

CITY OF FRANKSTON MUNICIPAL ORDINANCE

ORD. No. 03-11-14 Solicitation

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRANKSTON, TEXAS:

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Sec. 14-001. Findings and purposes.

- (a) The City Council of the City of Frankston, Texas makes the following findings:
- (1) The city is a Type A General Law city organized pursuant to Local Government Code Ch. 52 ; and pursuant to V.T.C.A., Transportation Code ch. 311, the city has exclusive control over and under the public highways, streets and alleys of the city;
 - (2) The city holds the rights-of-ways adjoining the public highways, streets and alleys of the city in trust for the benefit of citizens of the city;
 - (3) The use of the public highways, streets and alleys and their adjoining rights-of-ways for soliciting and vending is detrimental to the character and quality of residential, recreational, commercial, industrial and business areas, property, and the quality of life of citizens of the city;
 - (4) That while roadway vendors, peddlers, solicitors and merchants engage in legitimate and honorable commercial activities which enhance the convenience of the consuming public, soliciting and vending to persons in motor vehicles while standing on the public highways, alleys, streets and adjoining rights-of-way create a hazard to the users and the bystanders of the public highways and streets;
 - (5) The nature and characteristics of such commercial activities require the reasonable regulation of the time, manner and place of such activities;
 - (6) The public highways, streets and alleys and their adjoining rights-of-ways are primarily used to promote the smooth flow of vehicular and pedestrian traffic;

- (7) The regulations herein that may touch upon interstate commerce transactions are not over burdensome but are merely measures which are necessary to protect the public health, safety and welfare, and it is the definite intent of the city council to promote, preserve and protect free enterprise and interstate commerce; and
- (8) The reasonable regulations enacted hereby do not prohibit or inhibit free expression of religious, political or other ideas and beliefs, but regulate commercial activities and conduct for the below expressed public purposes.
- (b) The purposes of the regulation set forth in this article are:
 - (1) To reasonably regulate vendors, peddlers, itinerant merchants and commercial solicitors in and upon public highways, streets and alleys and their adjoining rights-of-ways;
 - (2) To protect the public health, safety and welfare and promote the use and enjoyment of public highways, streets and alleys and their adjoining rights-of-ways in an attractive environment;
 - (3) To promote smooth and safe flow of vehicular and pedestrian traffic and avoid urban congestion and hazards;
 - (4) To enhance and protect the quality and attractiveness of the environment;
 - (5) To protect the use and enjoyment of the people in their homes;
 - (6) To protect the public from fraudulent, illegal, unsafe or unhealthful commercial activities, products and services;
 - (7) To preserve the character and quality of residential, recreational, commercial, industrial and business areas and property; and
 - (8) To promote and enhance the quality of commercial activities within the city.

Sec. 14-002. Definitions.

Right-of-way means the area that is adjacent to and within ten feet of the edge of the street, highway, or roadway. However, the term does not include a sidewalk or an area that is separated from the edge of the street, highway, or roadway by a sidewalk.

Solicitation/soliciting/solicited or any other action form of the word "solicit" means the act of asking, begging, pleading or in any other such manner, communicate, whether orally, by written, and/or printed material, hand signing or by any other method, direct or implied, by an individual or group of individuals for the purpose of receiving or obtaining money, alms, gifts or items of value, real or intrinsic for said individual, for said group of individuals or a for profit organization or a nonprofit organization, individual, person or more than one person, organization, couple, family, relationship, joint venture, joint stock company, partnership, club, company, corporation, business trust, establishment, religious institution or religion, association, or the like or chapter or affiliate thereof, for the purposes of giving, use, sustenance, purchase, barter or any other such form.

Solicitor means the person soliciting.

Sec. 14-003. Prohibited conduct.

A solicitor shall not:

- (1) Make physical contact with a person unless that person's permission is obtained;
- (2) Continue efforts to solicit from a person, once said person has indicated, orally, by gesture, or any other recognizable form of communication, to the solicitor that he/she does not wish to be solicited;
- (3) Approach or, in some recognizable form, communicate to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:

- a. Imminent bodily injury; or
- b. The commission of a criminal act upon the person, or another person, or upon property in the person's immediate possession;
- (4) Persist in a solicitation, after the person has communicated, in some recognizable manner, a negative response; by blocking, interfering, obstructing the person's method and choice of direction of travel;
- (5) Engage in conduct or communicating in a manner that would reasonably be construed as intended to compel or force a person to accede to demands;
- (6) Misrepresent the purpose of the solicitation;
- (7) Misrepresent the affiliation of the solicitation;
- (8) Represent that the issuance of any permit or registration, under this division, as an endorsement or recommendation of the solicitation; or
- (9) Engage in conduct that creates a safety or traffic hazard for the solicitor or another person; or to peddle, solicit, hawk, sell or take orders for or offer to take orders for any item or service in the following places in the city:
 - (a) On any public street or alley or traffic island;
 - (b) Within 25 feet of the following facilities:
 - 1. ATM machines;
 - 2. Entrances and exits of banks, credit unions, or other financial institutions;
 - 3. Exterior public pay telephones;
 - 4. Self-service car washes;
 - 5. Self-service fuel pumps;
 - 6. Public transportation stops;

Sec. 14-004. Children.

The use of children to solicit shall be in accordance with the child labor laws of the state and the United States.

Sec. 14-005. No solicitation on streets, medians, roadways and rights-of-way.

No solicitor shall stand, kneel, squat, sit, lay, walk or the like in or upon a street, highway, roadway or the median, of a public vehicle easement or the like to solicit.

Sec. 14-006. Permit required for solicitation on private property.

There shall be no soliciting upon private property within the city without first having a written permit therefore. This section does not apply where the solicitor is on the property by express, prior invitation of the owner of the property or a person residing on the premises.

Sec. 14-007. Permit application to solicit on private property.

A permit to solicit on private property within the city may be granted by the city upon application for such permit and approval by the city secretary's office prior to the initiation of the solicitation. If the application is mailed to the city secretary's office, it must be received, approved and written notice received by the applicant, prior to initiation of the solicitation. Such application shall be sworn to by the applicant and shall contain, at a minimum, the following information:

- (1) The full and legally recognized names and any associated aliases, logos, nicknames, and abbreviated names of the entity or person applying for a permit to solicit;
- (2) If the entity/person is a part of or affiliated with another entity all applicable full and legally recognized names, and any associated aliases, logos, nicknames, and abbreviated names;

- (3) All legally recognized names and any associated aliases, nicknames, abbreviated names, phone and/or pager numbers, and addresses of all officers and directors or trustees of the entity;
- (4) Applicant shall show satisfactory proof of authority to represent the entity applicant states that applicant represents and such proof shall be in writing;
- (5) If the applicant is a corporation or if the individual is employed by a corporation, the date and place of incorporation;
- (6) For the individual, who will be in charge of conducting the solicitation, the name and any associated aliases, nicknames, and abbreviated names, phone and/or pager numbers as well as the times and days said individual can be reached at each said phone and/or pager number and associated mailing and street address;
- (7) For the individual, who will be in charge of conducting the solicitation, a physical description which includes race, sex, height, weight, hair and eye color, date of birth, driver's license number and the name of the state issuing the driver's license;
- (8) For the individual, who will be in charge of conducting the solicitation, the names of other communities in which the applicant has worked as a solicitor or canvasser in the past 12 months, and, if employed by a different company in the other communities, the name of those companies shall be stated;
- (9) The nature of merchandise to be sold or offered for sale or the nature of the services to be furnished;
- (10) Whether such applicant upon any such order so obtained will demand, accept or receive payment or deposit of money in advance of final delivery;
- (11) For each solicitor to be involved, the names and any associated aliases, nicknames, and abbreviated names, age, and associated mailing and street address;
- (12) An outline of the method to be used in conducting the solicitation; and
- (13) The period, proposed dates, times and location(s) of the proposed solicitation.

Sec. 14-008. Hours of solicitation at private residences.

All solicitations to private residences, including, but not limited to single family residences, duplexes, and apartments shall occur during the time that is one hour after sunrise and one hour before sunset, 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 solicitor is on the property by express, prior invitation of the owner of the property or a person residing on the premises.

Sec. 14-009. Number and duration of permit to solicit on private property.

An eligible organization or person may be issued one solicitation permit that is valid during the calendar year it is issued.

Sec. 14-010. Permit to solicit on private property nontransferable.

Any permit issued under this division shall be personal to the entity or person(s) so named on the application and shall not be assigned or transferred to any other person(s) entity or affiliated entity. Any attempted assignment or transfer shall render the permit void.

Sec. 14-011. Display of permit to solicit on private property.

The person(s) in charge of conducting the solicitation shall provide each solicitor with a copy of the permit issued by the city. It shall be unlawful for any solicitor to engage in solicitation without having such copy in their possession. It shall be unlawful for any solicitor to fail or refuse to show or display such copy upon the request of any person.

Sec. 14-012. Display of identification to solicit on private property.

The person(s) in charge of conducting the solicitation shall provide all solicitors involved in the solicitation, with identification that is to be clearly displayed and recognizable, by any person, at any time that identifies who the solicitor is, and for whom the solicitor is soliciting. It shall be unlawful for any solicitor to fail or refuse to show or display such identification.

Sec. 14-013. Denial or revocation of permit to solicit on private property.

A permit to solicit on private property may be revoked or an application to solicit on private property may be denied when it has been determined that:

- (1) An applicant has knowingly given false or misleading information on an application;
- (2) 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;
- (3) A solicitor or the entity has made, or caused to be made, false statements or misrepresentations to any member of the public with regard to the solicitations;
- (4) A solicitor or the entity has in any way publicly represented that the permit granted is an endorsement or recommendation of the cause for which the solicitations are being conducted;
- (5) A solicitor or the entity violates any part of any provision of this article; or
- (6) A solicitor creates a traffic or safety hazard to themselves, the users of the roadway, property owner, or occupant thereof.

Sec. 14-014. Appeal from denial or revocation of permit to solicit on private property.

If an applicant is denied a permit or a permit is revoked, the applicant may appeal that action to the city council by submitting a letter to the city secretary's office within 15 days of the action. A hearing on the denial or revocation will be scheduled for the next regular meeting of the city council that is more than six days away. The council will render a decision on the appeal within ten days of the hearing.

Sec. 14-015. Fee for permit/exemption.

The city council will set the fee for a permit to solicit upon or within public or on private property. A person may be exempted from the payment of the fee by filing an affidavit with the city secretary, which avers that the person is incapable of paying the fee, and sets forth the person's financial condition.

Sec. 14-016. Application of this division.

This division does not apply to persons and organizations that are regulated by federal or state agencies to the extent that the federal or state law or regulation conflicts with this division.

Sec. 14-017. Penalty

Any person violating any of the provisions or terms of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed the sum of \$500.00 for each offense, and each and every day such violation shall continue be deemed to constitute a separate offense. Allegation and evidence of a culpable mental state is not required for proof of any offense defined by this chapter.

**CITY OF FRANKSTON CITY ORDINANCE 03-11-14
SOLICITATION**

PASSED AND APPROVED this 11th day of March, 20 14
Attest:


Mayor


City Secretary