

ORDINANCE NO. 380

AN ORDINANCE OF THE CITY OF WALLER, TEXAS ESTABLISHING REGULATIONS REGARDING PEDDLING AND DOOR TO DOOR SOLICITATION; ESTABLISHING DEFINITIONS; MAKING IT UNLAWFUL TO ENGAGE IN SOLICITATION OR PEDDLING AS ESTABLISHED HEREIN; ESTABLISHING EXCEPTIONS TO THE PROVISIONS OF THIS ORDINANCE; REQUIRING A PERMIT TO BE ISSUED BY THE CITY UPON APPLICATION; REQUIRING THE POSTING OF A BOND BY THE APPLICANT; PROVIDING APPEAL RIGHTS; PROVIDING A PENALTY IN AN AMOUNT NOT LESS THAN FIFTY DOLLARS (\$50.00) AND NOT MORE THAN \$2,000.00 FOR ANY VIOLATION OF ANY PROVISION HEREIN WITH EACH DAY OF VIOLATION CONSTITUTING A SEPARATE OFFENSE; REPEALING ORDINANCE NO. 118, PASSED, APPROVED, AND ADOPTED ON OR ABOUT THE 12TH DAY OF JUNE, 1972, TOGETHER WITH ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

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Section 1. **Definitions.**

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Canvasser shall mean any person compiling information and/or conducting a poll from house-to-house, business-to-business, or in a public place.

City shall mean the City of Waller, Texas.

Identification shall mean either Texas Driver License or Texas Identification Card.

Interstate commerce shall mean soliciting, selling or taking orders for, or offering to take orders for any goods, wares, merchandise, magazines, or other things of value, which at the time the order is taken are in another state or will be produced in another state and shipped into the City in fulfillment of such order.

Itinerant merchant shall mean any person, firm or corporation as well as agents, or employees thereof, who or which engage in the temporary or transient business of selling, exhibiting, or offering for sale in the City any goods, merchandise, services, photographs, magazines, or other things of value, or exhibits same for the purpose of taking orders thereof, and who or which, for the purpose of carrying on such temporary or transient business, either rents, leases, or occupies without renting or leasing, any room or space in any building or structure or in any space, enclosed or unenclosed, upon any private premises within the City.

Peddler shall mean any person who engages in a temporary business within the City limits by carrying goods or merchandise and who sells or offers for sale for immediate delivery such goods or merchandise from house-to-house, business-to-business or upon public property; a merchant shall be

considered temporarily in business and a peddler unless it is the intention of such merchant to remain continuously in business at each location where the merchant is engaged in business in the City as a merchant for a period of 60 days or more.

Solicitor shall mean any person who solicits or attempts to solicit, from house-to-house, business-to-business or upon public property, orders for services, commercial goods, wares, merchandise, subscriptions, or publications to be delivered at a future date or time. A "canvasser" is a solicitor.

Temporary Business shall mean any business transacted or conducted in the City, in, upon, or through or from any private premises for which no written agreement for legal right of occupancy therefore has been made in advance of such use and occupancy.

Transient Business shall mean any business described above under "itinerant merchant" conducted or operated by any person, or his agent or employees, who resides away from the City or who has a fixed place of business headquarters outside the City, or who moves stocks of goods, wares, merchandise or other things of value into the City, or samples thereof into the City with the purpose or intention of removing them or the unsold portion thereof away from the City before the expiration of six months.

Section 2. Purpose.

This Ordinance shall be deemed an exercise of the police power of the state and of the City for the public safety, comfort, welfare, convenience, and protection of the City and citizens of the City, and all of the provisions hereof shall be construed for the accomplishment of that purpose.

Section 3. General prohibitions.

- (a) It shall be unlawful at any time for any person to engage in peddling or soliciting within the City without having first obtained a permit as provided for in Section 5 of this Ordinance.
- (b) It shall be unlawful for any person to engage in peddling or soliciting within the City before 8:00 a.m. or after 7:00 p.m. Monday through Friday, or before 10:00 a.m. or after 7:00 p.m. on Saturday, Sunday, or City holiday.
- (b) It shall be unlawful for any solicitor to solicit, take orders for, or offer to take orders for any goods, wares, merchandise, magazines or other things of value without first making application for and obtaining a peddlers' and solicitors' permit from the City.
- (c) It shall be unlawful for any itinerant merchant, to sell, offer for sale, or exhibit for the purpose of selling or the taking of orders for the sale thereof, any goods, wares, merchandise, service, photographs, magazines or any other thing of value without first making application for and obtaining a peddlers' and solicitors' permit from the City.

Section 4. Exclusions from applicability of this Ordinance.

The provisions of this Ordinance shall not apply to the following:

- (1) Commercial agents dealing with local business establishments in the usual course of their business;

- (2) Insurance salesman, real estate agents, and others licensed by the state;
- (3) Vendors of farm produce or agricultural products when the vendor himself produces such produce or products;
- (4) Persons calling on a residence or place of business within the City at the request of the owner of that residence or place of business;
- (5) Persons engaged in religious or political speech, which does not include the sale of any item or the solicitation of contributions; and
- (6) Persons engaged in the distribution of handbills or flyers for services, commercial goods, wares, merchandise, subscriptions, or publications to be delivered at some future dates, who do not engage in face-to-face contact with prospective customers or clients.

Section 5. Application for Permit

Each person applying for a peddler's and solicitor's permit under this Ordinance shall make application on a form to be supplied by the City, with an application fee in an amount to be determined from time to time by resolution of the City Council of the City, which shall include the following information:

- (1) Name of the applicant with a permanent address and local address, if any; and copy of the applicant's Texas Driver License or Texas Identification card. No out of state or other form of identification will be accepted.
- (2) The date of birth and gender of the applicant;
- (3) The name and address of the person, firm, or corporation, including DBA, the applicant represents and a copy of the Texas Sales Tax Permit reflecting applicable taxes to be leveled for products sold;
- (4) The nature of the goods, merchandise, or other things of value which are to be offered for sale, or for which orders are to be solicited;
- (5) The names of all cities in the State of Texas where the applicant has worked in the previous 90 days;
- (6) The description and license number of all vehicles, if any, which the applicant intends to use in the course of work while in the City;
- (7) Whether the applicant, upon sale or order, shall demand, receive, or accept payment or deposit of money in advance of final delivery;
- (8) Whether the applicant has ever been convicted of a felony or misdemeanor involving moral turpitude; and
- (9) The period of time during which the applicant wishes to solicit or sell in the City.

Section 6. Investigation.

(a) Each applicant shall submit the information required, together with an investigation fee as determined from time to time by ordinance, which will be used to help defray the expense of investigating the applicant to verify the statements on the application and shall not be refundable.

Exception: Charitable organizations and their representatives shall be required to go through an investigation, but shall not be required to pay fees provided in this section.

(b) It shall be the duty of the Chief of Police or his designee to investigate each applicant and to make a report thereof to the City Secretary before issuance of a peddler's and solicitor's permit.

Section 7. Performance bond.

If the application shows that the applicant intends to demand, receive, or accept payment or deposit of money in advance of final delivery, the applicant shall deliver, with the application, a bond in the sum of \$2,000.00 executed by such applicant as principal and by a surety company licensed to do business in the state, or a cash bond in the same amount. Where two or more applicants represent the same person, firm, or corporation, only one bond shall be required. Charitable organizations and their representatives shall not be required to post a performance bond pursuant to this section.

Section 8. Issuance or denial.

(a) It shall be the duty of the City Secretary or her designee to issue or refuse to issue a peddler's and solicitor's permit applied for under this Ordinance no later than two (2) weeks from the time a complete application is filed (including the bond, if required). A peddler's and solicitor's permit shall be in the form as established by the City.

(b) A peddler's and solicitor's permit issued hereunder shall be valid for 60 days, after which the holder thereof must reapply if the holder desires to continue to solicit in the City.

(c) Each peddler or solicitor in the City shall carry a copy of the permit and identification and shall provide those things when asked. Refusal to display copy of the permit and/or provide identification is grounds for the City to void the permit.

Section 9. Fees.

(a) If the City Secretary or her designee approves an application, the applicant shall pay a fee as determined from time to time by resolution of the City Council of the City upon issuance of the peddler's and solicitor's permit. No permit shall be issued for more than 60 days or before all fees as required by this Ordinance have been paid.

(b) Charitable organizations and their representatives shall obtain permits as provided in this Ordinance but shall not be required to pay the permit fee provided in this section.

Section 10. Appeal of denial.

If the City denies a peddler's and solicitor's permit to any applicant, the applicant may appeal such denial by written request or reconsider filing with the City Secretary within seven (7) days of such denial,

providing such additional information as the applicant believes is pertinent to the City Secretary's reconsideration of such denial. The City Secretary or her designee shall deny the appeal or issue the permit within seven (7) working days of receiving a request to reconsider.

Section 11. Underage solicitors.

No person under the age of 16 may solicit in the City unless accompanied by a person who is 18 years of age or older.

Section 12. No solicitation notices.

Any person may request a "No Solicitation Notice" in the form established and issued by the City. When such a "No Solicitation Notice" has been affixed in a conspicuous place within five feet of the front door of any residence or business, it shall be unlawful for any person to solicit at such residence or business, notwithstanding that such person may have a peddler's and solicitor's permit issued under this Ordinance.

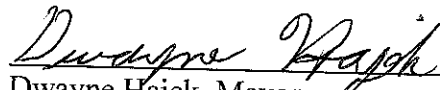
Section 13. Penalty.

Any person who shall intentionally, knowingly, recklessly, or with criminal negligence violate any of the provisions of this Ordinance shall be deemed guilty of a class C misdemeanor and upon conviction thereof shall be punished by a penalty of an amount to not less than fifty dollars (\$50) nor more than two-thousand dollars (\$2,000). Each day any violation of the Ordinance shall continue shall constitute a separate offense.

Section 14. Repealer. Ordinance No. 118, passed, approved, and adopted on the 12th day of June, 1972 is hereby repealed. All other ordinances or parts of ordinances inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

Section 15. Severability. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Waller, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 12th day of May, 2008.


Dwayne Hajek, Mayor

ATTEST:


Jo Ann London, City Secretary