

An Ordinance of the City of Plano, Texas repealing and replacing in its entirety Article IV, Peddlers, Solicitors, Itinerant Vendors, Carnivals, and Job Placement Activities, of Chapter 11, Licenses and Business Regulations, of the Code of Ordinances of the City of Plano and providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause and an effective date.

WHEREAS, the City Council adopted Ordinance No. 2002-7-13 on July 22, 2002, Ordinance No. 2003-6-7 on June 9, 2003, Ordinance No. 2004-9-13 on September 13, 2004, Ordinance No. 2004-11-24 on November 22, 2004, Ordinance No. 2005-6-27 on June 27, 2005, Ordinance No. 2006-3-6 on March 16, 2006, Ordinance No. 2007-8-6 on August 13, 2007, Ordinance No. 2009-4-10 on April 14, 2009, Ordinance No. 2014-5-7 on May 12, 2014, and Ordinance No. 2018-2-6 on February 26, 2018 to implement regulations regarding peddlers, solicitors, itinerant vendors, carnivals and job placement activities; and

WHEREAS, First Amendment case law has developed recently regarding the regulation of speech, including solicitation and, therefore, it is prudent to reconsider the City's regulations to preserve the right to free speech and especially to avoid the regulation of the content of speech; and

WHEREAS, state law has multiple penal and transportation code provisions to address health, safety and privacy concerns related to solicitation activities that are unrelated to the content of speech; and

WHEREAS, staff recommends repealing and replacing in its entirety Article IV, Peddlers, Solicitors, Itinerant Vendors, Carnivals, and Job Placement Activities, of Chapter 11, Licenses and Business Regulations, of the Code of Ordinances of the City of Plano to remove speech-related solicitation regulations on public and private property and utilizing state law regulations to address related health, safety, and privacy concerns; and

WHEREAS, staff recommends keeping some provisions regarding handbill distribution as those restrictions control litter rather than regulate speech; and

WHEREAS, staff recommends amending a provision making it an offense for an uninvited person to go on residential premises and ring a doorbell, knock, or create sound to attract the attention of occupants of a residence where there is a conspicuously posted sign prohibiting trespassing; and

WHEREAS, after consideration of the recommendation of staff and all matters attendant and related thereto, the City Council is of the opinion that it is in the best interest of the City and its citizens to repeal and replace in its entirety Article IV, Peddlers, Solicitors, Itinerant Vendors, Carnivals, and Job Placement Activities, of Chapter 11, Licenses and Business Regulations, of the Code of Ordinances of the City of Plano to accomplish same.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Article IV, Peddlers, Solicitors, Itinerant Vendors, Carnivals, and Job Placement Activities, of Chapter 11, Licenses and Business Regulations, of the Code of Ordinances of the City of Plano, and all ordinances that created the same as recited above, is repealed in its entirety.

Section II. Article IV, Handbills, No Trespassing Signs, Itinerant Vendors, and Carnivals, of Chapter 11, Licenses and Business Regulations, of the Code of Ordinance of the City of Plano is adopted and shall read as follows:

**“ARTICLE IV. HANDBILLS, NO TRESPASSING SIGNS, ITINERANT VENDORS, AND
CARNIVALS**

DIVISION 1. GENERALLY

Sec. 11-141. Definitions.

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

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

Carnival means a temporary commercial business located and/or operated on privately owned property, whether improved or unimproved, that is characterized by amusement rides, attractions, games of skill or chance, entertainment, shows, exhibitions, food vendors and/or a combination thereof including fairs or festivals. Carnival does not include non-commercial, non-profit or charitable amusement events.

Carnival operator means any person or entity who sets up and operates a temporary carnival on privately owned property, whether improved or unimproved, in the city.

Handbill means and includes 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.

Handbill distributor means and includes 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.

Handbill sponsor means and includes any person, firm or corporation who utilizes handbills as a medium of advertising or spreading a message.

Individual shall mean only a natural person.

Itinerant vendor shall mean any person or entity who sets up and operates an occasional business on privately owned property, whether improved or unimproved, in the city, soliciting, selling, or taking orders for, or offering to sell or take orders for any goods or services. A temporary business is one that continues for forty-five (45) days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding.

Any business that exists more than forty-five (45) days shall be deemed to be a permanent occupancy and is required to obtain a certificate of occupancy from the building inspection department.

DIVISION 2. HANDBILL DISTRIBUTION AND NO TRESPASSING SIGNS

Section 11-142. Handbill Distribution on private property.

- (a) It shall be unlawful for any individual, handbill distributor and/or handbill sponsor, to distribute or cause to be distributed, deposited, placed, thrown, scattered, or cast any handbill upon any residential property except by handing or transmitting such handbill directly to the owner, occupant, or any other person then present in or upon such private premises or by placing or depositing the same in a manner to secure to prevent such handbill from being blown or drifting about such premises, except that mailboxes may not be used when prohibited by federal postal laws or regulations.
- (b) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, scattered or cast any handbill upon any residential property if requested by anyone thereon not to

do so, or if there is a No Trespass(ing) sign placed on such premises in a conspicuous place upon or near the main entrance to the residence. A No Trespass(ing) sign shall be sufficient if it is weatherproof, not less than three (3) inches by four (4) inches in size, and bears the words "no trespassing" or "no trespass" with letters not less than two-thirds (2/3) of an inch in height.

Section 11-143. Failure to comply with no trespass sign.

It shall be unlawful for any person to go upon any residential premises uninvited and ring the doorbell, knock upon the door or create any sound for the purpose of attracting the attention of the occupants of the residence if there is a No Trespass(ing) sign placed on such premises in a conspicuous place upon or near the main entrance to the residence. A No Trespass(ing) sign shall be sufficient if it is weatherproof, not less than three (3) inches by four (4) inches in size, and bears the words "no trespassing" or "no trespass" with letters not less than two-thirds (2/3) of an inch in height.

Sec. 11-144. Penalty.

Any person violating this division or failing to observe any provision of this Division shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in section 1-4 (b) of this Code of Ordinances by a fine not exceeding five hundred dollars (\$500.00). Every day the violation continues shall be deemed as a separate offense. Proof of mental culpability is not required for conviction of an offense under this Division.

DIVISION 3. ITINERANT VENDORS AND CARNIVALS

Sec. 11-145. Itinerant vendors and carnivals on private property.

- (a) ***Requirements for itinerant vendors and carnivals.*** The following requirements shall apply to both itinerant vendor and carnivals:
- (1) A permit is required to operate a temporary business on privately owned property;
 - (2) A non-refundable permit fee in the amount of one hundred dollars (\$100.00) is required to be paid to the city upon application;
 - (3) Compliance with all city ordinances is required;
 - (4) Tents, food, animals, stages, and any allowable temporary structure shall require appropriate city permits or inspections as directed by the building official or his designee;
 - (5) Proof of a valid state sales tax certificate or tax exemption is required;
 - (6) Proof of permission from the owner of the private property where the temporary business is located is required. Hours of set-up and operation of the temporary business shall be limited to between 7:00 a.m. and 10:00 p.m. daily;
 - (7) A dimensioned or scaled site plan indicating the location of the display area, curb cuts, and parking area is required;
 - (8) No living quarters of any kind shall be permitted to be located on the site of a temporary business.
- (b) ***Regulations applicable solely to itinerant vendors.*** The following regulations shall apply solely to itinerant vendors:
- (1) A permit application shall be filed with the building inspection department at least five (5) calendar days prior to the first day of operation of the temporary business. The permit must be

- displayed at the temporary business in such a manner that it is clearly visible from the abutting street and must be available on request from any city official;
- (2) An itinerant vendor permit shall be issued for a minimum of five (5) days and shall not exceed forty-five (45) days in each calendar year. No physical address shall have an itinerant vendor business more than forty-five (45) days in any calendar year;
 - (3) The itinerant vendor must provide at least one unisex portable sanitary facility. In lieu of the portable sanitary facility, the vendor may provide a permission letter from the owner or manager of a property located within a 200-foot radius of the temporary business granting permission to use their sanitary facilities; however, the property where the itinerant vendor has permission to use the sanitary facilities cannot be located across a thoroughfare of four (4) lanes or larger.
- (c) **Regulations applicable solely for carnivals.** The following regulations shall apply solely to carnivals:
- (1) A permit application shall be filed with the building inspection department at least thirty (30) calendar days prior to the first day of operation of the temporary business. The permit must be displayed at the temporary business in such a manner that it is clearly visible from the abutting street and must be available on request from any city official;
 - (2) No more than three (3) carnivals shall be conducted at the same address in any calendar year. No carnival operator shall be issued more than three (3) permits in any one calendar year. A permit issued under this subsection shall not exceed two (2) weeks per permit period. The two-week period shall commence on the first day the carnival is in operation. All carnival equipment including, but not limited to trucks, trailers, rides, and booths, shall be removed from the property in its entirety upon permit expiration. More than one permit shall not be issued in the same or consecutive months;
 - (3) A carnival shall be located a minimum of five hundred (500) feet from a residential zoning district. For purposes of this subsection, the measurement shall be in a direct line from the nearest portion of any property line of the lot on which the carnival is located to the nearest portion of any property line on which a residential structure is located;
 - (4) The carnival operator shall provide at least two (2) unisex portable sanitary facility and additional portable sanitary pursuant to the same requirements listed in subsection 6-712(a)(1)(ii) of the City Code of Ordinances, which addresses outdoor toilet facilities;
 - (5) The carnival operator shall provide the city with a copy of the written inspection and/or reinspection certificate and insurance policy required under the Texas Occupations Code for amusement rides.
- (d) **Revocation of permit.** The building official or his designee shall have the sole discretion to revoke a permit issued pursuant to this division upon the following conditions:
- (1) Upon a violation of law; or
 - (2) Upon determination of a false or misleading statement or omission of material fact on an application for a temporary business.
- (e) **Appeals.** Revocation of any permit issued pursuant to this division may be appealed to the city manager or his designee. Such appeal shall be in writing and shall be filed with the city manager within five (5) business days after the building official or his designee has revoked the permit. The decision of the city manager or his designee shall be issued within five (5) business days and shall be final.
- (f) **Penalty.** Any violation of the provisions or terms of this Division by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with subsection 1-4(b) of

the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Secs. 11-146 - 11-200. Reserved.”

Section III. All provisions of the Code of Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section IV. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

Section V. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance.

Section VI. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 27th day of September, 2021.

John B. Muns, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY