

ORDINANCE 178

AN ORDINANCE REGULATING PEDDLERS, ITINERANT VENDORS, HAWKERS, SOLICITORS, AND CANVASSERS, ESTABLISHING REGISTRATION REQUIREMENTS FOR THE PEDDLERS, HAWKERS, AND SOLICITORS, ESTABLISHING PROTECTIONS FOR HOMEOWNERS DESIRING TO AVOID PEDDLERS, SOLICITORS AND CANVASSERS, REGULATING HANDBILLS AND PROVIDING PENALTIES FOR VIOLATIONS

WHEREAS, many citizens of this community expect their local government to assist them in preserving their privacy and avoiding petty annoyance that disrupt their quite enjoyment of their homes, and

WHEREAS, other persons often desire to interrupt the quiet enjoyment of one's home to solicit donations for causes believed to be worthy of support, or to canvas for support for particular religious, ideological, or political causes or for reasons of prompting commerce, and

WHERSAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference, and

WHEREAS, the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved, and

WHEREAS, it is the responsibility of all units of government to balance these competing interests in a manner consistent with the Constitution of the united States and of Texas, while attempting to minimize fraud, prevent crime, and protect the privacy of our citizens.

NOW THEREFOR BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WALLIS, TEXAS AS FOLLOWS:

Section One - Definitions. As used in this ordinance the following words have the meaning indicated:

- A. "Peddler" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service. A "peddler" does NOT include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for

purchase at a location away from the residence or at a time different from the time of visit. Such a person is a "solicitor."

- B. "Solicitor" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: (1) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service, or (2) distributing a handbill or flyer advertising a commercial event or service.
- C. "Canvasser" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of; (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a handbill or flyer advertising a non-commercial event of service.
- D. "Itinerant Vendor" or "Hawker" is a 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 days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding.

Section Two – Exception. This ordinance shall not apply to a federal, state or local government employee or a public utility employee in the performance of his/her duty for his/her employer.

Section Three – License Required for Peddlers, Hawkers, and Solicitors, available for Canvassers. No person shall act as a peddler, hawker, or solicitor within the city without first obtaining a Peddlers License in accordance with this ordinance. A canvasser is not required to have a Peddlers License but any canvasser wanting a Peddler License for the purpose of reassuring city residents of the canvasser's good faith shall be issued one upon request.

Section Four – Fee. The fee for the issuance of each Peddler License shall be:

- A. For a peddler acting on behalf of a merchant a fee of **\$10.00** per week (7 days). Local non-profit organization are exempt from this fee.

- B. For a solicitor (including a commercial solicitor advertising an event, activity, good or service for purchase at a location away from the residence)... no fee.
- C. For a canvasser requesting a Peddler License...no fee.

Section Five – Application for Peddler License. Any person or organization (formal or informal) may apply for one or more peddler licenses by completing an application form at the office of the issuing officer, during regular office hours. The peddler license shall be issued promptly after application but in all cases within twenty-four business hours of completion of an application, unless it is determined within that time that:

- A. The applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years.
- B. With respect to a particular license, the individual for whom a card is requested has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven years, or
- C. Any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

Section Six – Contents of Application. The applicant (person or organization) shall provide the following information:

- A. Name of applicant.
- B. Number of peddler licenses required.
- C. The name, physical description and photograph of each person for which a card is requested. In lieu of this information, a driver's license, state identification card, passport, or other government-issued identification card (issued by a government with the United State) containing this information may be provided, and a photocopy taken. If a photograph is not supplied, the city will take an instant photograph of each person for which a card is requested at the application site. The actual cost of the instant photograph will be paid for by the applicant.
- D. The permanent and (if any) local address of the applicant.
- E. The permanent and (if any) local address of each person for whom a license is requested.

- F. A brief description of the proposed activity related to this peddler license. (copies of literature to be distributed may be substituted for this description at the option of the applicant).
- G. Date and place of birth of each person whom a card is requested.
- H. A list of all infraction, offense, misdemeanor and felony convictions of each person from whom a license is requested for the seven years immediately prior to the application.
- I. The motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used by each person for whom a card is requested
- J. If a license is requested for a peddler:
 - 1. The name and permanent address of the business offering the event, activity, good or service (i.e., the peddler's principal).
 - 2. A copy of the principal's sales tax license as issued by the state of Texas, *provided that no copy of a license shall be required of any business which appears on the city's annual report of Sales Tax payees as provided by the Texas Comptroller's office.*
 - 3. The location where book and records are kept of sales which occur within the city and which are available for city inspection to determine that all city sales taxes have been paid.
- K. If a license is requested for a solicitor:
 - 1. The name and permanent address of the organization, person, or group for whom donations (or proceeds) are accepted.
 - 2. The web address for this organization, person, or group (or other address) where residents having subsequent questions can go for more information.
- L. Any other information the applicant wished to provide, perhaps including copies of literature to be distributed, references to other municipalities where similar activities have occurred, etc.

Section Seven – Investigation. During the time following the application for one or more peddler licenses and its issuance, the city shall investigate as to the truth and accuracy of the information contained in the application. If the city has not completed this investigation within the 24 business hours provided in section seven, the identification card will nonetheless be issued, subject, however, to administrative revocation upon completion of the investigation, [If a canvasser requests a peddler license, the investigation will proceed as described above, but if the city refuses to issue the peddler license (or revokes it after issuance), the

canvassers will be advised that the failure to procure a peddler license does not prevent him/her from canvassing the residents of the city.]

Section Eight – Revocation of license.

- A. Grounds. Any license issued hereunder may be revoked if the license holder is convicted of a violation of any provisions of this article or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a license under the terms of this article.
- B. Notice. If the issuing officer denies (or upon completion of an investigation revokes) the peddler license to one or more persons he shall immediately convey the decision to the applicant orally and shall within 16 working hours after the denial prepare a written report of the reason for the denial which shall be immediately made available to the applicant.
- C. Appeal; hearing. The licensee shall have ten (10) day from the date of revocation or denial in which to file notice of his appeal to the city council from the order denying or revoking the license. The applicant shall have at his option an appeal of the denial of his application before the city council, at its next regular meeting. After holding the hearing on the revocation or denial, the city council shall by majority vote either sustain the action or issue an order reinstating the license.
- D. In the event of the filing of an appeal from a revocation issued under the provisions of this article, then, until such appeal has been determined by this city council such revocation order shall be stayed.

Section Nine – Hearing on Appeal. If the applicant requests a hearing under Section 9, the hearing shall be held in accordance with the Administrative Procedure Act of the State of Texas, and review from the decision (on the record of the hearing) shall be had to the county court in which the city is located. The hearing shall also be subjected to the Texas Open Meetings and Records law.

Section Ten – Display of Peddler License. Each peddler license shall be (when the individual for whom it was issued is acting as a peddler or solicitor) worn on the outer clothing of the individual or otherwise displayed, as so to be reasonably visible to any person who might be approached by said person.

Section Eleven – Validity of Peddler License. A peddler license shall be valid within the meaning of this ordinance for a period of seven (7) days from its date of issuance or the term requested, whichever is less.

Section Twelve – Revocation of Card by Municipal Court Judge. A municipal court judge, in addition to imposing a fine, may institute proceedings to

suspend or revoke the license of a person if the person is required by law to obtain a peddler license from the city and the judge finds the person guilty of violating a city ordinance relating to peddlers.

Section Thirteen – “No Visit” List. The issuing officer shall maintain a list of persons within the city who restrict visits to their residential property (including their leasehold, in the case of a tenant) by peddlers, solicitors, and canvassers. The issuing officer may provide a form to assist residents, and this form may allow the resident to select certain types of visits that the resident finds acceptable while refusing permission to others. This “no visit” list shall be public document, and may be reproduced on the city’s web site and available for public inspection and copying. A copy of the “no visit” list shall be provided to each applicant for each recipient of a peddler license. If a canvasser chooses not to apply for a peddler card, it will be the responsibility of that canvasser to obtain on some other way a copy of the current “no visit” list.

Section Fourteen – Distribution of Handbills and Commercial Flyers. In addition to the other regulations contained herein, a solicitor or canvasser leaving handbills or commercial flyers about the community shall observe the following regulations:

- A. No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way. The police are authorized to remove any handbill or flyer found within the right-of-way.
- B. No handbill or flyer shall be left at, or attached to any privately owned property in a manner that causes damage to such privately owned property.
- C. No handbill or flyer shall be left at, or attached to any of the property: (a) listed on the city “no visit” list, or (b) having a “no solicitor” sign.
- D. Any person observed distributing handbills or flyers shall be required to identify himself/herself to the police (either by producing an peddler license or other form of identification). This is for the propose of knowing the likely identity of the perpetrator if the city receives a complaint of damage caused to private property during the distribution of handbills or flyers.

Section Fifteen – General Prohibitions. No peddler, hawker, solicitor or canvasser shall:

- A. Enter upon any private property where the property has clearly posted in the front yard a sign visible from the right of way (public or private) indicating a prohibition against peddling, soliciting and /or canvassing.

Such sign need not exceed one square foot in size and may contain words such as "no soliciting" or "no solicitors" in letters of at least two inches in height. (The phrase "no soliciting" or "no solicitors shall also prohibit peddlers, hawkers, and canvassers).

- B. Remain upon any private property where a notice in the form of a sign or sticker is placed upon any door or entrance way leading into the residence or dwelling at which guest would normally enter, which sign contains the words "no soliciting" or "no solicitors" and which is clearly visible to the peddler, solicitor or canvasser.
- C. Enter upon any private property where the current occupant has posted the property on the city's "no visit" list (except where the posting form indicated the occupant has given permission for this type of visit), regardless of whether a front yard sign is posted.
- D. Use or attempt to use any entrance other than the front or main entrance to the dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.
 - 1. Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.
 - 2. Enter upon the property of another except between the hours of 9:00 a.m. and 8:00 p.m. Except that the above prohibitions shall not apply when the peddler, hawker, solicitor, or canvassers has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any posted property.
- E. For a commercial solicitor, peddler, or hawker to solicit for a purpose other than that set out in the application upon which the license was issued.

Section Sixteen – Solicitation in public right-of way.

- A. A person may solicit for a charitable or political purpose in or upon the public right-of-way, except those areas prohibited in this article.
- B. A person may conduct commercial solicitation in or upon the public right-of-way, except those areas prohibited in this article, if the solicitor has obtained a license or who is a member of an organization that has obtained a license.
- C. Solicitation for any purpose in the public right-of-way shall be conducted only during the hours of daylight, specifically one-half (1/2) hour after sunrise and one half (1/2) hour before sunset.

- D. It shall be unlawful for a person younger than eighteen (18) years of age to solicit in the public right-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 Section 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 of residential streets so that their presence impedes the flow of traffic.
- G. It shall be unlawful for a person to solicit in the public right-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. ad 4:30 p.m. on days when such school is in session. The measurement of the distance shall be made from the nearest property line of the public or private elementary or secondary school

Section Seventeen – Solicitation in selected public rights-of-way prohibited.

- A. It shall be unlawful for any person to solicit, peddle, or to distribute handbills at any time in the public rights-of-way, with or without a license, within one thousand (1,000) feet of the following intersections:

List intersections

- B. A solicitor who has received authorization pursuant to Section 552.0071 of Chapter 552 of the Texas Transportation Code, is permitted to solicit in the following intersections notwithstanding the restrictions set forth in subsection 11-144 (a):

List intersections

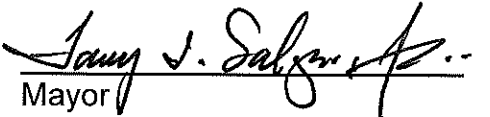
Section Eighteen – Violation. Any person violating any part of this ordinance or failing to observe any provision of this article shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars. Every day the violation continued shall be deemed as a separate offense.

Section Nineteen – Severability. It is hereby declared to be the intention of the City Council, of the City of Wallis, that the sections, paragraphs, sentences, clauses, phrases and words of this ordinance are severable, and if any section, paragraph, sentence, clause, phrase or word(s) of this


ordinance shall be declared unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases and words or this ordinance since the same would have been enacted by the City Council of the City of Wallis without the incorporation in this ordinance of any such unconstitutional or invalid portion of the ordinance.

Section Twenty – Effective Date. This ordinance shall be in full force and effect from and after August 19, 2009

PASSED AND APPROVED at a legally held meeting of the City Council of the City of Wallis, Austin County, Texas on the 19th day of August, 2009.



Mayor
Tony I. Salazar Jr.



City Secretary
DJ Sommers

ATTEST: