

ORDINANCE NO. 1033

**AN ORDINANCE OF THE CITY OF DUMAS, TEXAS:
AMENDING ORDINANCE NO. 957 AND SUBSEQUENT
ORDINANCES RELATING THERETO , TO AUTHORIZE
CHARITABLE, BENEVOLENT AND EDUCATIONAL
SOLICITATIONS IN PUBLIC STREETS AND HIGHWAYS
IN THE CITY; PROVIDING REGULATIONS FOR SAID
CHARITABLE BENEVOLENT AND EDUCATIONAL
SOLICITATIONS; DEFINING THE TERMS “PEDDLER” “
ITINERANT MERCHANT AND TRANSIENT RETAIL
BUSINESS; PROVIDING FOR A LICENSE AND A BOND
TO OPERATE A TRANSIENT RETAIL BUSINESS OR TO
SOLICIT, SELL OR TAKE ORDERS FOR OR ANY
GOODS, WARES, MERCHANDISE OR SERVICES;
PROVIDING EXCEPTIONS HERETO; PROVIDING A
SUNSET CLAUSE ON THE AUTHORIZATION AND
REGULATION OF SAID CHARITABLE, BENEVOLENT
OR EDUCATIONAL SOLICITATION; PROVIDING A
PENALTY; PROVIDING A SEVERABILITY CLAUSE;
PROVIDING A REPEALER CLAUSE; PROVIDING A
SURVIVAL CLAUSE AND PROVIDING FOR
PUBLICATION AND EFFECTIVE DATE.**

Whereas, the Dumas City Commission finds that charitable organizations perform many valuable services and support worthy projects promoting health and welfare of citizens; and

Whereas, the City Commission desires to allow charitable organizations to solicit funds from occupants of motor vehicles lawfully stopped at street intersections in the city; and

Whereas, the City Commission deems it necessary to place reasonable time, place and manner restrictions on street soliciting in order to: protect safety of motorists and pedestrians alike, maintain order at intersections, prevent conflict among competing groups and, to maintain control of its streets; and

Whereas, the City Commission finds that the terms “Peddler” “Itinerant Merchant” and “Transient Retail Business” should be further defined; and

Whereas, the City Commission finds that all persons, firms and corporations operating as Peddlers, Itinerant Merchants and Transient Retail Businesses within the City of Dumas, Texas, should obtain a license and if the licensed activity involves the sale of goods, wares, merchandise or services, such Peddler Itinerant Merchant or Transient Retail Business shall post a bond as provided herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY
COMMISSION OF THE CITY OF DUMAS, TEXAS:**

ARTICLE 1: That Ordinance No. 957 and subsequent ordinances relating thereto be and hereby is amended to read as follows:

SECTION 1. Definitions

- (a) “*Peddler*” and “*Itinerant Merchant*” The terms “Peddler” and “Itinerant Merchant” shall mean any person, firm or corporation or the agents, employees, servants or representatives thereof, who engages, in the City of Dumas, Texas, in any business which is transacted from door to door, place to place, house to house, on, upon, through or from any premises or space upon any property within the city for which no arrangement has been made which provides a legal right of occupancy for the purpose of conducting such business or which is conducted from a location or locations other than a Fixed Business Location as defined herein.
- (b) “*Transient Retail Business*” The term “Transient Retail Business” shall mean the sale or offering for sale of any goods, wares, merchandise or services, including but not limited, tools, hardware, appliances, furniture or food products, without utilizing a Fixed Business Location as defined herein.
- (c) “*Fixed Business Location*” The term “Fixed Business Location” shall mean a location within the City of Dumas, Texas, which complies with the Zoning Code of the City of Dumas and is located or situated on or in a facility that complies with the Building Code of the City of Dumas and which is occupied by the same business for thirty (30) consecutive days or more. A residential address may constitute a fixed business location even though the actual business operations are conducted elsewhere.

