

ORDINANCE NO. 2009-O-6B

AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS AMENDING CHAPTER 18 OF CODE OF ORDINANCES OF THE CITY OF ANGLETON BY REPEALING THE CURRENT CHAPTER 18 “PEDDLERS, ITINERANT MERCHANTS AND SOLICITORS” IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 18 REGULATING THE CONDUCT OF PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS WITHIN THE CITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR LICENSING AND REGISTRATION; PROVIDING FOR BONDING OF TRANSIENT MERCHANTS; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 PER VIOLATION AND MAKING EACH DAY OR PORTION OF A DAY THAT A VIOLATION CONTINUES A SEPARATE VIOLATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING FOR OTHER PURPOSES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Angleton, Texas has the authority to regulate peddlers, solicitors and transient merchants under Tex. Loc. Govt. Code Sections 215.031 and 215.075 (Vern. Ann. Loc. Gov’t Code), under its Home Rule Charter and other applicable laws; and

WHEREAS, regulation of the activities of peddlers, solicitors, and transient merchants is necessary to preserve the privacy of the citizens of Angleton within their homes or residences, to prevent fraud, theft, or other crimes, to prevent traffic hazards or interference with movement on streets and sidewalks and to protect the public safety and general welfare; and

WHEREAS, the City Council deems it in the public interest to enact this Ordinance.

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

SECTION 1 FINDINGS. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part of this Ordinance for all purposes as findings of fact.

SECTION 2. That Chapter 18 “Peddlers, Itinerant Merchants and Solicitors” is hereby amended by hereby repealing Chapter 18 and hereby enacting a new Chapter 18 entitled “Peddlers, Solicitors, and Transient Merchants” which shall read as follows:

CHAPTER 18: PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS
ARTICLE I. IN GENERAL.

SECTION 18-1. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHARITABLE ORGANIZATION. An entity that solicits or collects contributions from the general public where the total contribution is to be used to support charitable activities.

NON-COMMERCIAL DOOR-TO-DOOR ADVOCATE. A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purpose of this ordinance, the term door-to-door advocate shall fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

NON-PROFIT ORGANIZATION. An entity registered as a non-profit organization with the Secretary of State and/or the Comptroller of Public Accounts under the laws of the State of Texas or an entity exempt from federal income tax under section 501(c) of the Federal Internal Revenue Code.

PEDDLER. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of offering for sale, displaying for exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property that the person is carrying or otherwise transporting. For the purposes of this chapter, the term peddler shall have the same common meaning as the term hawker.

PERSON. Any natural individual, group, organization, corporation, partnership, or similar association.

PROFESSIONAL FUNDRAISER. Any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, political, social, or other charitable organization.

REGULAR BUSINESS DAY. Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law or city ordinance shall not be considered regular business days.

REGILIOUS ORGANIZATIONS means an entity duly organized and operating in good faith and entitled to receive a declaration of current tax exempt status for religious purposes from the United States government, and duly organized branches or chapters of those organizations.

SOLICITOR. A person who goes from house-to-house, door-to-door; business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. For purposes of this ordinance, the term solicitor shall have the same meaning as the term canvasser.

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property and who does not remain in any one location for more than twenty-one (21) consecutive days.

SECTION 18-2. EXCEPTIONS TO DEFINITIONS.

For the purpose of this Chapter, the terms *PEDDLER*, *SOLICITOR* and *TRANSIENT MERCHANT* shall not apply to:

- (A) Non-commercial door-to-door advocates. Nothing within this chapter shall be interpreted to prohibit or restrict non-commercial door-to-door advocates, including, without limitation, religious and charitable organizations, schools, and other non-profit organizations. Persons engaging in door-to-door advocacy shall not be required to register as a solicitor under Section 18-7.
- (B) Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler.
- (C) Any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk.
- (D) Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.

- (E) Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large.
- (F) