TOWN OF LITTLE ELM

ORDINANCE NO. 1008

AN ORDINANCE OF THE TOWN OF LITTLE ELM, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN, BY REPLACING CHAPTER 26, ARTICLE VI “VENDORS, PEDDLERS, AND SOLICITORS”, IN ITS ENTIRETY, TO REVISE AND CLARIFY STATIONARY CART REGULATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Little Elm ("Town") is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Charter adopted on May 1, 2001; and

WHEREAS, the Town possesses all the rights, powers, and authorities possessed by all home rule municipalities, including the authority to regulate peddlers under Chapter 215 of the Texas Local Government Code; and

WHEREAS, the Town desires to revise and clarify its regulations relating to vendors, peddlers, solicitors, and stationary carts; and

WHEREAS, after due deliberations and consideration of the information and materials received at the regular meeting, the Town Council has determined that the amendments set forth herein should be adopted, and that such amendments are in the best interest of the public health, safety, and welfare of the citizens of the Town.

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

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. AMENDMENT AND ADOPTION. That Chapter 26, Article VI “Vendors, Peddlers, and Solicitors” of the Town of Little Elm Code of Ordinances, is hereby repealed and replaced, in its entirety, to read as shown on the attached Vendor regulations document.

SECTION 3. SAVINGS. This Ordinance shall be cumulative of all other ordinances of the Town, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.
SECTION 4. **PENALTY.** Any person, firm, or corporation violating any of the provision of this ordinance shall be punished by a penalty of a fine not to exceed the sum of Two Thousand Dollars ($2,000) for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

SECTION 5. **SEVERABILITY.** The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and if any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or circumstance is for any reason judged invalid or unconstitutional, the adjudication shall not affect any other section or provision of this ordinance or the application of any other section or provision to any person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the Comprehensive Zoning Ordinance of the Town of Little Elm, Texas, and the Town Council hereby declares that it would have adopted the valid portions and applications of the ordinance without the valid parts and to this end the provisions of this ordinance shall remain in full force and effect.

SECTION 6. **REPEALER.** That all ordinances of the Town of Little Elm in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

SECTION 7. **EFFECTIVE DATE.** That this Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the Town Charter.

PASSED AND APPROVED this the _____ day of __________, 2010.

The Town of Little Elm, Texas

Charles Platt, Mayor

ATTEST:

Kathy Phillips, Town Secretary
Chapter 26, Article VI
“VENDORS, PEDDLERS and SOLICITORS”

Sec. 26-271 Purpose.

That this Article is and shall be deemed an exercise of the police powers of the state and of the Town 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. The primary purpose of the public streets, sidewalks, and other public ways is for use by vehicular and pedestrian traffic. Reasonable regulation of solicitation on public ways and in public places is necessary to protect the public health, safety and welfare. The regulations contained in this Article are not intended in any way to prohibit or hamper speech that is protected by the constitution of both the United States and the State of Texas.

Sec. 26-272 Definitions.

Automated Teller Machine. Means a machine, other than a telephone:

(1) that is capable of being operated by a customer of a financial institution;

(2) by which the customer may communicate to the financial institution a request to withdraw a benefit for the customer or for another person directly from the customer's account or from the customer's account under a line of credit previously authorized by the financial institution for the customer; and

(3) the use of which may or may not involve personnel of a financial institution.

Charitable purpose. Means the solicitation of money or property for the benefit of a charity, philanthropy, or non-profit organization or for the poor, underprivileged, needy, crippled, or handicapped persons; the teaching of patriotism or assistance to veterans or veteran’s organizations; or for existing educational institutions or for the establishment or endowment of educational institutions. Solicitation for one-self or one’s family, commonly termed pan-handling, does not fall within this definition.

Consumer. Means an individual who acquires real or personal property, services, money, or credit for personal, family or household purposes.

Exterior Public Pay Telephone. Means any coin or credit card reader telephone that is:

(1) installed or located anywhere on a premises except exclusively in the interior of a building located on the premises; and

(2) accessible and available for use by members of the general public.

Itinerant Vendor. Person engaged in a temporary business, or who operates from a stationary cart, or who travels from city to city and is engaged in solicitation in a specific, non-moving location.
Laundry mat. Means laundry mats that are privately-owned, but are open to the public regardless of whether owner of the laundry mat has given permission for solicitation.

Mobile Vendor. Is a peddler/solicitor and includes any food service establishment attached to wheels and which is capable of moving under its own power (motorized) or pushed or pulled by human power, such as push carts and pull wagons.

Non-profit organizations. Is any organization that does not aim to make a profit, and which is not a public body. This definition includes entities such as, but is not limited to, Multiple Sclerosis, American Heart Association, Muscular Dystrophy, American Cancer Society, Little Elm public safety departments, Boy Scouts of America, Girl Scouts, etc.

Parking lot. Includes public or private parking areas, regardless of whether owner or property has given permission for solicitation.

Parkway. Shall mean the area between the edge of the designated street and the adjacent owner’s property line.

Peddler, solicitor, vendor or person. Means any individual, firm, company, partnership, corporation, association, trust, society, religious sect, organization, league, or other legal entity and includes any trustee, receiver, assignee, agent, or similar representative.

Public Transportation Stop. Means an area officially marked and designated as a place to wait for a bus, a light rail vehicle, or any other public transportation vehicle that is operated on a scheduled route with passengers paying fares on an individual basis.

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

Self-Service Car Wash. Means a structure:

(1) at which a vehicle may be manually washed by its owner or operator with equipment that is activated by the deposit of money in a coin-operated machine; and

(2) that is accessible and available for use by members of the general public.

Self-Service Fuel Pump. Means a fuel pump:

(1) from which a vehicle may be manually filled with gasoline or other fuel directly by its owner or operator, without the aid of an employee or attendant of the premises at which the fuel pump is located; and

(2) that is accessible and available for use by members of the general public.

Sidewalk. Means any surface provided for the exclusive use of pedestrians.

Solicitation. 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 food, goods, services, publications, or subscriptions;

“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, and it also includes mobile vendors. An offer of membership in any organization is expressly excluded.

Stationary Cart. Is an itinerant vendor and means a cart, trailer, stand, or other facility that is moved on-site for the purpose of conducting business, selling food items, or other products. Examples include, but are not limited to hot dog carts, taco stands, and snow cone trailers.

Street. Means the portion of the street that is paved, designated, or used for vehicular traffic, and all areas dedicated to public use for public street purposes, which includes parkways, alleys, and sidewalks.

Town. Means the Town of Little Elm, Texas.

Traffic Island. Means a barrier within a street or roadway to exclude vehicles, designated for the purpose of separating or directing streams of vehicular traffic.

Vehicle. Means any wheeled vehicle. This definition includes bicycles, push carts and any other wheeled vehicle of whatever kind or character.

Sec. 26-273 Permits Required.

(a) It shall be unlawful for any person to attempt or to peddle, sell, solicit, canvass, or take orders for any services, wares, merchandise, food, or goods, or any article of value, including, but not limited to, plants, flowers, paintings, novelties, painting house numbers on streets, firewood, books, magazines, photographs, food, or any articles for future delivery, on a sidewalk, parkway, parking lot or the required landscaped areas within the parking lot, or Town owned, leased or controlled property within the Town or from door to door without having first obtained a permit therefor from the Town.

(b) Each person engaged in peddling or soliciting or selling as defined in paragraph (a) above must have a permit issued under the terms of this section, and such permit shall be personal to the applicant and shall not be reproduced nor assigned nor transferred to any other person. Any such attempted transfer or reproduction shall render the permit void.

(c) Each permit shall expire as of the date noted thereon, which date shall be in accordance with the provisions of this Article, and such permit shall indicate the hours when peddling, solicitation and selling within the Town is permitted in accordance with the provisions of this Article.
(d) It shall be unlawful for any person who shall solicit funds in the Town to represent in connection with such solicitation of funds that the issuance of a permit or identification card by the Town constitutes an endorsement thereof.

(e) It shall be unlawful for any person to solicit funds for a purpose other than that set out in the registration statement or application upon which the permit was issued.

(f) A permit shall not be issued to any person under sixteen (16) years of age.

(g) Solicitation shall be deemed completed when made, regardless of whether the person making the solicitation receives any contribution or makes any sale.

(h) It shall be unlawful for an itinerant vendor to sell or attempt to sell or to establish a location for business within the Town without first obtaining a permit. For sales on private property, the itinerant vendor must provide a letter from the property owner sufficient to demonstrate permission for the itinerant vendor to conduct business on the property.

(i) It shall be unlawful for any person to solicit on Town Property unless the person has obtained a permit in connection with an authorized Town Event, as set forth in Section 26-283(d) of this Article.

Sec. 26-274 Permit Application.

(a) Every person desiring to solicit in Little Elm shall, unless otherwise exempted, apply for a permit from the appropriate Town department as set forth in Sec. 26-276. Each application for a permit required by this section shall be in writing, under oath, notarized and shall set out the following:

(1) Name of the applicant, with his permanent residence;

(2) Whether the person represents a partnership, corporation or association, and:

   A. The business address and telephone number of the applicant;

   B. If a partnership, the names of all partners and the principal business address and telephone number of each partner;

   C. If a corporation, the person applying shall state whether it is organized under the laws of Texas or is a foreign corporation, and must show the mailing address, business location, telephone number, name of the individual in charge of the Texas office of such corporation, and the names and addresses of all officers and directors or trustees of said corporation, and, if a foreign corporation, the place of incorporation;

   D. If an association, the application shall show the association’s principal business address and telephone number. If the association is part of a
multistate organization or association, the mailing address and business locations of its local office.

(3) The specific location in which the applicant intends to solicit under the permit;

(4) The names mailing address and telephone number of all individuals who will be in direct charge or control of the solicitation of funds.

(5) The kind, type and character of goods or services he proposes to offer for sale, including the name brand, manufacturer and distributor of food, goods and commodities and the name, publisher and distributor of all books, magazines or periodicals to be offered for sale;

(6) Full description of goods and/or services for solicitation;

(7) How often the applicant will solicit during the year;

(8) The time period within which the solicitation is to be made, giving the date of the beginning of solicitation and its projected conclusion.

(9) A description of the methods and means by which the solicitation of funds is to be accomplished.

(10) The names of any cities where applicant has obtained a permit within the previous five (5) years;

(11) Whether the applicant, or any solicitor listed in the application, has ever been convicted of a felony or a misdemeanor involving moral turpitude;

(12) State driver’s license number or a state approved identification card number of applicant and each solicitor;

(13) If a motor vehicle is to be used during the time when the applicant will be soliciting, a description of the vehicle, together with the motor vehicle registration number, license number, and a copy of the vehicle’s current proof of liability insurance;

(14) A copy of the applicant’s current State of Texas Sales Tax Permit together with written documentation from the State Comptroller that all sales taxes that may be due and owing by the applicant have been fully paid; and

(15) A sworn statement from the property owner, if applicable, consenting to the applicant’s use of his/her property for the solicitation activities indicated in the permit application; and

(16) If any portion of a parking lot will be used by a solicitor, a site plan must be submitted that indicates no required parking will be used or impacted; and
If the solicitor intends to use property that has a permanent business located on-site, the on-site business must grant permission for the solicitor or his/her patrons to use the business’ restroom; and

If the solicitor intends to use property that has a permanent business on-site, a site plan must be submitted that shows that walkways and ingress and egress to the on-site business will not be impacted.

All stationary carts (itinerant vendor) and mobile vendors (solicitor-peddler) selling food items require a Health Permit, prior to issuance of their respective permit.

(b) In addition, there shall be attached to each application for a permit, the following:

1. Two (2) recent photographic likenesses of the applicant’s face, and any solicitor soliciting under said permit, which photographs shall not exceed one (1) inch square in size.

2. A certificate or letter from the president, vice-president, general manager, sales manager, assistant sales manager or district or area manager of the company for which the applicant works, sells or solicits stating that the applicant is an employee and/or agent of such company.

3. A reference to a recognized financial rating publication, which reference shall show the page on which the company’s or firm’s financial standing can be found; or a letter or a certificate from an association or organization which has as its purpose the protection of citizens of the United States against illegal or unsavory business practices stating that the firm or company is a member in good standing of such association or organization.

4. A copy of a valid health permit for any applicant engaged in the sale or distribution of food or beverages shall be included. A solicitor shall be subject to inspections by the health department at the time of application and at periodic intervals thereafter.

Sec. 26-275 Application Fee.

(a) The peddler/solicitor and itinerant vendor application shall be accompanied by a $100.00 fee for the original applicant, plus a $50.00 fee for each additional peddler/solicitor who works for or provides services for the original applicant, for the investigation and administration of the provisions of this Article.

(b) The special event application shall be accompanied by a $50.00 fee for the business owner or applicant, for the investigation and administration of the provisions of this Article.

(c) All fees shall be paid to the Town prior to acceptance of a permit application.

Sec. 26-276 Permits Generally.
(a) **Investigation of Applicant.** It shall be the duty of the Police Chief, or his/her authorized designee, to secure a background check through any lawful means on each applicant, and all other persons listed on the application before issuance of a permit, which investigation may include but is not necessarily limited to personal interviews with named individuals, public history checks, verification of references and information contained within the application.

(b) **Issuance of Permit.** A permit applied for under this Article shall be issued by the Town within thirty (30) days after the application is completed and filed, unless it is determined that the applicant has provided false or incomplete information on its application.

(1) A peddler/solicitor permit requested under this Article shall be issued for the length of time requested, not to exceed one (1) year. An expired permit may be renewed under the same terms and conditions as the original application and subject to the same fees. Peddler/solicitor permits shall be applied for with the Building Safety Department, reviewed by the Police Department as required, and issued or denied by the Building Official or his/her authorized designee.

(2) An itinerant vendor permit requested under this Article shall be issued for the length of time requested, not to exceed one (1) day unless associated with a permitted special event. An applicant or business may receive no more than four (4) itinerant vendor permits per calendar year. Itinerant vendor permits shall be applied for with the Building Safety Department, reviewed by the Police Department as required, and issued or denied by the Building Official or his/her authorized designee.

(3) A special event permit requested under this Article shall be issued for the length of time permitted under this Article for the type of event to be held. Special event permits shall be applied for with the Building Safety Department, reviewed by the Police and Fire Departments as required, and issued or denied by the Building Official or his/her authorized designee.

(c) **Form of Permit.** Each permit shall be printed in black except that the following shall be printed prominently thereon: “The issuance of the permit is not an endorsement by the Town of Little Elm or any of its officers or employees.” Each permit shall bear a permit number which is the same as the file containing the application filed by the applicant.

(d) **Permit to be Displayed.** It shall be unlawful for any person to sell or solicit in the Town without carrying the identification card and displaying the permit required, by this section on his person, in plain view, while engaged in such soliciting or selling.

(e) **Exhibiting Permit.** Every vendor, solicitor, peddler or seller shall identify themselves as a salesman upon approaching a citizen in a public place or at a private dwelling and explain his purpose, whether it be direct sales, solicitation or ordres of the demonstration of goods or merchandise, or any combination of purposes thereof, and shall produce for inspection, upon request by any person, the solicitor’s permit issued by this Town.
(f) **Solicitors’ identification cards.** Each identification card issued by the Town shall bear the name of the applicant, the application number, the name of the solicitor, or agent, and the expiration date of the permit, and it shall have printed prominently thereon: “This identification card is not an endorsement of the solicitation by the Town of Little Elm or any of its officers or employees. It is your duty to verify all information given to you by this solicitor.” The applicant shall provide, by a separate list, the names and addresses of all agents or employees for whom identification cards are to be issued.

(g) **Responsibility for Acts of Solicitors.** The recipient of a permit or named applicant shall be responsible for the acts of his/her authorized representatives or solicitors listed in the permit application in connection with solicitation activities. In this regard, the recipient of the permit shall actively supervise all persons listed in the permit application, which supervision shall include but not be limited to remaining within the corporate Town limits during all solicitation activity and responding promptly (within ten minutes) to calls by Town representatives relative to the solicitation activity which may include responding to an on-site complaint from a citizen.

(h) **Itinerant vendors’ permit.** Each permit issued by the Town shall bear the name of the applicant, the application number, the name of the itinerant vendor, or agent, and the expiration date of the permit, and it shall have printed prominently thereon: “This permit is not an endorsement of the solicitation by the Town of Little Elm or any of its officers or employees. It is your duty to verify all information given to you by this solicitor.”

(i) **Special event permit.** A special event permit issued by the Town, pursuant to the requirements of Section 26-283(d) of this Article, shall bear the name of the applicant, the application number, the name of the applicant, or agent, and the expiration date of the permit, and it shall have printed prominently thereon: “This permit is not an endorsement of the solicitation by the Town of Little Elm or any of its officers or employees. It is your duty to verify all information given to you by this solicitor.” The permit shall be posted in a conspicuous place at the special event location.

Sec. 26-277  Revocation or Denial of Permit.

(a)  Revocation of Permit.

(1) If, after the permit required by this section has been issued, it is determined that the permit was obtained by false representation in the application, or the permit has been reproduced or transferred or assigned to another person or the applicant has led someone to believe the permit is an endorsement of the applicant’s product or service by the Town, or in the event of fraud or misrepresentation by the permit holder, or in the event the permit holder has failed to furnish the items required by this Article, such permit may be revoked by, during the course of investigation finds a conviction of the permit holder of a felony or a misdemeanor involving moral turpitude the permit can or will be suspended or revoked.
(2) If there is probable cause to believe that a solicitor has engaged in prohibited conduct as defined by this Article, the Town staff member may revoke the permit of the permit holder.

(3) If more than one complaint of misconduct by a solicitor or group of solicitors working for the same company is received, the permit may be immediately revoked by the Town.

(b) **Appeal from Denial or Revocation of Permit.** Should an applicant be denied a permit, or have a permit revoked, he may appeal that action to the Town Manager of the Town of Little Elm by submitting a letter to the Town Secretary or her designee within ten (10) days to complain of that action. A hearing of the denial will then be scheduled with the Town Manager, to be held within fifteen (15) days of the appeal. The Town Manager shall render a decision on the appeal within one day of the date of the hearing. Such hearing shall be an administrative hearing. Adherence to formal rules of evidence shall not be required. The decision of the Town Manager shall be final and binding. No new application for a permit will be considered for six (6) 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 Town staff handling the permit application.

**Sec. 26-278   Bond.**

Each person engaging in solicitation activities requiring cash deposits or taking orders on delivery purchases (COD) or who requires a contract of agreement to finance the sale of any goods, services or merchandise for future delivery, or for services to be performed in the future, shall furnish to the Town a cash bond in the amount of ten thousand dollars ($10,000.00), naming the applicant for the permit as principal. The bond shall be in full force and effect for one year from the date of issuance of the permit, unless otherwise extended by demand of the Town due to the revocation of the permit, or an anticipated delivery date beyond 12 months, in order to protect the citizens of the Town of Little Elm from potential losses associated with such solicitations.

**Sec. 26-279   Permit Exemptions.**

(a) The following persons engaged in the activities set out in paragraphs (1) through (3) below in the Town of Little Elm shall first register with the Town by filling out a form to be promulgated by the Town in accordance with the provisions of this Article and by furnishing proof that he/she is actually engaged in such activity in the Town, and the Town shall issue to such person a registration certificate exempting him from the terms and conditions of this section and from paying a fee therefore, namely:

(1) public utility companies or others operating under a franchise granted by the Town;

(2) commercial agents dealing with local business establishments in the usual course of business; and

(3) insurance salesmen, real estate salesmen and others licensed by the state.

