

ORDINANCE NO. 2007-009

AN ORDINANCE OF THE CITY OF EAST BERNARD, TEXAS, ESTABLISHING RULES AND REGULATIONS GOVERNING PEDDLERS, SOLICITORS, AND ITINERANT VENDORS GOING FROM DOOR TO DOOR, OR FROM PLACE TO PLACE WITHIN THE CITY; PROVIDING FOR THE FILING OF REGISTRATION STATEMENTS WITH THE CITY; PROVIDING THAT REGISTRATION CERTIFICATES SHALL BE ISSUED WITHIN FIFTEEN (15) WORKING DAYS FROM DATE OF APPLICATION OF QUALIFIED APPLICANTS; PROVIDING THAT PERSONS CONDUCTING SOLICITATION ACTIVITIES FOR NONCOMMERCIAL OR NONPROFIT PURPOSES ARE EXEMPT FROM THE PROVISIONS HEREOF; SETTING FORTH THE HOURS DURING WHICH A PEDDLER, SOLICITOR, OR ITINERANT VENDOR MAY CONDUCT BUSINESS; PROVIDING FOR REVOCATION OF REGISTRATION CERTIFICATES AND PROVIDING FOR APPEAL OF SUCH REVOCATION; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

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BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF EAST BERNARD, TEXAS:

Section 1. General.

A. 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:

1. *Commodities, goods, or merchandise* shall mean personal property of any nature whatsoever.

2. *Itinerant vendors* shall mean any individual, firm, organization, or corporation, as well as their representatives, agents, and employees, who engage in a business within the City of selling, or offering for sale, any goods or merchandise, or exhibiting the same for sale, or for the purpose of taking orders for the sale thereof, who display, exhibit, sell, or offer for sale such goods, merchandise, or services upon or from a truck or other vehicle within the City. This term shall not include individuals connected

with a noncommercial or nonprofit purpose or cause, as that phrase is defined in this Section.

3. *Noncommercial or nonprofit purpose or cause* shall mean a purpose or cause not created, existing, or espoused for the generation of a profit or the remuneration of individuals, including, but not limited to, the religious or charitable solicitation of contributions, seeking political support or contributions, the promotion of civic causes, the promotion of conservation of resources or animals, or advocating a philosophy or religion.

4. *Peddler* shall mean any individual, firm, organization, or corporation, as well as their representatives, agents, and employees, who engage in the business within the City of selling, offering for sale, or exhibition for sale of any commodity or service, from house to house or from place to place and not from one (1) established spot. Delivery of the commodity or service is made or to be made at the time of sale. Collection of the sales price at time of sale or later is immaterial. This term shall not include individuals connected with a noncommercial or nonprofit purpose or cause, as that phrase is defined in this Section.

5. *Services* shall mean the performance of labor for the benefit of another, or at another's command.

6. *Solicitor or canvasser* shall mean any individual, firm, organization, or corporation, as well as their representatives, agents, and employees, who engage in the business within the City of taking orders for future delivery of commodities or services, or solicit subscriptions, orders, contributions, or any kind of support, for remuneration or gain, from house to house or from place to place. This term shall not include individuals connected with a noncommercial or nonprofit purpose or cause, as that phrase is defined in this Section.

B. Liability of corporate officers. If business, fund-raising, or communication under the provisions of this Ordinance shall be conducted by a corporation, it shall be unlawful for any officer, agent, or employee of such corporation to cause or permit a violation of this Ordinance.

C. Exemptions.

1. A peddler, solicitor, canvasser, or itinerant vendor conducting activities on the property of another by express, prior invitation of the owner thereof is exempt from the provisions of this Ordinance.

2. A vendor selling or exhibiting for sale commodities, goods, merchandise, or services to persons engaged in the business of buying, selling, and dealing in the same within the City is exempt from the provisions of this Ordinance.

3. Minors conducting fund-raising activities, who represent an organization for the benefit of youths, including, but not limited to, boy scouts, girl scouts, little league groups and school groups, are exempt from the coverage of this Ordinance.

4. Persons conducting activities for or on behalf of a noncommercial or nonprofit purpose or cause are exempt from the provisions of this Ordinance.

D. Unlawful conduct. It shall be unlawful for any peddler, solicitor, canvasser, or itinerant vendor to:

1. Conduct such business or related activities within the City without a valid registration certificate as hereinafter provided.

2. Conduct such business or related activities within the City without a valid identification card as hereinafter provided.

3. Conduct such business or related activities without visibly displaying the identification card issued to that individual.

4. Alter a registration certificate or identification card issued by the City.

5. Conduct such business or related activities within the City after the expiration of the registration certificate issued by the City.

6. Conduct such business or related activities within the City different than described in the registration statement required by this Ordinance.

7. Provide false, inaccurate, or misleading information in the registration statement.

8. Use a vehicle or vehicles in the conduct of such business or related activities not identified in the registration statement.

9. Conduct a business selling, offering for sale, exhibiting for sale, or taking of orders for delivery of any commodities, goods, merchandise, or services not listed and described in the registration statement.

10. Sell, assign, or transfer, or attempt to sell, assign, or transfer, a registration certificate or identification card.

11. Conduct a business, authorized under a registration certificate issued pursuant to this Ordinance, on any public sidewalk, public street right-of-way, or other public property within the City, without written authorization from the City.

12. Conduct such business during hours other than those permitted by this Ordinance.

13. Attempting to conduct such business on property where a "No Solicitors" sign, or other sign bearing a similar message, exists, or where the owner or occupant of such property has requested or directed the solicitor, peddler, canvasser, or itinerant vendor to leave the premises.

E. Inspection. The person designated by the City Council as the enforcement official ("Enforcement Official") of this Ordinance shall have the authority to request admission to inspect, at a reasonable time without advance notice, a business operating under a registration certificate issued pursuant to this Ordinance, to determine whether the permit holder's business and related activities are as represented in the registration statement. If such admission is denied, or if the Enforcement Official deems it advisable, then the Enforcement Official shall have the authority to obtain a warrant, in accordance with applicable law, for the purpose of allowing the inspection.

F. Hours. Business conducted in accordance with this Ordinance shall be carried out during Central Standard Time from 9:00 a.m. to 7:00 p.m., and during Daylight Savings Time from 9:00 a.m. to 8:00 p.m.

Section 2. Registration certificate; identification cards; registration fees.

A. Registration statement.

1. Prior to commencement of business and related activities by any peddler, solicitor, canvasser, or itinerant vendor, a registration statement shall be completed on a form provided by the City Clerk for that purpose, stating and/or providing the following:

a. Name of applicant (person who completes the registration statement);

b. Height, weight, sex, and hair color of applicant;

c. A color or black and white photograph of the applicant, no larger than two inches by two inches (2" x 2"), taken not more than ninety (90) days prior to the registration;

d. Social security number of applicant;

e. Permanent home address, and local address, if different;

f. Applicant's driver's license number and state of issuance. The Enforcement Official shall verify this information from the applicant's license. If the applicant has no driver's license, other identification shall be provided.

g. Name of individual, firm, company, or organization represented, if any, and the permanent address and local address of any individual, firm, company, or organization represented:

(1) The last four (4) communities in which business was conducted by the individual, firm, company, or organization represented shall be listed, with the period (beginning and ending month/year) business was conducted in each community listed; and

(2) If the applicant, or individual, firm, company, or organization represented, is a corporation incorporated under the laws of the state, the corporation shall provide a certified copy of the charter or article of incorporation; or

(3) If the applicant, or individual, firm, company, or organization represented, is a corporation incorporated under the laws of a state other than Texas, the corporation shall provide a certified copy of its certificate of authority to do business in the State of Texas.

h. Description, vehicle license number, and state of registration of each vehicle, if any, that will be operated under the registration certificate being applied for;

i. The name, height, weight, sex, hair color, social security number, permanent home address, and driver's license number and state of issuance for

each individual who will be involved in business under the registration certificate. If an individual has no driver's license other identification shall be provided.

j. Prior to issuance of the registration certificate and identification cards provided for in this Section, each individual whose name is listed by the applicant shall present his driver's license or other identification in person to the Enforcement Official for verification of the information provided by the applicant.

k. A color or black and white photograph of each individual who is listed by the applicant, no larger than two inches by two inches (2" x 2"), taken not more than ninety (90) days prior to the registration;

l. A description of the business and related activities to be conducted;

m. Character and description of commodities, goods, merchandise, or services to be offered for sale;

n. Prior to issuance of the registration certificate and identification cards provided for in this Section, the applicant, and each individual whose name is listed by the applicant, shall answer on the registration statement, or on an attachment thereto, whether he has ever been convicted of any related felony or a misdemeanor, as described in CHAPTER 53, TEXAS OCCUPATIONS CODE.

o. Prior to issuance of the registration certificate and identification cards provided for in this Section, the applicant and each individual whose name is listed by the applicant, shall, on the registration statement, or attachment thereto, separately list and explain the nature of each and every such conviction, whether for felony or misdemeanor offenses, other than convictions for misdemeanor traffic law offenses, and give the state where the conviction occurred, and the year of such conviction; and

p. The term or period during which the business activities will be conducted, not to exceed one hundred eighty (180) days. Upon expiration of the one hundred eighty day period, or shorter period indicated by the applicant on the permit registration statement, the applicant must complete a new registration statement, in accordance with the requirements of this Section if renewal is desired.

2. In addition to the foregoing, each person for whom a registration certificate is required hereunder shall, at their sole cost and expense, provide for the criminal history of such person to be delivered by the State of Texas directly to the City. The City shall be precluded from using such criminal history for any purpose other than confirming the statements required by paragraphs "n" and "o" of Section 2.A.1. above. No registration certificate shall be issued for any person until confirmation of such statements is received as herein provided.

B. Registration certificate.

1. When all the prerequisites of this Section have been complied with, the Enforcement Official shall initiate appropriate action to process the application. The Enforcement Official shall make an appropriate investigation of an applicant, any person listed by the applicant, and any information provided. The Enforcement Official shall issue a registration certificate to the applicant authorizing the sale, offer for sale, taking of orders for sale and exhibition of commodities, good, merchandise, and services within fifteen (15) working days after the applicant has fully complied with all applicable provisions of this Section, subject to denial of registration certificate or identification card as outlined in Subsection E of this Section.

2. The registration certificate shall state the effective term, and the beginning and ending dates, not to exceed one hundred eighty (180) days. Upon expiration, the registration certificate may be renewed upon full compliance with the requirements of this Section.

3. A registration certificate issued hereunder shall be personal to the applicant and shall not be sold, assigned, or transferred to any other person, firm, corporation, or association. Any attempted sale, assignment, or transfer of registration certificate shall be grounds for revocation of the registration certificate.

C. Identification cards.

1. In conjunction with the issuance of a registration certificate under this Section, the Enforcement Official shall issue identification cards for each individual whose name is listed in the registration statement. The identification card shall be laminated in clear plastic; it shall have a metal clothing clip; it shall contain the photograph of the holder; and it shall state the holder's name, driver's license number and

state of issuance, and height, weight, sex, and hair color of the cardholder; the term of the permit; and the nature of the business and related activities. The card shall contain the following disclaimer of any endorsement by the City, to be placed in a conspicuous place upon such card:

“THE CITY OF EAST BERNARD, TEXAS, DOES NOT ENDORSE THE PRODUCT, SERVICE, OR ACTIVITY PROMOTED BY THIS CARDHOLDER.”

2. An identification card issued in accordance with this Section shall be personal to the cardholder and shall not be sold, assigned, or transferred to any other person. Any attempted sale, assignment, or transfer of an identification card shall be grounds for revocation of the registration certificate and the identification cards issued thereunder.

D. Display of identification card. While conducting business covered by the registration certificate each identification card shall visibly display the identification card for identification by clipping the identification card to the clothing of the holder, so that the identification card is in plain view.

E. Denial of certificate, card to specified individuals.

1. The issuance of a registration certificate may be denied if:

a. Any violation of this Ordinance, or other City ordinances or laws relating to or governing the business or related activities to be conducted under the registration certificate applied for has been committed by any individual or individuals who would operate under such registration certificate; or

b. False, inaccurate or misleading information is contained in the registration statement; or

c. The applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed or imposed against him; or

d. The applicant fails to fully comply with applicable provisions of this Ordinance.

2. Conviction of a related felony or misdemeanor, as described in CHAPTER 53, TEXAS OCCUPATIONS CODE, shall be grounds for:

- a. Denial of issuance to that individual of an identification card; and/or
- b. Removal from the registration statement on file with the City of any such person so convicted; and/or
- c. Denial of the right to conduct business covered by such certificate by any such person so convicted.

3. Notice of a denial of a registration certificate, or denial of an identification card, to any individual, shall be given in writing, specifically setting forth the reasons for such denial, and what action will be required before a registration certificate can be issued. Such notice shall be served in person, or by depositing same in the United States mail, addressed to the applicant's permanent business or home address listed on the registration statement.

F. Revocation of certificate. The City may revoke a registration certificate if:

1. Any violation of this Ordinance, or any violation of other City ordinances or laws relating to or governing the business or related activities covered by the registration certificate, is committed by any individual or individuals operating under the registration certificate during the original term or renewal thereof; or

2. False, inaccurate, or misleading information is contained in the registration statement; or

3. There is conviction of a related felony or misdemeanor, as described in CHAPTER 53, TEXAS OCCUPATIONS CODE.

G. Appeal of denial or revocation. An applicant or other individual who has been denied a registration certificate or identification card, or who has had a registration certificate revoked, may appeal that action to the Board of Aldermen by submitting a letter to the City Secretary's office within ten (10) days of the action complained of. A hearing on the denial will be scheduled for the next regular Board of Aldermen meeting. The Board of Aldermen shall render its decision on the appeal at the meeting during which the appeal is considered.

H. Registration fees. Each application for a registration certificate shall be accompanied by a non-refundable registration application fee equal to ten dollars (\$10.00), plus five dollars (\$5.00) for each identification card issued pursuant to the registration certificate. Fees for issuance of replacement identification cards shall be three dollars (\$3.00) each.

Section 3. Penalty. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.

Section 4. Repealer. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

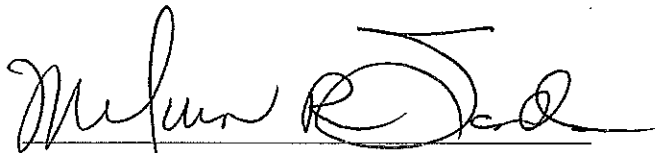
Section 5. Severability. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the Board of Aldermen of the City of East Bernard, 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 19th day of November, 2007.



BUCK BOETTCHER
MAYOR

ATTEST:



MELVIN SANDS
CITY CLERK