SECTION 2. Soliciting In Street

- (a) No person shall stand in a Street or highway and solicit, or attempt to solicit, employment, business or contributions from the occupant of any vehicle.
- (b) The prohibition in subsection (a) above does not apply to a person soliciting contributions for a charitable, benevolent or educational organization which has been issued a permit under this section and who is in compliance with other provisions of this section.
- (c) For purposes of this section, the following terms have the meaning stated here:

“Charitable organization ” or "organization " means an entity that the United States Internal Revenue Service recognizes to be a charitable organization or a church. "Contribution " means currency, coin, or check. "Location " means the approaches to an intersection equipped with a traffic control signal light and within 100 feet of such an intersection.

(d) In order to solicit contributions while standing in a street or highway, a charitable organization must comply with the following requirements:

1. Not less than thirty (30) days prior to the date desired for soliciting, submit a complete application to the City of Dumas police chief or designee for a permit. The police department shall create a form and review procedure for this purpose. The form shall require the name of the charitable organization; a point of contact for the organization (meaning the name and phone number of the individual seeking the permit for the organization); the desired date(s) and specific location(s) for soliciting, the name, address, phone number and age of each individual who may solicit contributions on behalf of the organization and, an agreement of the organization indemnifying the City and holding it harmless from any and all claims, suits, demands, damages, and attorney fees arising out of or related to the acts or omissions of persons soliciting for the organization. The form may require further information that is reasonably necessary to the direct enforcement of this section and the purposes of this ordinance.

2. At the time of submitting a completed application, the organization shall also submit the following items and failure to do so renders the application incomplete:

A. Fee payment in the sum of \$400.00 (cash or money order only) to defray the City’s costs of both processing the application, advertising, and compliance monitoring on the street. This fee is non-refundable, unless the permit is denied.

B. Provide written proof of liability insurance in the minimum amounts of: \$250,000.00 for personal injury or death to any one person soliciting for the organization, and \$500,000.00 per occurrence of death or personal injury, and \$100,000.00 per occurrence of property damage or destruction. The City of Dumas must be an additional insured on the policy and specify that such insurance is primary and the City's insurance is secondary. The insurance policy must be issued by a company authorized by the State Department of Insurance to do business in Texas and, have an effective date that covers the date(s) of street soliciting.

C. Provide written proof that the organization is a charitable, benevolent or educational organization, if that exemption is being claimed, along with a copy of the organization's charter (or if a foreign organization, then a copy of its certificate of authority to do business in Texas).

3. No more than one permit per calendar year may be issued to an organization. For purposes of this subsection, local chapters of a state, national or international organization are deemed separate organizations, but committees or other subdivisions of an organization are not so deemed

4. A permit shall authorize street soliciting only for three (3) consecutive calendar days, between the period of 9 o'clock a.m. and one (1) hour prior to sunset, at the approved location(s) specified in the application.

5. The police chief or designee shall not issue an organization a permit for given date(s) or location(s) if a permit has already been issued to another organization for such date(s) and location(s).

6. The police chief or designee shall grant or deny a permit solely on the basis of the information, documents, and requirements stated in the above subsections 1 through 5, inclusive. The police chief or designee shall advise the organization's point of contact of the decision to grant or deny the permit, not later than the tenth day after date of receiving the application and fee.

If a permit is granted, it shall state the name of the organization, the names of persons who will be soliciting contributions for the organization and, the approved date(s) and location(s). The organization shall, at its expense, make sufficient copies of the permit to have a copy at each approved location and, shall readily present such copy for inspection upon demand by any person. The chief shall also cause to be published a newspaper notice of approximately 2 columns x 5 inches in size, advising the motoring public to be alert to the presence of solicitors in the street at the location(s) and date(s) approved in the permit. The notice shall also state the name of the organization.

If a permit is denied, then the applicant may appeal to the City Commission by filing a letter with the City Secretary indicating why the permit should be granted. This letter must be filed no later than three (3) business days after the notice of denial. The City Commission shall decide the matter and advise the organization's point of contact of the decision no later than the 15th day after receiving the appeal letter. The City Commission's decision is final

(e) It is an offense for a person to solicit or attempt to solicit contributions, for a charitable organization that is issued a permit, and fail to:

1. Be at least 18 years of age; or
2. Be named on the organization's permit; or
3. Wear a reflective orange or yellow visibility vest as the outer most garment; or
4. Be in the street or highway only when the controlling traffic signal light prohibits vehicle movement in that lane; or
5. Remain within 100 feet of or from an intersection approved in the permit; or

6. Place an orange traffic control cone, not less than 24 inches in height, on the center stripe of each street and highway approaching the intersection, at least 100 to 150 feet from the intersection, to warn drivers of a hazard ahead; or

7. Present for inspection a copy of the permit upon demand by any person.

(f) It is an offense for any person to obstruct, tamper with, alter, cover, or post any object on or to a traffic control device. Traffic control device includes but is not limited to: median markers, reflectors, signal control boxes, regulatory signs, directional signs, warning signs, and pedestrian walk lights.

(g) Any peace officer observing any violation of any requirement or prohibition of this section is authorized to issue a citation for the person to appear in municipal court to answer the charge. Upon issuance of the citation, such person shall immediately cease soliciting or attempting to solicit any charitable contribution under that organization's permit. However, it is not the intent of this provision to bar such person from participating in future charitable solicitations approved under the provisions of this ordinance.

SECTION 3. Peddlers, Itinerant Merchants and Transient Retail Businesses. No person, firm or corporation shall operate a Transient Retail Business or as a Peddler or Itinerant Merchant, peddle, sell or offer for sale goods, wares or services within the city limits of the City of Dumas, Texas without a license issued by the City Manager or his/her designated representative. No person, firm or corporation shall operate a Transient Retail Business or as a Peddler or Itinerant Merchant, peddle, sell or offer for sale any goods, wares or services without first posting a bond with the City, as herein provided.

(a) License- The Application for a Transient Retail Business License, a Peddlers or Itinerant Merchant's license shall be made to the City Manager of Dumas, or his/her designated representative, and shall contain:

1. The name, permanent street address, mailing address, telephone number, and copy of their driver's license or other type of photo identification of the principal owner of the business. If an assumed name is used for the principal owner of the business, then the above described information shall be provided for the Chief Executive Officer.

2. The principal occupation of the business and the identity of the goods, wares or services to be sold or offered for sale.

3. The State of Texas sales tax permit number.

4. The name, local address, local telephone number, and copy of their driver's license or other type of photo identification of the local supervisor or person in charge of the sales efforts.

5. The name, local address, local telephone number, and copy of their driver's license or other type of photo identification of each agent, representative or consignee of the

Peddler, Itinerant Merchant or Transient Retail Business who will be transacting business in the City of Dumas.

6. If the business is to be conducted on premises owned by a person other than the business to be licensed, then the application shall contain the name and address of the property owner and show that the applicant has the express written permission of the owner of the premises to conduct business at such location.

(b) Compliance with Zoning Requirements- All Peddlers, Itinerant Merchants and Transient Retail Businesses shall at all times comply with the Zoning Ordinances of the City of Dumas and shall conduct any and all business in a properly zoned location. Failure to comply with the Zoning Ordinance shall result in the revocation of the License.

(d) Display of License and issuance of receipts. A license issued hereunder shall be displayed conspicuously at the primary location of any Transient Retail Business and shall be produced for inspection upon request by any potential buyer or any officer of the City of Dumas, for any Peddler or Itinerant Merchant.

(e) Exceptions- The following activities are excepted herefrom:

(1) Occasional Sales- Any sale of tangible personal property, goods, wares, merchandise or services exclusive of a Peddler or Itinerant Merchant doing business in a zoning area which does not allow business by a person whose occupation does not include the sale of such property shall be allowed for not more than two (2) times, for not more than three (3) consecutive days each, in any twelve (12) month period.

(2) Merchant to Merchant Sales- Merchants who sell to other merchants engaged in the same business of buying, selling or dealing in the same merchandise.

