

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 8, "OFFENSES AND NUISANCES," OF THE CODE OF ORDINANCES BY ADOPTING A NEW ARTICLE 8.10, "SOLICITATIONS TO OCCUPANTS OF VEHICLES ON PUBLIC ROADWAYS PROHIBITED"; MAKING FINDINGS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas ("Town"), is a home-rule municipal corporation duly organized under the laws of the State of Texas; and

WHEREAS, it has come to the attention of the Town that on occasion individuals stand in the roadway for the purpose of engaging drivers and the occupants of vehicles in the solicitation of funds, the sale of goods, or requests from drivers or the occupants of vehicles, among other activities; and

WHEREAS, Prosper police records reflect that from January 1, 2022, through May 1, 2024, 72 citizen-generated calls were related to individuals soliciting on or near a roadway, thus calling into question the safety of those individuals so soliciting; and

WHEREAS, it is the intent of this Ordinance to provide for the public health and safety, ensuring the normal and safe flow of traffic; and

WHEREAS, the Town recognizes the First Amendment rights of the public and has therefore tailored this Ordinance to be in full compliance with current jurisprudence, including recent federal district and circuit court opinions addressing this topic; and

WHEREAS, the Town Council has determined it is in the best interest for the protection of the public health and general welfare of Town residents that this matter be addressed.

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

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, Chapter 8, "Offenses and Nuisances," of the Code of Ordinances of the Town of Prosper, Texas, is hereby amended by adding a new Article 8.10, "Solicitations to Occupants of Vehicles on Public Roadways Prohibited," to read as follows:

“ARTICLE 8.10. SOLICITATIONS TO OCCUPANTS OF VEHICLES ON PUBLIC ROADWAYS PROHIBITED

Sec. 8.10.001 Definitions.

For purposes of this article, the following words have the meaning hereinafter designated:

Goods means property of every kind.

Public property means:

- (1) any property open or devoted to public use or owned by the Town; and
- (2) any area dedicated to the public use for sidewalk, street, highway, or other transportation purposes, including, but not limited to, any curb, median, parkway, shoulder, sidewalk, alley, drive, or public right-of-way.

Roadway has the meaning given that term in Chapter 541, Texas Transportation Code, as amended.

Services means any work done for the benefit of another person.

Solicitation means any conduct or act whereby a person:

- (1) either orally or in writing, asks for a ride, employment, goods, services, financial aid, monetary gifts, or any article representing monetary value, for any purpose;
- (2) either orally or in writing, sells or offers for sale goods, services, or publications;
- (3) distributes without remuneration goods, services, or publications; or
- (4) solicits signatures on a petition or opinions for a survey.

Vehicle has the meaning given that term in Chapter 541, Texas Transportation Code, as amended.

Sec. 8.10.002 Offense.

A person commits an offense if, while occupying any public property adjacent to any public roadway in the Town, he knowingly conducts a solicitation directed to, or intended to attract the attention of, the occupant of any vehicle stopped or traveling on the roadway. An offense occurs when the solicitation is made, whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money, goods, or services takes place.

Sec. 8.10.003 Defense to Prosecution.

It is a defense to prosecution under Section 8.10.002 that the person was:

- (1) summoning aid or requesting assistance in an emergency situation; or
- (2) a law enforcement officer in the performance of official duties.

Sec. 8.10.004 Filing of Complaint with the Town.

In addition to any enforcement action by a peace officer for a violation of this Article, any person who is a victim of a solicitation prohibited under Section 8.10.002, or who witnesses a violation of Section 8.10.002, may file a complaint with the Town. Evidence to support a conviction for a violation of this Article may include, but is not limited to, testimony of witnesses, videotape evidence of the violation, and other admissible evidence.

Sec. 8.10.005 Penalty.

Any person violating any provision of this Article, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not to exceed \$500.00, and each and every day a violation continues shall constitute a separate offense.”

SECTION 3

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portion of conflicting ordinances shall remain in full force and effect.

SECTION 4

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 5

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Prosper, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS THE 28TH DAY OF MAY, 2024.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney