

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, REPEALING EXISTING ARTICLE 4.03, "SOLICITORS AND ITINERANT MERCHANTS; HANDBILL DISTRIBUTION," OF CHAPTER 4, "BUSINESS REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, AND REPLACING IT WITH A NEW ARTICLE 4.03, "SOLICITORS AND ITINERANT MERCHANTS; HANDBILL DISTRIBUTION"; MAKING FINDINGS; PROVIDING FOR A PENALTY; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas ("Town") has deemed it necessary and in the best interest of the Town and its residents to repeal existing Article 4.03, "Solicitors and Itinerant Merchants; Handbill Distribution," of the Town's Code of Ordinances and replace it with an updated ordinance regarding solicitation, itinerant merchants and handbill distribution, in full compliance with state and federal case law relative thereto; and

WHEREAS, it is the desire and intent of the Town Council to fully comply with existing jurisprudence on these issues while protecting the health and safety of Town residents who interact with solicitors and itinerant merchants; and

WHEREAS, the Town Council has further determined that it will be advantageous and beneficial to Prosper and its inhabitants to amend Article 4.03 as described below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

From and after the effective date of this Ordinance, existing Article 4.03 "Solicitors and Itinerant Merchants, Handbill Distribution," of Chapter 4, "Business Regulations," of the Code of Ordinances of the Town of Prosper, Texas, is hereby repealed in its entirety and replaced with a new Article 4.03 "Solicitors and Itinerant Merchants, Handbill Distribution," of Chapter 4, "Business Regulations," of the Code of Ordinances of the Town of Prosper, Texas, to read as follows:

"ARTICLE 4.03. SOLICITORS AND ITINERANT MERCHANTS, HANDBILL DISTRIBUTION

DIVISION 1. GENERALLY

Sec. 4.03.001 Purpose.

This article and shall be deemed an exercise of the police powers of the state and of the town, in full compliance with the First Amendment to the United States Constitution and applicable jurisprudence, for the public safety, comfort, convenience, and protection of the town and the

citizens thereof, and all of the provisions of this article shall be constructed for the accomplishment of that purpose.

Sec. 4.03.002 Definitions.

(a) The following words and phrases, when used in this article, shall have the meanings ascribed to them by this subsection:

Agent means a person who undertakes to transact some business or manage some affair for another person by the authority and on the account of the latter.

Badge means photographic identification permit issued by the police department of the town.

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

Canvasser means a person who engages in canvassing activities.

Canvassing or canvassing activity means the act of:

(1) Traveling either by foot or vehicle, going door-to-door, house-to-house, building-to-building; or

(2) Occupying space in or traveling on or through any public place in the city;

Charitable purpose means philanthropic or other nonprofit objectives, including the benefit of poor, needy, sick, refugee or handicapped persons; the benefit of any patriotic or veterans' association or organization; the benefit of any fraternal, social or civil organization; or the benefit of any educational institution. "Charitable purpose" shall not be construed to include:

(1) The direct benefit of the individual making the solicitation;

(2) The benefit of any political group or political organization that is subject to financial disclosure under state or federal law; or The benefit of any church or religious society or order;

(3) The benefit of any church or religious society or order.

Consumer means an 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.

Handbill means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature that is commercial in nature or has a commercial intent.

Handbill distribution means traveling either by foot or vehicle, going door-to-door, house-to-house or building-to-building without personally contacting persons to distribute or leave on or at each premises handbills for any purpose.

Handbill distributor means 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.

Home solicitation transaction means a consumer transaction for the purchase of goods, services, or realty, payable in installments, or in cash, in which the merchant engages in a personal solicitation of the sale to the consumer at a residence, and the consumer's agreement or offer to purchase is given at the residence to the merchant. A home solicitation transaction shall not include a sale made pursuant to a preexisting revolving charge account or 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 or 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.

Local business means a business located and operated within the corporate limits of the town.

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

Police department means the police department of the Town.

Political purpose means any form of communication related to a political issue, a particular candidate to a position or nonpartisan office, a political committee, as defined by state law, or to a political party.

Religious organization means an organization that is dedicated to the support of a church, religious society, or any other religious sect, group, or order.

Religious purpose means the use of money or property for the support of a church, religious society or other religious sect, group, or order.

Solicitation means conduct whereby a person or its agent, member, or representative:

(1) Either orally or in writing, asks for a ride, employment, property, financial aid, money, or any article representing monetary value, for any purpose;

(2) Whether orally or in writing, sells or offers to sell goods, services, publications, or subscriptions;

(3) Distributes without remuneration goods, services, publications, or subscriptions; or

(4) Solicits signatures on a petition or opinions for a survey.

a. The term "solicitation" shall include persons engaged in the delivery of handbills or circulars door to door for the solicitation of money, products, services or other items of pecuniary value. An offer of membership in any organization is expressly excluded.

b. All terminology used in this article and not specifically defined above shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of Webster's Collegiate Dictionary.