(3) Charitable, Benevolent or Educational Sales- Sales of goods, wares, Merchandise or Services by bona fide charitable, benevolent or educational organizations, the proceeds of which are applied to some charitable, religious, educational or philanthropic purpose. "Educational Sales" as used herein, shall mean sales of goods, wares, merchandise or services, sanctioned or authorized by an accredited or recognized educational institution such as Dumas Independent School District, Amarillo College or West Texas State A & M University.

(4) Farmers Market- Participants in the scheduled Farmers Market conducted at McDade Park or such other location as the City Commission shall from time to time direct.

(5) Sales of Goods by Governmental Entities- Sales of goods, wares or merchandise by sheriffs, constables or other public officers or to bona fide assignees auctioneers, trustees or receivers duly appointed.

(6) Merchants engaged in Interstate Commerce- Merchants engaged in the sale of goods, wares or merchandise that is involved in interstate commerce. However, such Merchants

must register at the City Hall and provide the information required by the application for license.

(7) Merchants Invited to Solicit- Merchants invited by the owner, occupier or person entitled to possession of the premises, to sell or solicit the sale of goods, wares, merchandise or services to the owner, occupier or person entitled to possession of the premises.

(f) Fee Required- For a Peddler, Itinerant Merchant or Transient Retail Business with a Fixed Business Location, as that term is defined herein, within the City of Dumas, Texas, the license shall require a fee of Two Hundred Dollars Dollars (\$200.00) for each issuance. For a Peddler, Itinerant Merchant of Transient Retail Business without a Fixed Business Location, as that term is defined herein, within the City of Dumas, Texas, the license shall require a fee of Four Hundred Dollars (\$400.00) for each issuance. The license so issued shall expire Ninety days (90) from the date of issuance. The license may not be renewed for successive Ninety day (90) periods, until Ninety days following the end of any prior Ninety day permit period.

(g) Bond Required- The application for license shall be accompanied by a bond in the penal sum of One Thousand Dollars (\$1,000.00) signed by the applicant and by sureties authorized to do business in Texas, conditioned upon final delivery of any and all goods, wares, merchandise or services sold in accordance with any order obtained prior to the delivery; payment of all sales tax; and conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of said bond, at the time of delivery and that may be discovered by such purchaser within thirty (30) days after delivery. The Bond shall be made payable to the City of Dumas, Texas, for the use and benefit of all persons, firms and corporations that may make any purchase or give any order to the principal on said bond or to any agent or employee of said principal.

(h) Removal of Temporary Structures. At the end of each and every permit period, the Licensee (peddler, itinerant merchant or transient retail business owner) shall remove any and all temporary structures or facilities used in connection with the business and shall leave the premises clean and free of all trash and debris.

SECTION 4. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Commission of the City of Dumas, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 5. Repealer. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 6. Survival Clause. All ordinances and parts of ordinances not in conflict herewith are hereby ratified and confirmed. Nothing contained herein shall allow or authorize any person, firm or corporation to violate any other law, statute, ordinance, rule or regulation.

SECTION 7. Notification of Filing Gross Sales Report. The Applicant shall provide the city of Dumas written notification of the filing of the gross sales report to the state of Texas. Failure to provide such notification or failure to file such report shall prohibit the renewal or reissuance of the license herein required.

SECTION 8. Publishing and Effective Date. This ordinance shall be published and become effective according to law.

SECTION 9. Penalty. Any person, firm or corporation found to be in violation of any provision hereof shall be guilty of a class "C" misdemeanor and upon conviction, shall be fined not more than Five Hundred Dollars (\$500.00). Each successive day of violation shall constitute a separate offense hereunder.

PASSED AND APPROVED by the City Commission of the City of Dumas, Texas, on Second and Final Reading the 21st day of January, 2008.

CITY OF DUMAS, TEXAS

BY: _____
Mike Milligan, Mayor

ATTEST:

Kim Rehkopf, City Secretary