

ORDINANCE NO. 3613

AN ORDINANCE AMENDING SECTIONS 22-31 THROUGH 22-43 REGULATING ROADSIDE SOLICITORS, ESTABLISHING REGISTRATION REQUIREMENTS FOR ROADSIDE SOLICITORS, REGULATING HANDBILLS; PROVIDING PENALTIES FOR VIOLATION AND DECLARING AN EMERGENCY.

WHEREAS, the City wishes to regulate roadside soliciting to provide safety for the participants and allow normal traffic flows.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEER PARK, TEXAS, AS FOLLOWS:

Section 22-31. Definitions. As used in this ordinance the following words have the meaning indicated.

- A.** "Public Area Solicitor" is a person who attempts to make personal contact with an individual in a public area without prior specific invitation or appointment from the individual, for the primary purpose of: (i) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, education, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service, or (ii) distributing a handbill or flyer advertising a commercial event or service.
- B.** "Responsible Party" means the individual, who must be at least 18 years of age, who is on the scene during the public area solicitation or direct seller event and responsible for ensuring all parties involved adhere to the city ordinance.
- C.** "Permittee" means the individual filing the written sworn application with the City of Deer Park.
- D.** "Goods" means personal property of any kind, and shall include goods provided incidental to services offered or sold.

E. "Roadway" is defined to include the roadbed, shoulder, median, curbs, safety zones, sidewalks, and utility easements located adjacent to or near the roadway.

Section 22-32. Exception. This ordinance shall not apply to a federal, state or local government employee or a public utility employee while in the performance of official duties.

Section 22-33. License Required for Solicitors. No person shall act as a public area solicitor within the city without first obtaining a License in accordance with this ordinance.

Section 22-34. Fee. The fee for the issuance of each License shall be:

A. For a solicitor (including a commercial solicitor) advertising an event, activity, good or service for purchase at a location away from the residence..... no fee.

Section 22-35(a). Application for License. Any person or organization (formal or informal) may apply for a License by completing an application form, at the office of the city secretary, during regular office hours. The License shall be issued within 11 calendar days after the application is submitted unless it is determined within that time that one or more of the applicants is unqualified to receive a license.

Section 22-35(b). Application. Applicants for License under this article, whether a person, firm or corporation, charitable, religious, patriotic, civic, fraternal or social organization, or educational institution, or other philanthropic or non-profit organization shall file a written sworn application signed by the applicant with the City of Deer Park showing:

A. The name, the address (if applicable), and phone number of the person(s), business, firm or corporation, charitable, religious, patriotic, civic, fraternal or social organization, or educational institution, or other philanthropic or non-profit organization that will be carrying out the applicant's business.

B. The name of the responsible person(s), who must be at least eighteen years of age, having the management or supervision of the applicant's business or organization, if applicable, during the time that it is proposed that it will be carried on in the city; the local address or addresses

of such person(s) while engaged in such public area solicitation; the permanent address of such person(s), the capacity in which such person(s) will act (that is whether as proprietor, agent or otherwise); the name and address of the person(s), firm, corporation or organization for whose account the business will be carried on, if any.

- C. The location in the city where it is proposed to carry on the applicant's business or organization, and the length of time during which it is proposed that the business shall be conducted. If said location is not a public place then a contact person(s), phone number and signature of the contact person(s) shall be provided on the application to approve utilization of said location for requested business.
- D. A statement of the type of solicitation, service or material to be distributed or sold.
- E. The applicant shall submit the application to the City of Deer Park no later than the 12th calendar day before the date the solicitation is to begin.

Section 22-36. Prohibited Acts.

- A. No person shall utilize city or state right-of-ways, including highways, streets, alleys, or sidewalks, whether or not improved and open to traffic, to conduct public area solicitations. No solicitor shall impede the free use of sidewalks and streets by pedestrians and vehicles.
- B. No solicitor shall make any loud noises or use any sound amplifying device to attract customers if the noise is such that it violates the City of Deer Park Ordinance Sec. 38-71 to 38-74.
- C. No solicitor shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.
- D. No solicitor shall stand in a roadway for the purpose of soliciting a ride, contribution, employment or business from the occupant of any vehicle.
- E. No solicitor shall solicit or conduct any business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a

public nuisance, increase traffic congestion or delay or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.

F. Every solicitor shall comply with the laws of this state and all other relevant provisions of this code and, if required, must cooperate with any inspections that may need to be performed and must correct any deficiencies noted. Some examples include but are not limited to:

(1) Health inspection;

(2) Compliance with building codes;

(3) Fire inspections;

(4) Restrictions on signs ;

(5) Inspection and testing of weighing and measuring devices.

(6) No persons shall engage in solicitation or sales prior to 8:00 a.m. or after 30 minutes prior to sunset of any day.

G. No persons shall engage in solicitation, prior to 8:00 a.m. or 30 minutes prior to sunset of any day.

Section 22-37. Investigation. During the time following the application for a License and its issuance, the city shall investigate as to the truth and accuracy of the information contained in the application.

Section 22-38. Denial or Revocation of License.

A. Grounds. Any License issued hereunder may be denied or revoked if the License holder is convicted of a violation of any provisions of this article or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a License under the terms of this article, or has been convicted of a felony within ten (10) years or a misdemeanor of moral turpitude within ten (10) years; has been incarcerated for such act within the last 10 years; or is a high risk sex offender as classified by the Texas Department of Public Safety website at www.txdps.state.tx.us.

- B. Notice.** If the city secretary denies (or upon completion of an investigation revokes) the License, the decision shall immediately be conveyed to the applicant orally and a written report prepared of the reason for the denial which shall be immediately made available to the applicant.
- C. Appeal; hearing.** The Licensee shall have ten (10) days from the date of revocation or denial in which to file written notice of appeal to the city manager for the order denying or revoking the License. After hearing the appeal on the revocation or denial, the city manager shall either sustain the action or issue an order reinstating the License within 5 business days.
- D.** In the event of the filing of an appeal from a revocation issued under the provisions of this article, then, until such appeal has been determined by the city manager such revocation order shall be stayed.

Section 22-39. Hearing on Appeal. If the applicant requests a hearing under Section 22-38, the hearing shall be held in accordance with the Administrative Procedure Act of the State of Texas, and review from the decision (on the record of the hearing) shall be in the county court in which the city is located. The hearing shall also be subject to the Texas Open Meetings and Records law.

Section 22-40. Display of License. It shall be the responsibility of a responsible party to display or have available upon his person evidence of compliance with any License, inspection, registration or permit requirement provided for under the provisions of the codes of the city. Any police officer shall have the right to request evidence of compliance with such provisions requiring any License, inspection, registration or permit. If any public area solicitor is observed to be in violation of any provisions of this ordinance, the person who is listed as the responsible party on the permit may be issued a citation. If the participants in the event do not have a permit, the person who is determined to be the responsible party for the event may be issued a citation.

Section 22-41. Validity of License. The License shall be valid within the meaning of this ordinance for a period of fourteen (14) days from its date of issuance or the term requested, whichever is less.

Section 22-42. Distribution of Handbills and Commercial Flyers. In addition to the other regulations contained herein, a solicitor leaving handbills or commercial flyers about the community shall observe the following regulations:

- A. No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way. The police or code enforcement officer is authorized to remove any handbill or flyer found within the right-of-way.
- B. No handbill or flyer shall be left at, or attached to any privately owned property in a manner that causes damage to such privately owned property.
- C. No handbill or flyer shall be left at, or attached to any of the property.
- D. Any person observed distributing handbills or flyers shall be required to identify himself/herself to the police (either by producing a license or other form of identification). This is for the purpose of knowing the likely identity of the perpetrator if the city receives a complaint of damage caused to private property during the distribution of handbills or flyers.

Section 22-43. Violation. Any person violating any part of this ordinance or failing to observe any provision of this article shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars. Subsequent to the receipt of a citation of a violation of the provisions of this ordinance, a police or code enforcement officer shall, upon a continuation of the violation, seize the License and forward it to the city secretary on the next regularly scheduled business day.

Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, phrases and words of this ordinance are severable, and if any section, paragraph, sentence, clause, phrase or word(s) of this ordinance shall be declared unconstitutional or