

Response to Six Recommendations for Handbill Solicitation

The responses were prepared by staff and reviewed by the Town Attorney.

1. Recommendation: *Require all handbill solicitors to apply for a handbill solicitor's permit with the police or city offices. Flower Mound should require a valid Texas Driver's License or State ID for all applicants. Flower Mound should also run a criminal background check on all applicants and those with a history of sex offense, burglary, etc. should be denied.*

Response: We do not believe that we have the legal authority to require such a provision with the exception of requiring a Texas Driver's license after the person has been a resident for a period of time and only if they are operating a motor vehicle. Criminal history checks are regulated by TLETS and are restricted to persons who are involved in or subjects of actual active criminal investigations. The process we employ now requires that we pay a fee of \$1.00 per background check.

Such a requirement would be a substantial strain on records personnel who are near being overwhelmed by maintaining records of the current Solicitation Ordinance, Burglar Alarm Ordinance (both registration and false alarm fee collection), normal day-to-day report and records entries, accident reporting entry, lobby customer service duties, Open Records requests, etc. Additionally, these distributors normally do not use full-time personnel to distribute these products, requiring what would possibly be a daily process of new employees applying for permits, further straining records personnel. Many of these distributors come into Town, distribute their products and are gone within a few days. This process would likely keep them in the area for a considerably longer period of time, because of the permitting requirements. We currently have 41 active individual solicitation permits working under 7 master permits. We have no way of predicting numbers for potential handbill delivery permits under a similar ordinance.

The Town Attorney's Office concurs that there is no legal authority to require that someone must have a Texas driver's license or state-issued identification card in his/her possession. The other issue noted is that even if a person did have such identification, a private citizen has no legal authority to demand to see it or require it to be produced. While producing a copy of a permit is allowable, there would be serious legal issues if an officer arrested a handbill distributor for not possessing such identification. Additionally, there could be serious probable cause issues for our officers—simply stated, what would give the officer probable cause to think an offense was being committed relative to an identification card (or lack thereof)? Another practical matter would be how would the Town address minors who may be passing out flyers door-to-door.

2. Recommendation: *Handbill applicants should bring passport photos along with their application. The photos should be used to create a plastic,*

laminated ID badge that must be worn from a lanyard around the neck at all times when distributing handbills in Flower Mound.

Response: We have no authority under Federal Immigration Law or any other state or federal statute to require possession of a passport. We have no authority to enforce Federal Immigration Law. The few municipal, state, and county agencies that have gained such authority through agreements with Immigration and Customs Enforcement (ICE) have had their activities severely reduced by the Federal Government over the course of the past year. There is reason to believe those previous agreements may be nullified in the near future.

3. Recommendation: *All handbills and materials left behind should have the handbill solicitor's permit number printed on them. That way, when the home owner gets home, if he or she has a question about the handbill, he or she can refer to the permit number.*

Response: Such a stipulation would probably be considered an unfair burden on the company distributing the handbills due to the increase in printing and labor costs associated with numbering just those handbills intended for distribution in a particular municipality.

4. Recommendation: *The city should post a listing of all current handbill solicitors on the city website. That way, when a home owner gets home from work, he or she can easily check the handbill by permit number on the city's website.*

Response: Such a process would likely cause a substantial burden on Community Affairs personnel already faced with numerous responsibilities with regard to Website maintenance.

5. Recommendation: *Please consider a large fee for the permit to help discourage handbill solicitors in Flower Mound. Highland Village charges \$250 for 90 days.*

Response: Once again, such a high fee would likely be considered an unfair burden on companies involved in the distributing these products. Requiring a permit be renewed at such a high fee every 90 days would further foster that belief as well as further increasing the burden on records personnel. The current solicitors permit is valid for 6 months after passage of the most recent budget.

Legally permit fees have to be based on the actual cost of regulation. Adopting a high fee for the purpose of discouraging such activity by handbill distributors is illegal and the Town would be subject to possible litigation over the fee amount.

6. Recommendation: *Handbill solicitors should be required to only walk on the paved or concrete portion of the landscape and not trespass on the lawn.*

Response: This requirement would be virtually unenforceable due to the fact peace officers are required to witness Class C Misdemeanor offenses personally prior to taking any enforcement action. Officers would not be able to issue citations or make arrests based upon statements or declarations of witnesses or complainants regarding alleged violations. Complainants would likely be referred to Municipal Court in order to file their own case, which is seldom ever done and tends to cause frustration for the complainant due to the belief the officer has failed to carry out his/her duties.

Many of the letters and other correspondence we receive with regard to delivery of handbills seem to target the individuals involved in the delivery rather than the act itself. Many of them refer to the race or suspected nationality of the delivery persons. Passage of such an ordinance, aside from the already stated opinions of the Town Attorney and his staff that the ordinance would likely be found to be unconstitutional, could also be, just by the possible numbers of minorities and immigrants who could be affected by any enforcement action, construed that the Flower Mound Police Department engages in some form of racial profiling. Many of the letters, telephone complaints, and calls to police dispatch make references to the handbill distributors race or ethnicity while making references to their not "belonging" in the neighborhood. The members of the Police Department work very hard to ensure that our officers never participate in such practices and this proposed ordinance, aside from likely being illegal, may serve to artificially alter the numbers to the point of indicating racial profiling is in fact taking place.