

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, ESTABLISHING REGULATIONS FOR SPECIAL EVENTS AND TEMPORARY OUTDOOR SEASONAL SALES; PROVIDING FOR PERMIT FEES; PROVIDING FOR THE ISSUANCE AND RECOVATION OF PERMITS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE AND AN EFFECTIVE DATE THEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council") has investigated into and determined that it would be advantageous and beneficial to the citizens and inhabitants of the Town of Prosper, Texas (the "Town") to regulate special events and temporary outdoor seasonal sales as provided herein.

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

SECTION 1: FINDINGS INCORPORATED. The findings set forth above are incorporated into the body of this Ordinance s if full set forth herein.

SECTION 2: DEFINITIONS. For the purpose of this Ordinance, the following terms, phrases, words and their derivation shall have the meaning given below:

Ambient (background) sound pressure level means the all-encompassing sound associated with a given environment, being usually a composite of sounds from all sources, excluding the alleged offensive sound, at the location and approximate time at which a comparison with the alleged offensive sound is to be made.

Ambient light means the general character and overall level of illumination in a particular area.

Amplified sound means music, speech or sound projected or transmitted by artificial means, including but not limited to, amplifiers, loud speakers, or any similar devices which emit sound distinctly discernible at a distance of more than one hundred feet (100') beyond the property line of the premises where the equipment is located.

Building Official means the Town's Building Official or his/her authorized designee.

Carnival means a temporary event that is characterized by, among other things, mechanical rides, games of skill or chance, entertainment or food.

Circus shall mean a temporary entertainment event that is characterized by, among other things, the performance of acrobats, trained or exotic animals, or clowns.

Concession means a temporary food establishment where food is offered to the public that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single circus, carnival, special event, celebration or sales, seasonal or temporary.

Exotic animal means any nondomesticated animal, other than livestock, that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced

from abroad. The term “exotic animal” specifically includes, but is not limited to, animals such as lions, tigers, jackals, dingoes, leopards, elephants, pandas, camels, antelope, anteaters, kangaroos, chimpanzees, gorillas, orangutans, water buffalo, and species of foreign domestic livestock requiring state or federal permits.

Non-profit organization means any organization registered with the State of Texas and recognized by the Internal Revenue Service under section 501(c) series rules.

Public school district means the Prosper Independent School District (PISD)

Religious institution means a use customarily associated with a building where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, including the on-site housing of ministers, rabbis, priests, nuns and similar staff personnel, is maintained and controlled by a religious body organized to sustain public worship.

Temporary Outdoor Seasonal Sales means the sale of, including but not limited to, firewood, nuts, pumpkins and gourds, wreaths, dried corn stalks, square hay bales, Christmas trees, Christmas tree ornaments and crafts, illuminated and non-illuminated Christmas, Halloween, Patriotic, or Easter yard art and crafts, Valentine flowers, and Valentine-related gifts, crafts, yard art and similar seasonal products (“Seasonal Products”) by Town, civic, school, philanthropic, religious, or other non-profit organizations.

Special event means an event or gathering that requires a temporary exception to otherwise applicable rules or requirements, including, but not limited to:

- a. the temporary complete or partial closure of a public street;
- b. the temporary closure or restriction of access to public property;
- c. the temporary offer of merchandise, food, or beverages on public property or on private property where not otherwise permitted by the Town or the applicable certificate of occupancy;
- d. the temporary erection of a tent on public property or on private property where not otherwise permitted by the Town or the applicable certificate of occupancy;
- e. the temporary erection of a stage, band shell, portable building, grandstand, or bleachers on public property or on private property where not otherwise permitted by the Town or the applicable certificate of occupancy;
- f. the temporary use, for other than storage, of a trailer or van on public property or on private property where not otherwise permitted by the Town or the applicable certificate of occupancy;
- g. the temporary use of equipment to amplify and transmit sound, which exceeds ambient (background) sound pressure levels at the property lines;
- h. the placement of portable toilets on public property or on private property where not otherwise permitted by the Town or the applicable certificate of occupancy;
or
- i. activities such as, among others, a carnival, circus, fireworks displays, runs, events not wholly contained on Town parks or building sites or PISD.

All terminology used in this Ordinance, and not specifically defined above, shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of Webster's Collegiate Dictionary.

SECTION 3: TEMPORARY OUTDOOR SEASONAL SALE REGULATIONS. The following additional regulations shall apply to Temporary Outdoor Seasonal Sales:

- a. Seasonal Products may lawfully be sold during periods approved by the Building Official after the issuance of a permit referenced in Section 5.
- b. The sale of Seasonal Products shall not involve more than one tent or temporary building on a lot and no more than one motor home, recreational vehicle, travel trailer or similar vehicles for the sales operator's use. If the applicant elects to install a temporary tent or temporary building, the applicant must meet all Town requirements for said installation, as they exist or may be amended.
- c. Local businesses and property owners within the Town may grant permission to a person or entity eligible to receive a permit to hold a Temporary Outdoor Seasonal Sale on their parking lot or property.
- d. Temporary Outdoor Seasonal Sales are not allowed on properties with a current residential use.
- e. Off-street parking must be provided on site and be constructed of an approved all weather surface, such as concrete, asphalt or gravel. Off site or soft surface parking areas must have a parking plan submitted as part of the application process.
- f. No required parking spaces, as set forth in applicable Town ordinances may be used.
- g. Livestock (*i.e.*, equine, cattle, sheep, goats, lambs, pigs, etc.), fowl, rodents, reptiles, amphibians, or any other animal does not qualify for a Temporary Outdoor Seasonal Sale.
- h. Temporary lighting and/or security lighting may be used at a Temporary Outdoor Seasonal Sale location. Electrical Permits are required for temporary power and any other electrical installations at the premises. Electrical Contractors must be a registered contractor with the Town. Electrical work installed requires inspection by a Town building inspector. Temporary lighting must meet the requirements of the Town's Comprehensive Zoning Ordinance, as it currently exists or may be amended. Any lights located on the premises may not flash, travel, blink, fade, move, or scroll.
- i. Sales items, display areas, jump houses and/or any other related items in conjunction with the Temporary Outdoor Seasonal Sale may not block any fire lanes, fire hydrants, public access areas or means of egress pathways as determined by a Town building inspector.
- j. Sidewalks and pedestrian access ramps are required to have a minimum of six (6) feet clearance at all times and meet the requirements of the Americans with Disabilities Act, as it currently exists or may be amended.
- k. Written permission must be obtained from the property owner and must accompany the Temporary Outdoor Seasonal Sale Permit Application seeking a permit for the temporary use at the property.
- l. If food and/or drinks are served, the applicant must meet any and all health requirements of the Town, as they exist or may be amended.

- m. Equipment used for a Temporary Outdoor Seasonal Sale shall comply with all ordinances of the Town, as they currently exist or may be amended.
- n. Proof of a current Texas Sales Tax Permit must be submitted at time of application, if applicable.

SECTION 4: SPECIAL EVENT REGULATIONS. The following additional regulations shall apply to a Special Event:

- a. A Special Event requiring street closures or other participation from the Town will be allowed only with the approval of the Town Manager or his/her designee.
- b. Temporary lighting and/or security lighting may be used at a Special Event location. Electrical Permits are required for temporary power and any other electrical installations at the premises. Electrical Contractors must be a registered contractor with the Town. Electrical work installed requires inspection by a Town building inspector. Temporary lighting must meet the requirements of the Town's Comprehensive Zoning Ordinance, as it currently exists or may be amended. Any lights located on the premises may not flash, travel, blink, fade, move, or scroll.
- c. Any items used in conjunction with the Special Event may not block any fire lanes, fire hydrants, public access areas or means of egress pathways as determined by a Town building inspector.
- d. Sidewalks and pedestrian access ramps are required to have a minimum of six (6) feet clearance at all times and meet the requirements of the Americans with Disabilities Act, as it currently exists or may be amended.
- e. Written permission must be obtained from the property owner and must accompany the Special Event Permit Application seeking a permit for the temporary use at the property.
- f. If food and/or drinks are served, the applicant must meet any and all health requirements of the Town, as they exist or may be amended.
- g. Equipment used for a Special Event shall comply with all ordinances of the Town, as they currently exist or may be amended.
- h. The following events are not considered a Special Event and are, therefore, exempt from this Ordinance:
 - (1) Events which require the approval or sanctioning of, or are officially sponsored by, the Town or PISD and:
 - i. the event is wholly contained on a Town park or building site or PISD property;
 - ii. the impact on traffic and surrounding neighborhoods was evaluated and found insignificant by the Town Police Department before approval for the event was granted by the Town or PISD; and
 - iii. the event conforms to the other general criteria of this Ordinance
 - (2) Private parties to which the public is not invited.
 - (3) An event wholly contained on property specifically designed or suited for said event and which holds a certificate of occupancy for such use, including but not limited to, adequate parking.

- (4) Funeral processions.

SECTION 5: PERMIT REQUIREMENTS; ADDITIONAL REGULATIONS. A permit of a Temporary Outdoor Seasonal Sale or Special Event permit may be issued by the Building Official subject to the following conditions:

- a. Written application for a permit shall be provided on a form provided by the Town and made no less than fifteen (15) business days prior to the date such Temporary Outdoor Seasonal Sale or Special Event shall commence operation.
- b. The application for a permit shall contain the following:
 - (1) Name, address, and telephone number of person, organization, or company conducting the Temporary Outdoor Seasonal Sale or Special Event.
 - (2) Requested date or dates and operating times of the Temporary Outdoor Seasonal Sale or Special Event.
 - (3) A plan showing in detail the different component parts of the Temporary Outdoor Seasonal Sale or Special Event, including but not limited to, the shows, concessions, amusements, businesses, portable toilets and the location of each on the property, as well as any other details required by the Town.
 - (4) A written lease or agreement from the owner of such property stating permission to the applicant to operate the Temporary Outdoor Seasonal Sale or Special Event on said property.
 - (5) Proposed location and size of parking area(s).
 - (6) Location and quantity of solid waste disposal containers. Individual waste cans must be bagged and have a tight fitting lid. All waste, excluding cardboard boxes, disposed of in front or top loading dumpster containers must be bagged.
 - (7) The approximate number of persons who are attending and, if applicable, the number and types of animals and vehicles that will constitute such event. If attendance is over five hundred (500) persons in any eight (8)-hour period, Town-approved security must be provided. Prosper Police Department requires one off-duty officer per five hundred people in attendance. If alcohol is served or is involved, then the requirement is two off-duty officers per five hundred people.
 - (8) The location and orientation of loudspeakers or sound amplification devices, if any.
 - (9) Proof of public liability insurance with minimum combined limits of one million dollars (\$1,000,000.00). The Building Official shall require a certificate of insurance that shows that such policy is in full force and effect prior to commencement of the Temporary Outdoor Seasonal Sale or Special Event, lists the Town as an additional insured, and provides that the Town shall receive notice of cancellation of the insurance coverage.
 - (10) Any other information that the Town shall deem necessary under the standards for issuance.
- c. Safe and orderly movement of normal traffic shall not be substantially, as solely determined by the Town, interrupted. The Town may require the permit holder to provide

additional signage for traffic control and safety-related issues. If any Temporary Outdoor Seasonal Sale or Special Event is located adjacent to a TXDOT-controlled road, a TXDOT sign permit must be obtained, and signs must be in place before a seasonal sale or event permit is issued. (The specific requirement for TXDOT signs may be waived if staff determines that sufficient traffic control measures are currently in place.) Prosper Police Department will review the event traffic flow and parking plan and may require the event holder hire an off duty officer to direct traffic. Those current fees, or as amended, are \$30/hour with a four hour minimum. During inclement weather (rain, storm, snow, extreme cold or heat) the fee is \$35/hour. Any event that occurs on a recognized holiday is \$40/hour with a four hour minimum and \$45/hour if the event occurs during inclement weather.

- d. The temporary use shall not impede the movement of any public safety equipment.
- e. Waste from animals shall be removed and properly disposed of daily from the premises. Animals shall not be kept closer than three hundred feet (300') to any residence, commercial establishment or food establishment.
- f. The application shall be reviewed and approved by the Building Official, Police Chief, Fire Chief, and Director of Public Works, or designees of these individuals, for traffic control, security, fire, medical, safety, and other related issues.
- g. The permit for a Special Event will be valid for a maximum period of seven (7) days. Each Temporary Outdoor Seasonal Sale permit will be valid for a maximum of thirty-five (35) days during one period of four weeks before and one week after the Valentine's Day, Halloween, Easter, or Christmas holidays.
- h. All signs must conform with the Town's sign code except that signs adjacent to a TXDOT-controlled road will be limited to two (2) signs not to exceed twenty (20) square feet.

SECTION 6: DENIAL OF PERMIT. A permit of a Temporary Outdoor Seasonal Sale or Special Event permit may be denied by the Town if:

- a. a permit has been granted for another Temporary Outdoor Seasonal Sale or Special Event at the same place and time; or
- b. the proposed Temporary Outdoor Seasonal Sale or Special Event will unreasonably, as solely determined by the Town, disrupt the orderly flow of traffic and no reasonable, as solely determined by the Town, means of rerouting traffic or otherwise meeting traffic needs is available; or
- c. the application is incomplete; or
- d. the applicant fails to comply with or the proposed Temporary Outdoor Seasonal Sale or Special Event will violate a Town code, ordinance, rule, regulation or other applicable law, unless the prohibited conduct or activity would be allowed under this Ordinance; or
- e. the applicant makes a false statement of material fact on an application for a Temporary Outdoor Seasonal Sale or Special Event permit; or
- f. the applicant has had a Temporary Outdoor Seasonal Sale or Special Event permit revoked within the preceding twelve (12) months or the applicant has committed two (2) or more violations of a condition of a provision of a Temporary Outdoor Seasonal Sale or Special Event permit or of this section within the preceding twelve (12) months; or

- g. as solely determined by the Town, the proposed Temporary Outdoor Seasonal Sale or Special Event would unduly burden Town services or unreasonably disrupt the public order.

SECTION 7: REVOCATION OF PERMIT. A permit of a Temporary Outdoor Seasonal Sale or Special Event permit may be revoked by the Town if:

- a. applicant fails to comply with or the Temporary Outdoor Seasonal Sale or Special Event violates a condition or a provision of the permit, an ordinance, rule or regulation of the Town, or any other applicable law; or
- b. the permit holder made any false statements on an application for a Temporary Outdoor Seasonal Sale or Special Event permit; or
- c. as solely determined by the Town, the Temporary Outdoor Seasonal Sale or Special Event unduly burdens Town services or unreasonably disrupts the public order.

SECTION 8: FEES. The permit fee for a Temporary Outdoor Seasonal Sale or Special Event shall be as follows:

- a. Temporary Outdoor Seasonal Sale or Special Event, one hundred dollars (\$100.00) per permit.
- b. The applicant shall provide a one thousand dollar (\$1,000.00) dollar deposit at the time of the original permit application for clean up after the Temporary Outdoor Seasonal Sale or Special Event. If the applicant cleans up, satisfactory to the Town, within twenty-four (24) hours after the Temporary Outdoor Seasonal Sale or Special Event ends, the one thousand dollar (\$1,000.00) deposit will be refunded to the applicant within fourteen (14) business days of the Temporary Outdoor Seasonal Sale or Special Event ending.
- c. Permit fees may be waived by the Building Official for the following:
 - (1) Town organized events.
 - (2) PISD-sponsored and supervised events when only school property is used.
 - (3) Non-profit organizations providing a copy of its valid federal and State of Texas Tax Identification Numbers and any other documentation required by the Town to evidence good standing.
 - (4) Religious institutions when the event is sponsored solely by and held wholly on the institution's property.

SECTION 9: APPEAL. Any applicant who has been denied a permit or any person, whose permit has been suspended or revoked, shall have the right to a hearing before the Town Manager, or his/her designee. Request for a hearing must be made in writing and received by the Town Manager, or his/her designee, within ten (10) days of the date of the denial or the date of the notice of suspension or revocation. The Town Manager, or his/her designee, may review the appeal at a staff level and has the authority to reverse the decision of the Building Official and order that a permit be granted or to reinstate a suspended or revoked permit. The Town Manager's failure to take any action shall result in a denial of the appeal. The decision of the Town Manager shall be final.

SECTION 10: OTHER REQUIREMENTS. All federal, state and local rules, regulation, codes and ordinances will be adhered to by all participants and applicants. The provisions of this

Ordinance are cumulative of all other Town ordinances, rules and regulations. Tent permits, building permits, electrical permits, food establishment and handling permits, sign permits and all other permits and licenses required by the Town or other law for specific activities conducted in conjunction with or as a part of the Temporary Outdoor Seasonal Sale or Special Event must be applied for in a form satisfactory to the Town.

SECTION 11: OFFENSE; NOTICE OF VIOLATION. A person commits an offense if he/she:

- a. Commences or conducts a Temporary Outdoor Seasonal Sale or Special Event without the appropriate permits or fails to comply with any requirement or condition of a permit or this Ordinance.
- b. Participates in a Temporary Outdoor Seasonal Sale or Special Event for which a permit has not been granted.

In the event any owner, tenant, agent or person (hereinafter "owner") responsible for or claiming or having supervision or control over a Temporary Outdoor Seasonal Sale or Special Event fails to comply with provisions of this Ordinance, the Town, by and through its Building Official, or designee, shall give notice of the violation to such owner. Such notice shall be given to the owner in any one of the following ways:

- a. verbal or written to the owner or responsible person;
- b. by posting notice at the site or sale location; or
- c. by letter addressed to the responsible owner on said application and/or property owner at premises as recorded in the appraisal district records of the appraisal district in which the property is located.

SECTION 12: CITATIONS; WORK OR IMPROVEMENTS BY THE TOWN OF PROSPER; CHARGES AGAINST OWNER. An applicant, owner, tenant, agent or individual who fails or refuses to comply with a demand for compliance may be issued citations and/or their permit(s) may be suspended or revoked. The Town may do the work or make improvements required to abate violations, pay for the work done or improvements made, and charge all expenses to the owner, tenant, agent or individual.

SECTION 13: PENALTY PROVISION. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of FIVE HUNDRED DOLLARS (\$500.00), unless the violation relates to fire safety, zoning or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the Town from filing suit to enjoin the violation. The Town retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 14: ENFORCEMENT AND INTERPRETATION; PRIVILEGE. The Building Official shall enforce this Ordinance. Unless otherwise provided herein, the Building Official shall be responsible for interpreting and administering this Ordinance. The receipt of a permit required by this Ordinance is a privilege and not a property right.

SECTION 15: REPEALING/SAVINGS CLAUSE. All provisions of any Ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining provisions shall remain in full force and effect.


SECTION 16: SEVERABILITY. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more section, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

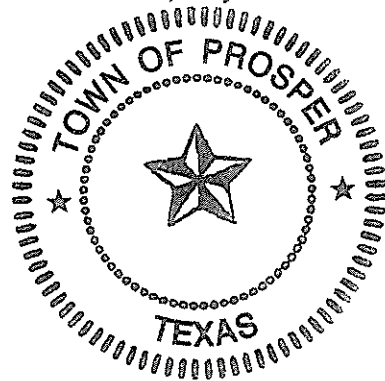
SECTION 17: EFFECTIVE DATE. This Ordinance shall become effective from and after its adoption and publication as required by the Town Charter and by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 14th day of November, 2006.


CHARLES NISWANGER, Mayor

ATTESTED:


MATTHEW D. DENTON, Town Secretary



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