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(b) The following persons engaged in the activities set out in paragraphs (1) through (5) below in the Town of Little Elm are exempt from any registration requirements in addition to the exemption from the permit requirements:

(1) Solicitations related to non-profit activities, including, but not limited to, public and/or private school-related activities, Girl Scouts, Boy Scouts, and Big Brothers and Sisters, which may involve children under the age of sixteen (16). Children under the age of sixteen (16) may participate in such activities to the extent they are actively supervised by a parent, guardian or other adult person, at least 18 years of age, who is responsible for the well being of the child;

(2) Religious, political or non-profit organizations and their representatives distributing handbills or pamphlets only for the purpose of communicating issues of general interest to the public need not register with the Town or pay a permit fee. A donation received from the distribution of handbills or pamphlets does not affect this exemption;

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

(4) Little Elm citizens conducting a survey; and

(5) Persons holding a concession agreement with the Town.

Sec. 26-280  Prohibited Location, Activities and Conduct.

(a) It shall be unlawful for any person 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 Town:

(1) On any public street or alley or traffic island; or

(2) Within twenty-five feet (25') of the following facilities:

A. Automated Teller Machines;

B. Entrances and Exits of banks, credit unions, or other financial institutions;

C. Exterior public pay telephones;

D. Self service car washes;

E. Self service fuel pumps; and/or

F. Public transportation stops.

(3) Any residence which shall exhibit in a conspicuous place upon or near the main entrance to the residence containing the words “NO SOLICITORS.” The letters shall
be not less than two-thirds of an inch in height and should be displayed on a weather
proof card not less than three inches by four inches in size.

(4) For purposes of Subsection (a)(2), measurement will be made in a straight line,
without regard to intervening structures or objects, from the nearest point at which a
solicitation is being conducted to whichever is applicable of the following:

A. the nearest entrance or exit of a facility in which an automated teller machine
is enclosed or, if the machine is not enclosed in a facility, to the nearest part
of the automated teller machine;

B. the nearest entrance or exit of a bank, credit union, or other similar financial
institution;

C. the nearest part of an exterior public pay telephone;

D. the nearest part of the structure of a self-service car wash;

E. the nearest part of a self-service fuel pump; or

F. the nearest point of any sign or marking designating an area as a public
transportation stop

(b) It shall be unlawful for any person to block or obstruct or hinder the free flow of traffic in the
lawful use of the street or free passage of pedestrians in the lawful use of the sidewalk. No
solicitations, sales, or distribution of merchandise, products, or service shall be offered or
made to occupants of motor vehicles moving or stopped in traffic on a public street or alley.

(c) It shall be unlawful for a person engaged in solicitation to;

(1) Misrepresent the purpose of the solicitation;

(2) Misrepresent the affiliation of those engaged in the solicitation;

(3) Continue efforts to solicit from an individual once that individual informs the
solicitor that he does not wish to give anything to or buy anything from that solicitor;

(4) Represent the issuance of any permit or registration under this Article as an
endorsement or recommendation of the solicitation;

(5) Remove, deface, or render illegible a card placed by the occupant of a residence
pursuant to (a)(3) above.

(6) Go on property upon which the owner of the property or the person controlling the
property has posted signs prohibiting solicitation; or
(7) Remain on property after the property owner, or the property owner’s designee, representative or agent, has instructed the solicitor to leave.

(d) No solicitor, or person working on his or her behalf, shall shout, make an outcry, blow a horn or whistle, or use any sound device, including any sound amplifying system, upon any of the streets, avenues, alleys, parks or other public places of the Town, or otherwise be in violation of the Town’s noise ordinance.

(e) No person shall engage in solicitation through the delivery of handbills or circulars by placing said handbills or circulars on motor vehicles, public utility posts, or other location such that the same constitutes littering under Chapter 365 of the Texas Health and Safety Code. It is presumed that the person or business whose address or telephone number is listed in the notice, poster, paper, or device, or who is otherwise named, described, or identified in the notice, poster, paper, or device, is the person or business who committed the violation, either personally or through an agent or employee.

(f) It shall be unlawful for any person to use children sixteen (16) years of age or younger for solicitation activities, unless otherwise expressly permitted herein, unless such children are actively supervised by a parent, guardian or other adult person at least 18 years of age who is registered as provided herein. For purposes of this section, actively supervised means that the adult person shall be within one hundred feet (100’) of all children sixteen (16) years of age or younger for whom the adult person is responsible at all times when the children are engaged in solicitation activities.

(g) 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 or 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.

(h) Public safety personnel shall be exempt from the requirements of subsection (a)(1) of this Section; however, such activities should not hinder the flow of traffic.

Sec. 26-281 Solicitation Restrictions.

(a) Residential. No person shall peddle, solicit, hawk, sell or take orders for or offer to take orders for any item or service at a private residence in the Town of Little Elm after sunset on any day until 9:00 a.m., Monday through Saturday, unless the transaction is the result of a request made to such person by the occupant of such private residence. For purposes of this Section “sunset” means the time of day identified by the National Weather Service as the time for sunset for that day for the Town. There shall be no solicitations on Sunday, New Years Day, Fourth of July, Memorial Day (observed), Labor Day (observed), Thanksgiving, or Christmas Day.

(b) Non-Residential. Except for the vending of food or drinks from a motor vehicle or other non-stationary means within construction, manufacturing or similar areas in the manner specified in subsection (g) below, solicitation shall be allowed only between the hours of 8:00 a.m. to
6:00 p.m. Monday through Saturday. All vending stands must be removed during non-vending hours. All stands and other vending operations must be removed during non-operating hours.

(c) **Stationary Carts.** A vendor stand shall not:

1. Exceed 20 feet in length, 10 feet in width or 13 feet in height;

2. Impede access to the entrance or driveway of any adjacent building, impede flow of traffic, or within 20 feet of fire hydrant;

3. Occupy more than half of the available sidewalk width or 20 feet of such sidewalk, whichever is less; or

4. Occupy any portion of required on-site parking.

5. Use a generator or other external power source.

(d) **Handicapped Areas.** No solicitor shall conduct business within 20 feet of any handicapped parking space or access ramp.

(e) **Removal of Trash.** All trash or debris accumulating within 50 feet of any vendor stand shall be collected by the solicitor and deposited in an authorized trash container. All solicitors selling food or beverages must provide trash receptacles adjacent to or as a part of their stands.

(f) **Prohibited Areas.** A solicitation permit issued pursuant to this Article is valid only on specified public ways or in public places of the Town of Little Elm. The Town shall prohibit vendors from selling on specified public ways or in public places if it determines such prohibitions are necessary for the protection of public health and safety. Vendor stands and motor vehicles are prohibited within twenty feet (20') of a fire hydrant, fire escape, loading zone, or the driveway of a fire station, police station or hospital.

(g) **Monthly Reports.** Upon request from the Town, all vendors shall provide a copy of their monthly report of sales tax receipts to the Town.

(h) **Motor Vehicles.** Solicitation from a motor vehicle shall be prohibited if the solicitor:

1. Stops, stands or parks the vehicle within twenty feet (20') of any intersection, within any other prohibited area, or during prohibited hours;

2. Conducts business in such a way as would increase traffic congestion or delay, constitute a hazard to life or property, interfere with an abutting property owner, or obstruct access to emergency vehicles.

(i) **Fire Inspection.** If in the sole opinion of the fire marshal, or his/her designee, he/she deems an unsafe condition exists, the solicitation must be immediately discontinued.
Sec. 26-282  Consumers Right to Cancel.

(a) The vendor, merchant, peddler, or seller shall provide to the consumer in writing the right to cancel a solicitation transaction made in person or by telephone in which the consideration exceeds five dollars ($5.00), until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase in a solicitation transaction. For purposes of a telephone solicitation, date of transaction means the day that the consumer receives the goods, services, or realty purchased in a solicitation transaction.

(b) If the consumer chooses to cancel the solicitation transaction, notification by mail shall be considered given at the time mailed as evidenced by the postmark; notification by e-mail shall be considered given at the time filed for transmission; and notification by any other writing shall be considered given at the time delivered to the merchant’s designated place of business.

(c) It shall be unlawful for a merchant, peddler, or seller to refuse to allow the customer to cancel the solicitation transaction.

(d) Cancellations authorized, and the procedure and notice requirements set forth in Chapter 39 of the Texas Business and Commerce Code, as it may be amended, are applicable to this Section, for transactions applicable there under. The text of Chapter 39 is available in the Town Secretary’s office or on the web at Texas Legislature On-line.

Sec. 26-283  Special Events.

(a) Tent Sale--Parking Lot Sale.

(1) Temporary permission is granted, as a special privilege to on-site business owners, to hold two (2) parking lot or (2) tent sales annually, or a combination thereof, but no more than two (2) events in the aggregate. Individual events cannot exceed a two (2)-week period.

(2) A permit is required.

(3) All tents must comply with the fire code and a flame retardant certificate must be provided.

(4) A thirty (30)-foot buffer space must be clear around the tent at all times.

(5) If the event is to be held in a shopping center, a letter from the shopping center owner, granting permission for the use of the parking lot, must accompany the permit application.

(6) No parking spaces which are required in order to meet the requirements of this Code may be used to hold the sale.
(7) If the event is not held in a shopping center, the business holding the sale must be the owner or tenant of the premises being used.

(b) Sidewalk Sales.

(1) Temporary permission may be granted to on-site business owners abutting a sidewalk adjacent to their business to hold a sidewalk sale up to four (4) times per calendar year. Individual sidewalk sales may not exceed five (5) days per event.

(2) A permit is required.

(3) The sidewalk shall remain open to pedestrian traffic and may not be obstructed. A minimum of a six (6) foot clearance aisle must be maintained.

(4) Displays or sale items cannot exceed a vertical height of four (4) feet.

(5) Items located under the store canopy and displayed on a permanent basis, on the business property are exempt from this Article.

(c) Town Sponsored Events.

(1) Temporary permission to solicit on Town property may be granted during a Town Event within the location of the Town Sponsored Event. The term of a Town Sponsored Event permit shall be for the length of the Town Sponsored Event.

(2) A permit is required.

(3) The applicant must follow all procedures set forth by the coordinator of the Town Sponsored Event.

(d) Grand Opening.

(1) Temporary permission is granted, as a special privilege to on-site business owners, to hold (1) grand opening event within 30 days of receiving their certificate of occupancy.

(2) A grand opening event may be held once for up to 3 consecutive days.

(3) A special event permit is required.

(4) If the event is to be held in a shopping center, authorization from the owner must be submitted at time of application in the form of a letter granting permission to use the parking lot.

(5) The event may make use of stationary carts, outside amusements, signs, and entertainment, if the activity’s location and scope of operation is included in a letter at time of application.
(6) No more than 50% of the required parking may be used.

(7) In conjunction with a grand opening event permit, the business may use streamers, balloons, and banners for a period of time not to exceed the duration of the event.

(e) Special Event - Other.

(1) Other special events may be permitted at the discretion of the Director of Community Development, if the extent of its operations, duration, and location are clearly described and identified.

(2) The event may make use of stationary carts, outside amusements, signs, and entertainment, if the activity’s location and scope of operation is included in a letter at time of application.

(2) A special event permit is required.

Sec. 26-284 Penalty.

Any person violating any of the provisions or terms of this Article shall be deemed guilty of a misdemeanor and, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars ($500.00) and for Health and Safety Code Violations a fine not to exceed two thousand dollars ($2,000.00) 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.


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