter or the holder of such a license is dissatisfied with any holding or finding of the City Inspector, the applicant shall have the right to appeal to the City Council by filing a written notice of such appeal with the City Secretary within ten (10) days from the decision by the City Inspector. Upon the filing of such notice of appeal, the application for the license and all papers possessed by the City Inspector in connection with such application and such license may be delivered to the City Council. The appeal shall be heard by the Council at the next regular meeting after the filing of the notice of appeal that allows compliance with the Texas Open Meetings Act.

5.9 Fees & Terms

- 5.9.1.** Any person who is required to obtain a license by the provisions of this Chapter may apply for a one-day, thirty-day, or a six-month license.
- 5.9.2.** When a one-day license is issued to any such person, the applicant shall pay, at the time the license is picked up, to the City Inspector a license fee as established by the City Council in the City's Fee Schedule.
- 5.9.3.** When a thirty-day license is issued to any such person, the applicant shall pay, at the time the license is picked up, to the City Inspector a license fee as established by the City Council in the City's Fee Schedule.
- 5.9.4.** When a six-month license is issued to any such person, such person shall pay, at the time the license is picked up, to the City Inspector a license fee of as established by the City Council in the City's Fee Schedule. No license issued under the provisions of this Chapter shall be issued for a longer period than six (6) months.
- 5.9.5.** Not later than three (3) days after a completed application is filed, the applicant shall be notified in writing of the decision of the issuance or denial of the license unless the day filed is a Thursday or Friday. Then the applicant shall be notified not later than six (6) business days after a completed application is filed.

5.10 Display of License

Any person issued a license pursuant to the provisions of this Chapter must exhibit in plain view to all present the license and the photo identification.

5.11 Records

The City Inspector shall keep a record of each license issued for a minimum of twelve (12) months after issue date.

5.12 Warranties & Claims

Any person required to obtain a license under the provisions of this Chapter must display at all times during which such person is doing business, a sign lettered in two-inch letters and visible to all present specifying the type and duration of any warranties made on such goods and the address where any purchaser may make a claim for breach thereof.

5.13 Trespass

No person, including the holder of any license issued under this Chapter, shall enter upon the land or premises of another after receiving notice from the owner and/or resident that such entry is forbidden. A sign on the premises stating approximately "*No Solicitors Commercial or Charitable*" or "*No Solicitors Except for Non-Profit Organizations*", shall constitute notice. A conviction for the violation of this section shall result in the automatic revocation of such convicted person's peddler's and solicitor's license.

SECTION 6. ENFORCEMENT

6.1 Civil & Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Chapter as may be required by governing law. Any person violating any provision of this Chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Chapter is hereby declared to be a nuisance.

6.2 Criminal Prosecution

Any person violating any provision of this Chapter shall be fined by the City Inspector a sum not exceeding five hundred dollars (\$500.00) per offense. Each day that a provision of this Chapter is violated shall constitute a separate offense. An offense under this Chapter is a misdemeanor.

6.3 Civil Remedies

Nothing in this Chapter shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following:

- a. injunctive relief to prevent specific conduct that violates the Chapter or to require specific conduct that is necessary for compliance with the Chapter ; and
- b. a civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the Chapter and after receiving notice committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter; and
- c. other available relief.