Sec 4.03.003

Unlawful solicitation and handbill distribution.

(a) No person, directly or through an agent, shall canvass or solicit in person from house to house in the town, to sell or attempt to sell goods, merchandise, wares, services or anything of value or to take or attempt to take orders for the future delivery of goods, merchandise, wares, or any personal property of any nature whatsoever, or take or attempt to take orders for services to be furnished or performed in the future, without first having a written permit therefor, unless the solicitation is for charitable purposes.

(b) Subject to Division 2 of this article, it shall be unlawful for any person, directly or through an agent or employee, to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill in or upon any premises within the corporate limits of the town without first having obtained a permit for such distribution.

(c) It shall be unlawful to solicit funds or distribute handbills after sundown and before 9:00 a.m.

(d) Subject to Division 2 of this article, it shall be unlawful for any person, directly or through an agent or employee, to solicit funds or distribute handbills after the expiration of any permit issued as hereinafter provided.

(e) Subject to Division 2 of this article, it shall be unlawful for the person registering or applying, or the agents or employees thereof, to solicit funds or distribute handbills for a purpose other than that set out in the registration statement or application upon which the permit was issued.

(f) It shall be unlawful for any person who shall solicit funds or distribute handbills in the town to represent that the issuance of a permit by the town constitutes an endorsement or approval of the solicitation or distribution by the town or its officers or employees.

(g) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill in or upon any premises which are temporarily or continuously uninhabited or vacant.

(h) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill upon any premises which are inhabited and not otherwise posted as provided for in subsection (i) below, except by:

(1) Handing or transmitting such handbill directly to the owner, occupant, or any other person then present in or upon such premises; or

(2) Placing or depositing the handbill in a secure manner to prevent such handbill from being blown or drifting about the premises, except that mailboxes may not be used when prohibited by federal postal laws or regulations.

(i) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill upon any premises if requested not to do so by the owner, occupant, or any other person then present in or upon such premises, or if there is placed on such premises, in a conspicuous place upon or near the main entrance to the residence, a weatherproof card, not less than three inches by four

inches in size bearing the words "no trespassing," "no peddlers," "no advertisements," "no solicitation," no handbills," or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbill left upon such premises. The letters on such cards shall be not less than two-thirds of an inch in height.

(j) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill in any place, under any circumstances, which does not have printed on the cover, front or back thereof, the name, address and telephone number of the handbill sponsor who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers, or agents for the fictitious person or club sponsoring such handbill shall also appear thereon.

Sec. 4.03.004 Penalty for violation.

Any person violating any of the provisions or terms of this article 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 article.

Sec 4.03.005 Supervision of child solicitors.

It shall be unlawful for any person to use any children 13 years of age or less for any type of solicitation or handbill distribution purposes unless the child or children are actively supervised by an adult individual at least 18 years of age, who has obtained the permit required by this article, or is the agent of the individual who obtained the permit. In all cases the supervising adult shall always be within 100 yards of the child solicitor.

Sec. 4.03.006 Permit—Grounds for denial or revocation.

(a) The police department may deny a permit to any applicant for good cause, which shall include but not be limited to, the following:

- (1) being a fugitive from justice, including any outstanding arrest warrant;
- (2) submission of an incomplete application for a permit; or
- (3) providing false and/or misleading statements on a permit application.

(b) Failure to comply with any of the provisions of this article shall constitute grounds for denial or revocation of any permit sought to be issued or issued in accordance with the provisions of this article.

Sec. 4.03.007 Appeals.

Should an applicant or registrant be denied a permit, or have a permit revoked, he/she may appeal that action to the Town Manager by submitting a letter and/or related documentation within ten days of the denial or revocation, specifying the reasons why the permit should have been granted.

The Town Manager shall consider the reasons for the denial or revocation of a permit and shall render a decision on the appeal within 21 days of the date the appeal was received by the Town Manager. The decision of the Town Manager shall be final. No new application for a permit will be considered for six months after denial or revocation, unless said denial or revocation is without prejudice or is conditional and the conditions have been satisfied as determined by the chief of police.

Sec. 4.03.008 Sale of merchandise on public right-of-way.

It shall be unlawful for any person to peddle, solicit, sell, offer for sale, or exhibit for sale any merchandise upon any public sidewalk, street, street right-of-way, parkway, or other public right-of-way.

Sec. 4.03.009 Affirmative defense and exemption.

(a) It shall be an affirmative defense to prosecution under this article if the person is occupying the public right-of-way for the purpose of selling newspapers or publications of other printed material which deal with the dissemination of information or opinion; however, this defense is not available if said act occurred upon the paved surface or shoulder of any public street, highway or road.

(b) The provisions of this article shall not apply to:

(1) The regular delivery of newspapers or magazines or other items which have been subscribed to by the persons receiving them or by occupants of the premises to which they are delivered;

(2) The interruption of service notices by utility companies;

(3) The distribution of mail by the United States government; and

(4) The service of any lien foreclosure or governmental notices of any character distributed by the town or any other governmental entity.

Sec. 4.03.010 Exhibiting sign or card prohibiting solicitors and handbill distributors.

(a) A person desiring that no merchant or other person engage in handbill distribution or a home solicitation at his/her premises shall exhibit, in a conspicuous place upon or near the main entrance to the premises, a weatherproof sign or card, not less than three inches by four inches in size bearing the words "no trespassing," "no peddlers," "no advertisements," "no solicitation," "no handbills," or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbill left upon the premises. The letters on such sign or cards shall be not less than two-thirds of an inch in height.

(b) Every person upon going onto any premises shall first examine the premises to determine if any notice prohibiting solicitation or handbill distribution is exhibited upon or near the main entrance to the premises. If notice prohibiting soliciting or handbill distribution is exhibited, the person shall immediately depart from the premises without distributing, placing, or depositing

any handbill or disturbing the occupant, unless the visit is the result of a request made by the occupant.

(c) No person shall go upon any 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 premises, for the purpose of securing an audience with the occupant and engaging in or attempting to engage in a solicitation or distribution transaction, if a sign or card, as described in this section, is exhibited in a conspicuous place upon or near the main entrance to the premises, unless the visit is the result of a request made by the occupant.

(d) No person, other than the owner or occupant of the premises, shall remove, deface, or render illegible a sign or card placed by the occupant pursuant to this section.

(e) Any merchant who has gained entrance to a premises, or audience with the occupant, whether invited or not, shall immediately depart from the premises without disturbing the occupant further when requested to leave by the occupant.

Secs 4.03.011—4.03.040 Reserved.

DIVISION 2. NONCHARITABLE SOLICITATION AND HANDBILL DISTRIBUTION

Sec. 4.03.041 Exception.

The provisions of this division shall not apply to a person engaged in a solicitation for a charitable purpose, a political purpose or a religious purpose.

Sec. 4.03.042 Permit application.

(a) Any person desiring to make home solicitation transactions or distribute handbills within the town shall file a written application for a permit to do so with the town's Police Department, which application shall show:

(1) The name, date of birth and address of the person applying and desiring to make home solicitations.

(2) No person younger than 18 years of age shall conduct any solicitation within and upon public rights-of-way within the town.

(3) Whether the person applying is a natural person, partnership, corporation or association, and:

a. If a natural person, the business or residence address and telephone number must be given.

b. If a partnership, the names of all partners and the principal business address and telephone number of the partnership and the address and telephone number of each partner must be given.

c. If a corporation, the person applying must:

i. State whether it is organized under the laws of this state or is a foreign corporation;

ii. Show the mailing address and telephone number of the principal place of business;

iii. Show the mailing address, business location, telephone number and name of the individual in charge of the town office of such corporation, if any;

iv. State the names of all officers and directors or trustees of such corporation; and

v. If a foreign corporation, state the place of incorporation.

d. If an association, the application must:

i. Show the association's principal business address, and telephone number, if any;

ii. Show names and principal business or residence addresses and telephone numbers of all members of the association unless they exceed ten in number, in which case the application shall so state and the person registering may alternatively list the names of principal business or residence addresses and telephone numbers of the officers and directors or trustees of the association; and(iii)If the association is part of a multistate organization or association, the mailing address and business location of its central office shall be given, in addition to the mailing address and business location of its local office.

(4) The names, mailing addresses and telephone numbers of all individuals who will be in direct charge or control of the solicitation of funds or distribution of handbills.

(5) The time period within which the solicitation of funds or distribution of handbills is to be made, giving the date of the beginning of solicitation and its concluding date.

(6) A description of the methods and means by which the solicitation of funds or distribution of handbills is to be accomplished.

(7) The names of other communities in which the applicant has made home solicitations or distribution of handbills in the past six months.

(8) The nature of merchandise to be sold or offered for sale or the nature of the services to be furnished.

(9) Whether such applicant, upon any such order so obtained, will demand, accept or receive payment or deposit of money in advance of final delivery.

(10) Each applicant shall provide proof of identification through submission of a valid driver's license or other valid/official photo ID.

(11) A statement to the effect that if a permit is granted, such permit will not be used or represented to be an endorsement or approval by the town or any of its officers or employees.

(12) Any other information which the town deems necessary for the administration of this division.

a. The application must be signed by the applicant, if the person applying is an individual; if the applicant is a partnership, by the partner charged with disbursing the funds solicited or overseeing the handbill distribution; if the applicant is a corporation or an association, by its officer charged with disbursing the funds solicited or overseeing the handbill distribution. The individual signing the application shall sign the application and swear before an officer authorized to administer oaths that he/she carefully read the application and that all the information contained therein is true and correct.

b. The application must be accompanied by a copy of a valid state sales tax certificate, if applicable.

c. Information provided by the applicant in accordance with the provisions of this division shall be subject to verification by the Police Department. Such application shall also be satisfactory written proof of the individual's authority to represent the partnership, corporation, association or business entity.

Sec. 4.03.043 Permit fee generally.

Every application shall be accompanied by a nonrefundable application fee of \$50.00 subject to change by resolution by town council in order to compensate the town for the cost of administering this division, and such fee will not be refunded if a permit is not issued. No permit provided for by this division shall be issued until such fee has been paid by the applicant.

Sec. 4.03.044 Permit fee exemptions.

The permit fee required for the issuance of a permit under the provisions of this division shall not be required of the following:

(1) Ordinary commercial travelers who sell or exhibit for sale goods, wares or merchandise to persons selling and dealing in the same within the town.

(2) Persons offering for sale agricultural products, meats, poultry or other articles of food grown or produced by such persons.

(3) The provisions of this article shall not apply to public utility companies or others operating under franchises granted by the town, insurance salespeople, real estate sales people, and others licensed by the state, political groups or organizations which are subject to financial disclosure under state or federal law.

(4) The provisions of this article shall not apply to commercial agents dealing with local business establishments in the usual course of business.

(5) Persons engaged in interstate commerce.

Sec. 4.03.045 Permit issuance, duration and form.

(a) After review of the application to determine its compliance with section 4.03.042 above, and within ten business days of the receipt of the application, unless it is determined that the applicant has provided false or incomplete information on its application, the Police Department shall either issue a permit, or notify the person applying that the application does

not comply with the requirements of section 4.03.082 above and specifically point out what information or explanation has not been furnished that is required before a permit can be issued.

(b) A permit requested under this division shall be issued for the length of time requested, not to exceed one year.

(c) The town shall prescribe the form of the permit. Each such permit shall be printed in black and the following shall be printed thereon: "The issuance of this permit is not an endorsement by the Town of Prosper or any of its officers or employees." Each permit shall bear a permit number which is the same as the files containing the application filed by the applicant.

Sec. 4.03.046 Identification.

(a) Each solicitor and handbill distributor shall carry with him/her and produce upon request the following information and identification:

(1) Authorization to represent the permittee by holding a copy of the permit issued by the town;

(2) copy of the valid state sales tax certificate, if applicable; and

(3) A valid driver's license or other valid/official photo ID.

(4) Upon issuance of the badge by the police department, the following requirements shall apply:

a. The badge issued shall be in such form and requirement so as to fully identify the person soliciting and will bear a photographic likeness of the solicitor and shall contain an expiration date.

b. The badge shall be valid only for the person to whom it is issued (nontransferable). Each solicitor is also required to carry a state approved picture identification card or a state driver's license as proof of identification.

c. The badge issued shall be carried/displayed by the solicitor in plain sight while he is engaged in soliciting.

d. The badge is and shall remain the property of the town and may be revoked and required to be surrendered at any time for any false or misleading information on the permit application, for violation of any town ordinance, including the provisions set forth in this article, and for violation of any state or federal law.

Sec. 4.03.047 Revocation of permit.

Any permit issued under this article may be revoked by the police department for any of the following reasons:

1. Fraud or misrepresentation in the application for a permit;
2. Fraud or misrepresentation in the course of conducting solicitation activities;
3. Conducting solicitation activities contrary to the conditions of the permit; or

4. Conducting solicitation activities in such a manner as to create or constitute a danger to the public health, safety or welfare.

Upon revocation, the police department shall deliver written notice to the permit holder stating the action taken and the reasons supporting such action. The written notice shall be delivered to the permit holder's place of business or mailed to the permit holder's last known address. The chief of police or designee shall have the authority to seize any and all permit badges possessed by persons conducting business as a solicitor while the official notification process is underway. At such time, any and all solicitation activities conducted under the authority of that permit shall cease. Any appeal of such revocation shall be subject to the provisions of section 4.03.007.

Sec. 4.03.048 Public disclosure.

All applications, whether or not a permit has been issued, shall be public record and shall be available for inspection by members of the public during regular business hours, and copies may be obtained at cost.”

SECTION 3

Any person, firm, corporation, or business entity violating this Ordinance or any provision thereof, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Five Hundred Dollars (\$500.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

SECTION 4

Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 5

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6

This Ordinance shall become effective from and after its adoption and publication as required by law.

**DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE
TOWN OF PROSPER, TEXAS, ON THIS 11TH DAY OF JUNE, 2024.**

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney