

ORDINANCE NO. 1904 02

AN ORDINANCE OF THE CITY OF ROPESVILLE, TEXAS CODE OF ORDINANCES REGULATING PEDDLERS, SOLICITORS, CANVASSERS AND ITINERANT MERCHANTS; ESTABLISHING PROTECTIONS FOR HOMEOWNERS DESIRING TO AVOID PEDDLERS, SOLICITORS, CANVASSERS AND ITINERANT MERCHANTS; REGULATING HANDBILLS; ESTABLISHING A PERMIT FEE; PROVIDING A PENALTY OF UP TO \$500 PER VIOLATION; PROVIDING AN EFFECTIVE DATE; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALER AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the City of Ropesville, Texas as a Type A General Law municipality, has the authority under the constitution and laws of the State of Texas including, but not limited to, Texas Local Government Code § 51.012, to adopt ordinances, acts, laws, and/or regulations, not inconsistent with Texas state law, which are found to be necessary for the government, interest, welfare, and/or good order of the municipality as a body politic; and

WHEREAS, citizens in this country are protected by the Constitution of the United States and Texas to speak freely and to express ideas that may be unpopular and to engage others in debate without government interference; and

WHEREAS, in exercising this freedom many citizens desire 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

WHEREAS, in exercising its legal and proper police power, the City Council previously approved an ordinance regulating itinerant merchants in order to protect the quiet enjoyment of one's property from disruption and from fraud and harassment; and

WHEREAS, there is a considerable expense in administering these regulations both in monetary terms and in the time and effort required of City staff; and

WHEREAS, the City Council of the City of Ropesville, in balancing the interests recited above, in accordance with the laws of the United States and Texas, finds following amendments regulating peddlers, solicitors and itinerant vendors to be reasonable and beneficial for the public health, safety and general welfare of the citizens of Ropesville and proper exercise of its police power;

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

SECTION 1. The recitals set forth above are hereby found to be true and correct and are incorporated into the body of this Ordinance for all purposes as if fully set forth herein.

SECTION 2. Definitions. The following definitions shall apply for the purposes of this Ordinance:

(a) Canvasser. Shall include all persons who attempt 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 or service.

(b) Itinerant Vendor. Shall include all persons who sell or solicit the sale of any merchandise goods or services within the City of Ropesville and who do not maintain a fixed and permanent place of business within the City of Ropesville for the conducting of business. This includes, but is not limited to, persons who set up displays of merchandise in vacant lots, parking lots, or similar places for display and sale, whether or not with the owner's permission, on a temporary or intermittent basis. A display, whether from a stand, vehicle or freestanding, is considered temporary or intermittent if it is one that continues for forty-five days or less. However, this term does not include the following:

- (1) Persons who conduct solicitations for sale of merchandise, goods, or services solely by either (A) telephone solicitation or (B) direct mail solicitation.
- (2) A canvasser, peddler or solicitor as defined herein.
- (3) Local organizations or local affiliates of organizations which raise funds for charitable or religious purposes, or for medical or scientific research.
- (4) Route salespeople such as newspaper carriers and milkmen who service customers on a regularly scheduled route.
- (5) Locally owned or managed facilities such as trade marts at which vendors display goods for sale at booths or similar spaces designated by the operator, which are (A) operated or conducted at a fixed location, (B) are conducted or operated on a scheduled basis, and (C) for which the operator or manager maintains a record of each vendors' name, address, and sales tax permit or exemption.

(c) Peddler. Shall include all persons who attempt to make personal contact with a resident at their residence without a prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service. This definition does not include a solicitor as defined herein.

(d) Person. Shall include individuals, sole proprietorships, partnerships, corporations, unincorporated associations, and all other forms of organization for doing business.

(e) Solicitor. Shall include all persons who attempt 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.

SECTION 3. Permit Required.

(a) No itinerant vendor, peddler or solicitor shall sell or solicit the sale of any merchandise, goods or services or conduct any activity described in or governed by this article unless they first obtain a permit as provided herein.

(b) A canvasser is not required to have a permit under this article but any canvasser wanting a permit for the purpose of reassuring city residents of the canvasser's good faith may apply for one from the city. Alternatively, a canvasser may request for a city issued identification badge. In the event the city fails or refuses to issue a permit or identification badge upon request (or revokes it after issuance), the canvassers will be advised that the failure to procure a permit or city issued identification badge does not prevent him/her from canvassing the residents of the city.

SECTION 4. Permit Application, Issuance and Investigation

(a) The City Secretary or her designee shall issue a permit to any applicant desiring to be an itinerant vendor, peddler or solicitor only when the applicant has, under oath, provided the following information:

- (1) The name, address and telephone number of applicant.
- (2) The name, date and place of birth, residence address and telephone number of the person representing the applicant if different than the applicant.
- (3) The location of applicant's place of business or other while engaging in business in Ropesville.
- (4) The last three (3) cities in which applicant engaged in business.
- (5) The address, including street address, and telephone number where applicant can be reached on each of the five days after applicant ceases engaging in business in Ropesville.
- (6) The name, date and place of birth, physical description and photograph of each person working in Ropesville for, with or on behalf of the applicant under the permit. A state issued driver's license, state identification card, passport, or other government-issued identification card (issued by a government within the United States) containing this information may be provided to satisfy this requirement. The City Secretary shall make a photocopy of any identification card provided under this section. If a photograph is not supplied, the city will take an instant photograph of each person working in Ropesville for, with or on behalf of the applicant under the permit at City Hall. The actual cost of the instant photograph will be paid by the applicant.
- (7) A copy of applicant's sales tax permit or written evidence of applicant's exemption.

- (8) Proof of at least a \$1000 insurance bond.
- (9) Authorization for the City of Ropesville to conduct a criminal background check for the applicant and any person working in Ropesville for, with or on behalf of the applicant under the permit
- (10) A description of the merchandise, goods, or services to be offered for sale.
- (11) A list of all infractions, offenses, misdemeanors and felony convictions of the applicant and each person working in Ropesville for, with or on behalf of the applicant under the permit for the seven years immediately prior to the application.
- (12) The motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used by the applicant and each person working in Ropesville for, with or on behalf of the applicant under the permit.

(b) Upon receipt of the above required information, the City Secretary shall issue within twenty-four (24) business hours a permit which shall be effective for ninety (90) days unless it is determined within that time that:

- (1) the applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years,
- (2) with respect to a particular individual working for, with or on behalf of the applicant under the permit, the individual has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven years, or
- (3) any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

(c) Investigation. During the time following the application for one or more permit 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 twenty-four (24) business hours provided in section seven, the permit will nonetheless be issued, subject, however, to administrative revocation upon completion of the investigation. If a canvasser requests a permit, the investigation will proceed as described above, but if the city refuses to issue the permit (or revokes it after issuance), the canvassers will be advised that the failure to procure a permit does not prevent him/her from canvassing the residents of the city.

SECTION 4. Permit Fee. Prior to issuing a permit under this section, the City Secretary shall collect a non-refundable permit application fee of \$25.00 for each itinerant vendor, peddler or solicitor that will be good for one year following issuance.

SECTION 5. Hours of Operation. No person subject to this Ordinance shall conduct door to door sales or solicitations at residences prior to 9:00 a.m. or after 7:00 p.m. local time.

SECTION 6. Identification Required. While engaged as an itinerant vendor, peddler or solicitor, each person will wear or have readily available identification showing, at a minimum, the person's photograph and name.

SECTION 7. Impeding Traffic and Parking; Schools; Public Right-of-Way

- (a) No person displaying goods or merchandise outside of any building shall do so at any location where sufficient off-street parking is not available or where the orderly flow of traffic may be impeded.
- (b) 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. and 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.
- (c) No itinerant vendor, peddler or solicitor as herein defined, whether permitted or not, shall:
 - (1) Have exclusive right to any location in the public streets or rights-of-way;
 - (2) Be permitted a stationary location on the public streets or rights-of-way unless such goods are offered for sale or sold by a person owning, occupying or controlling the premises adjoining or adjacent to the sidewalk, so long as such goods and services are being offered for sale or sold in compliance with all other applicable laws of the city; or
 - (3) Be permitted to operate in any congested area where his operations might impede or inconvenience the public.

SECTION 8. Use of Parks Prohibited. No itinerant vendor may display goods or merchandise or sell or solicit sales of any merchandise, goods or services in any park owned by the city or on any other city owned property.

SECTION 9. Revocation of Permit and Appeals Process.

- (a) Grounds. Any permit issued hereunder may be revoked if the permit 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 permit under the terms of this Article.
- (b) Notice. If the City Secretary or her designee denies (or upon completion of an investigation revokes) the permit to one or more persons she shall immediately convey the decision to the applicant orally. Within two business days after the denial, the City Secretary shall prepare a written report of the reason for the denial which shall be immediately made available to the applicant.
- (c) Appeal. The applicant/permittee shall have ten (10) days from the date of revocation or denial in which to file a written notice of appeal from the order denying or revoking the permit. The notice of appeal shall be filed with the City Secretary. 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 the city council such revocation order shall be stayed.

(d) **Hearing.** The appeal shall be heard by the city council at its next called or regularly scheduled meeting, whichever occurs first, subject to the requirements of the Texas Open Meetings Act. After holding the hearing on the revocation or denial, the city council shall by majority vote either sustain the denial/revocation or issue an order reinstating the permit.

(e) **Revocation of Permit by Municipal Court Judge.** A municipal court judge, in addition to imposing a fine, may institute proceedings to suspend or revoke the permit of a person if the person is required by law to obtain a permit from the city and the judge finds the person guilty of violating a city ordinance relating to this Article.

SECTION 10. 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 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 a peddler permit or other form of identification). This is for the purpose 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 11. General Prohibitions. No peddler, itinerant vendor, 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, itinerant vendors, 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 guests 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 indicates 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.

(e) Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.

(f) Enter upon the property of another except during the hours of operation provided in this Ordinance unless the peddler, itinerant vendor, solicitor, or canvassers has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any posted property.

(g) For a commercial solicitor, peddler, or itinerant vendor to solicit for a purpose other than that set out in the application upon which the license was issued.

SECTION 12. Exceptions. 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 13. Penalty. Any person found in violation of any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not greater than \$500.00. This penalty provision shall be in addition to any other legal or equitable remedies available to the City to enforce this article. Each day that a violation occurs is a separate offense.

SECTION 14. Effective Date. This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION 15. Repealed. All other terms and provisions of the Code of Ordinances of the City of Ropesville, not in conflict herewith and not hereby amended shall remain in full force and effect.

SECTION 16. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Ropesville, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 17. Publication. The City Secretary of the City of Ropesville is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

Passed and approved this 9th day of April, 2019.

Brenda Rabel
Brenda Rabel, Mayor

ATTEST:

Delia Cruz
Delia Cruz, City Secretary