

ORDINANCE NO. 2008-06-24

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY REPEALING, IN ITS ENTIRETY, ARTICLE 4.100, "PEDDLER REGULATIONS" AND REPLACING WITH A NEW ARTICLE 4.100, "PEDDLERS, SOLICITORS AND ITINERANT VENDORS"; PROVIDING FOR DEFINITIONS; PROVIDING FOR SOLICITATION IN THE PUBLIC RIGHT-OF-WAY; PROVIDING PROHIBITION FOR SOLICITATION IN SPECIFIED PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SOLICITATION AND HANDBILL DISTRIBUTION ON PRIVATE PROPERTY; PROVIDING FOR THE DISPLAY OF IDENTIFICATION CARDS; PROVIDING FOR THE DISPLAY OF PERMIT TO SOLICIT; PROVIDING FOR SOLICITATION FOR OTHER PURPOSE; PROVIDING FOR A PERMIT AND PERMIT FEE; PROVIDING FOR PERMIT APPLICATION; PROVIDING FOR THE ISSUANCE, DURATION AND FORM OF PERMIT; PROVIDING FOR THE DENIAL OR REVOCATION OF PERMIT TO SOLICIT; PROVIDING FOR AN APPEAL FROM THE DENIAL OR REVOCATION OF PERMIT TO SOLICIT; PROVIDING FOR THE SUPERVISION OF CHILD SOLICITORS; AND PROVIDING FOR REGULATIONS OF ITINERANT VENDORS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, protecting private residents of the City from unwanted annoyance of itinerant merchants, peddlers and solicitors protects the peace in the community; and

WHEREAS, requiring peddlers, solicitors and itinerant vendors to register may deter inappropriate conduct; and

WHEREAS, the City does not have any desire to interfere with free speech, open dialogue and exchange of opinions; and

WHEREAS, the City does desire to ensure the protection of the health, safety and welfare of its citizens; and

WHEREAS, after consideration, the City Council has determined that it is in the best interest of the City and its citizens to repeal the current Article 4.100 and replace with a new Article 4.100 to provide for new and updated regulations and guidelines for peddlers, solicitors and itinerant vendors, within the City.

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

SECTION 1. That the Code of Ordinances of the City of Lancaster, Texas, as amended, be, and the same is, hereby amended by repealing Chapter 15, "Peddler-Regulations" in its entirety and replacing with a new Chapter 15, " Peddlers, Solicitors and Itinerant Vendors", which shall read as follows:

"ARTICLE 4.100 PEDDLERS, SOLICITORS AND ITINERANT VENDORS

Sec. 4.101 Definitions.

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

Canvassing means, for the purpose of this chapter, to examine or discuss in detail; to make subject of discussion or debate; go through places or among people asking, requesting or engaging for vote/opinions concerning religious, political, or other topics of public concern; but in no event shall the term "canvass" be construed to mean solicitation of funds or soliciting merchandise as provided in this chapter.

Charitable purpose means philanthropic, religious or other nonprofit objectives, including the benefit of poor, needy, sick, refugee or handicapped persons; the benefit of any church or religious society, sect, group or order; the benefit of a patriotic or veterans' association or organization; the benefit of any fraternal, social or civic organization, or the benefit of any educational institution. "Charitable purpose" shall not be construed to include any direct benefit to the individual making the solicitation, to include the benefit of any political group or political organization which is subject to financial disclosure under state or federal law.

Commercial solicitation or soliciting, means the act of asking, bartering, or communicating in any other such manner, whether orally, by written and or printed material including but not limited to handbills or leaflets, hand signing or by any other method, direct or implied, by an individual or group of individuals for a for-profit purpose which includes promoting, advertising, receiving or obtaining money, alms, gifts or items of value, real or intrinsic for said individual or group of individuals, or for-profit organization, joint venture, joint stock company, partnership, club, company, corporation, business trust, or establishment. However the term does not include solicitation for religious, political, charitable, or other non-commercial purposes.

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

Consumer transaction means a sales transaction in which one (1) or more of the parties is a consumer.

Handbill means and includes any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature.

Handbill distributor means and includes any person engaging or engaged in the business for hire or gain of distributing handbills, other than newspapers distributed to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

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

Home solicitation means soliciting in person or by telephone call from house to house for the purposes of selling or attempting to sell goods, merchandise, wares, services or anything of value or to take or attempt to take orders for the future delivery of goods, merchandise, wares, or any personal property of any nature whatsoever, or to take or attempt to take orders for services to be furnished or performed in the future.

Home solicitation transaction means a consumer transaction for the purchase of goods, services, or realty, payable in installments or in cash, in which the merchant engages in a person solicitation of the sale to the consumer at a resident, in person or by telephone, and the consumer's agreement or offer to purchase is given at the residence to the merchant in person or by telephone. A home solicitation transaction shall not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.

Individual means a natural person.

Itinerant vendor means any person who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the city, soliciting, selling, or taking orders for, or offering to sell or take orders for any goods or services. A temporary business is one that continues for forty-five (45) days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding. Any business that exists more than forty-five (45) days shall be deemed to be a permanent occupancy and is required to obtain a certificate of occupancy from the building inspection department.

Job placement activities mean any request, offer, enticement, or action which announces the availability for, or of employment, or seeks to secure employment. "Job placement activities" shall be deemed complete when made whether or not an actual employment relationship is created.

Merchant means a party to a customer transaction other than a consumer.

Person means an individual, corporation, trust, partnership, association or any other legal entity.

Political purpose means any form of communication relating to a political issue, a particular candidate to a position or non-partisan office, or to a political party.

Public rights-of-way means the traveled portion of a roadway, traffic medians and the area that is within ten (10') feet of the curb line. In the absence of a curb line the area within ten (10') feet of the shoulder of a road or highway.

Residence means any separate living unit occupied for residential purposes by one (1) or more persons, contained within any type of building or structure.

Residential street means a thoroughfare with a right-of-way of fifty (50) feet and pavement width of twenty-six (26) feet where the paved section allows for two (2) travel lanes with one (1) parking lane.

Solicitation, soliciting, solicited, or any other form of the word solicit means the act of asking, begging, bartering, or communicating in any other such manner, whether orally, by written and/or printed material including but not limited to handbills or leaflets, hand signing or by any other method, direct or implied, by an individual or group of individuals for the purpose of, receiving or obtaining money, or items of value, real or intrinsic for said individual or group of individuals, an organization, joint venture, joint stock company, partnership, club, company, corporation, business, trust, or any other organization or affiliate thereof, and includes a home solicitation and home solicitation transaction.

Solicit funds or solicitation of funds shall mean any home solicitation transaction; any request for money, property, or anything of value; or the pledge of a future payment of money, or delivery of property, or anything of value; or the selling or offering for sale of any property, real or person, or delivery of tangible or intangible, whether of value or not, including, but not limited to, goods, books, pamphlets, tickets, publications or subscriptions to publications. Expressly excluded from the meaning of "solicit funds" or "solicitation of funds" is any offer of membership in any organization. A solicitation of funds is complete when the solicitation is communicated to any individual then located within the corporate limits of the city.

Sec. 4.102 Solicitation in public rights-of-way.

(a) A person may solicit for charitable or political purpose in or upon the public rights-of-way, except those areas prohibited in this chapter.

(b) A person may conduct commercial solicitation in or upon the public- rights-of-way, except those areas prohibited in this article, if the solicitor has obtained a permit or who is a member of an organization that has obtained a permit.

(c) Solicitation in the public rights-of-way shall be conducted only during the hours of daylight, that is one-half hour after sunrise and one-half hour before sunset.

(d) It shall be unlawful for a person younger than eighteen (18) years of age to solicit in the public rights-of-way.

(e) It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway unless the solicitor has been granted authorization pursuant to § 552.0071 of Chapter 552 of the Texas Transportation Code. The restriction on solicitation in the traveled portion of the roadway does not apply to public residential streets.

(f) It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway, except on residential streets provided that their presence does not impede the flow of traffic on said residential street.

(g) It shall be unlawful for a person to solicit in the public rights-of-way that is within one thousand (1,000) feet of any public or private elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when such school is in session. The measurement of the distance shall be from the nearest property line of the public or private elementary or secondary school.

Sec. 4.103 Solicitation in specified public rights-of-ways prohibited.

(a) It shall be unlawful for any person to solicit, at any time, in the public rights-of way, within one thousand (1,000) feet of the following intersections:

W. Pleasant Run Rd @ I-35 Service Rd

W. Pleasant Run Rd. @ S. Houston School Rd

W. Pleasant Run Rd. @ Blue Grove Rd.

W. Pleasant Run Rd. @ N. Dallas Ave

(b) The restrictions in this section do not apply to a solicitor who has received authorization pursuant to §552.0071 of the Texas Transportation Code.

Sec. 4.104 Solicitation and handbill distribution on private property.

(a) It shall be unlawful for any person to conduct commercial solicitation upon residential property within the City, without first obtaining a written permit as prescribed by this chapter.

(b) All solicitation on private property, including the distribution of handbills, shall occur only during the time that is one-half hour after sunrise and one-half hour before sunset, except when the solicitor is on the property by the express prior invitation of the owner or occupant of the property.

(c) It shall be unlawful for any person, handbill distributor or handbill sponsor, to distribute or cause to be distributed, deposited, placed, thrown, scattered, or cast any handbill upon any private premises which are inhabited and which are not posted as provided by this chapter except by handing or transmitting such handbill directly to the owner, occupant, or any other person then present in or upon such private premises, or by placing or depositing the same in a manner to secure and to prevent such handbill from being blown or drifting about such premises, except that mailboxes may not be used when prohibited by applicable federal or state law.

(d) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, scattered or cast any handbill upon any premises if requested by the owner or any occupant thereof not to do so, or if there is placed on such premises in a conspicuous place upon or near the main entrance to the premises, a weatherproof card, not less than three (3) inches by four (4) inches in size bearing the words "no trespassing," "no peddlers," "no advertisements," "no solicitation," "no handbills," or any similar notice indicating in any manner that the occupants of such premises do not desire to have any such handbills left upon such premises. The letters on such cards shall be not less than two-thirds (2/3) of an inch in height.

(e) No person shall go upon any residential premises and ring the doorbell, or rap or knock upon the door or create any sound in a manner calculated to attract the attention of the occupant of the residence for the purpose of securing an audience with the occupant and engaging in or attempting to engage in a solicitation, if a card described in subsection (d) above is exhibited in a conspicuous place at or near the main entrance of the residence, unless at the request of the owner or occupant.

(f) No person, other than the occupant of the premises, shall remove, deface or render illegible a card placed by the owner or the occupant under subsections (d) and (e) above.

(g) Any person who has gained entrance to a premises or an audience with the occupant, whether invited or not, shall immediately depart such premises when requested to leave by the occupant.

Sec. 4.105 Display of identification cards.

(a) The person(s) in charge of conducting commercial solicitation shall provide each commercial solicitor with a copy of the permit issued by the City as prescribed by this section. It shall be unlawful for any solicitor to engage in commercial solicitation without having a copy of the permit in their possession. It shall be unlawful for any commercial solicitor to fail or refuse to show or display such copy upon the request of any person.

(b) The applicant for the permit required under this chapter shall at the time application is made provide, by a separate list, the names and addresses of all agents or employees for whom permits are to be issued.

Sec. 4.106 Display of permit to solicit.

The person(s) in charge of conducting the solicitation shall provide each solicitor with a copy of the permit issued by the city as prescribed by this chapter. It shall be unlawful for any person to engage in solicitation without having a copy of the permit required by this chapter in such person's immediate possession while engaged in such solicitation. It shall be unlawful for any person engaged in a solicitation to fail or refuse to show or display such copy of the permit upon the request of any person, or to display a permit issued in the name of another person.

Sec. 4.107 Solicitation for other purpose.

It shall be unlawful for any person(s) to solicit in the city for a purpose other than that set out in the application upon which the permit was issued.

Sec. 4.108 Permit; fee.

It shall be unlawful for any person to conduct commercial solicitation within the city without first obtaining a written permit from the city police department. Every application shall be accompanied by a nonrefundable permit fee established by resolution of the city council, from time-to-time. A permit fee shall be charged for each person engaged in a solicitation.

Sec. 4.109 Permit application.

(a) A person or organization who desires to conduct commercial solicitation within the city shall make written application with the city's police department on a form provided by the city. Such application shall contain at a minimum the following:

- (1) The full and legally recognized names and any associated aliases, logos, nicknames, and abbreviated names of the entity or person applying for the permit;
- (2) If the purpose of the solicitation is for the distribution of handbills, the name of the handbill distributor and handbill sponsor;
- (3) Whether the person applying is an individual, partnership, corporation or association, and:
 - a. The business or residence 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 this state or is a foreign corporation, and must include the mailing address, business address, telephone number, name of the individual in charge of such corporation, and, if a foreign corporation, the place of incorporation;
 - d. If an association, the application shall state the association's principal business address and telephone number if any, and shall state the names and principal business or residence addresses and telephone numbers of all members of the association unless in excess of ten (10) members, in which event the application shall so state and the application must contain the name and principal business or residence addresses and telephone numbers of the officers and directors or trustees of the association. If the association is a part of a multi-state organization or association, the application shall state the mailing address and business address of its central office, in addition to the mailing address and business address of the local office.
- (4) The names, mailing address and telephone number of all individuals who will be in direct charge or control of the solicitation;
- (5) The time period and dates during which the solicitation is to be made the date of the commencement of solicitation and its projected conclusion, and how often the applicant will solicit during the year;
- (6) A description of the methods and means by which the solicitation is to be accomplished;
- (7) The nature of merchandise to be sold or offered for sale, or the nature of the services to be furnished;

- (8) Whether such applicant, upon any such order so obtained, will demand, accept or receive payment or deposit of money in advance of final delivery;
- (9) A statement to the effect that if a permit is granted, such permit will not be used as or represented to be an endorsement by the city or any of its officers or employees;
- (10) Any other information which the city deems necessary for the administration of this chapter.

(b) The application must be signed by the applicant, if the person applying is an individual if the applicant is a partnership, by the partner charged with disbursing funds solicited; if a corporation or an association, by the officer charged with disbursement of the funds solicited. The individual signing the application shall sign the application and swear before an officer authorized to administer oaths that such person has carefully read the application and that all the information contained therein is true and correct.

(c) The application information provided by the applicant will be subject to verification by the police department.

(d) The application shall also contain satisfactory written proof of the individual's authority to represent the applicant.

(e) The application must be accompanied by a copy of a valid state sales tax certificate, if applicable.

(f) The application shall be accompanied by the nonrefundable permit fee. No permit shall be issued until such fee has been paid by the applicant.

Sec. 4.110 Permit issuance, duration and form.

(a) A permit applied for under this chapter shall be issued by the city police department within ten (10) days after a completed permit application is filed, unless it is determined that the applicant has provided false or incomplete information.

(b) A permit applied for under this chapter shall be issued for the length of time requested, not to exceed thirty (30) days. Permits for handbill distribution shall be exempt from this time limitation.

(c) The city shall prescribe the form of the permit. Each such permit shall be printed in black except that the following shall be printed prominently thereon in red: "The issuance of this permit is not an endorsement by the City of Lancaster 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 same applicant.

Sec. 4.111 Denial or revocation of permit to solicit.

A permit required under this chapter may be denied or revoked, and the person prohibited from reapplying for the period covered by the original application, when it has been determined that:

- (1) An applicant has knowingly given false or misleading information in an application;
- (2) A permit holder is charged and subsequently convicted of theft or fraud, or a violation of any city, state, or federal law, in connection with a solicitation in the city;
- (3) A permit holder has made, or caused to be made, false statements or misrepresentations to any member of the public with regard to the solicitation;
- (4) A permit holder violates any provision of this article; or
- (5) A permit holder creates a traffic or safety hazard to themselves or others.

Sec. 4.112. Appeal from denial or revocation of permit to solicit.

A person denied a permit or who has had a permit revoked, may appeal that action to the city manager, or designee, by submitting a letter to the city secretary within ten (10) days of the complained action. A hearing on such appeal will then be scheduled within seven (7) days after the receipt of the appeal, with the hearing to be held within fifteen (15) days after receipt of the appeal. The city manager, or designee, shall render a decision on the appeal within three (3) days after the date of the hearing which shall be final.

Sec. 4.113 Supervision of child solicitors.

It shall be unlawful for any person to use children thirteen (13) years of age or less for any type of solicitation or handbill distribution purposes unless said children are actively supervised by a person at least eighteen (18) years of age, who has been issued a permit under this chapter, or who is the agent of the permittee. In all cases the supervising person shall be within one hundred (100) yards of the child solicitor.

Sec. 4.114 Itinerant vendors on private property.

(a) *Permit required.* No itinerant vendor may intermittently occupy any privately owned property for the purpose of operating a temporary business within the city

without having previously obtained a temporary sales permit from the city. The applicant must have such permit within his or her personal possession during the time that the temporary business is in operation and must display the permit in such a manner that it is clearly visible from the abutting street.

(b) *Permit fee.* Prior to the issuance of a permit, the applicant must pay the City of Lancaster a permit fee in the amount of twenty dollars (\$20.00). The city will not require payment of this permit fee by locally-based charitable organizations or organizations engaged in activities such as bake sales or car washes.

(c) *Permit duration.* A permit requested under this article will issue for a minimum of five (5) days, but not to exceed forty-five (45) days. Each eligible property may only allow use of the property for a temporary business for a maximum of forty-five (45) days per calendar year.

(d) *Requirements for permit issuance.* The city shall only issue a permit if the applicant has complied with the following requirements:

- (1) The itinerant vendor must conduct his business on the property in a manner that does not violate any code of the city, including all zoning, building, and health codes. The city will exempt an itinerant vendor from zoning provisions where the proposed location of the temporary business is an improved property that contains an active institutional use, such as a church or school; and
- (2) The itinerant vendor must possess a valid state sales tax certificate or proof of a tax exemption; and
- (3) The itinerant vendor must provide the city with a copy of either a lease or written permission from the owner of the private property showing that the itinerant vendor may use the property; and
- (4) The itinerant vendor must submit a dimensioned or scaled site plan indicating the location of the display area, curb cuts, and parking area; and
- (5) The itinerant vendor must provide one unisex portable sanitary facility. In lieu of the portable sanitary facility, the vendor may provide a permission letter from the owner or manager of a property located within a two-hundred-foot radius of the temporary business granting permission to use their sanitary facilities; however, the property where the itinerant vendor has permission to use the sanitary facilities cannot be located across a thoroughfare of four lanes or larger; and
- (6) If the sale involves food products, the itinerant vendor must obtain all the necessary health permits.

(e) An itinerant vendor may not use a tent or temporary building, except a portable sanitary facility, in conjunction with a temporary sale.”

SECTION 2. That all provisions of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That the Code of Ordinances of the City of Lancaster, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

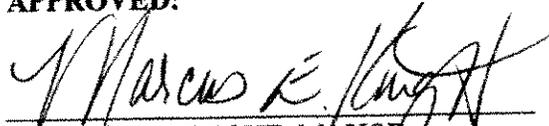
SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the ordinance as a whole.

SECTION 5. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinance of the City of Lancaster, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6. That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Lancaster, Texas, on the 23rd day of June 2008.

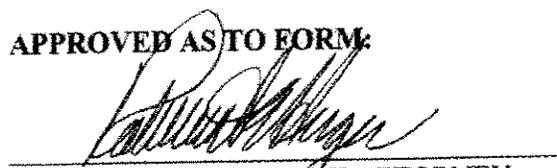
APPROVED:


MARCUS E. KNIGHT, MAYOR

ATTEST:


DOLLE K. SHANE, CITY SECRETARY

APPROVED AS TO FORM:


ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb 04/30/08)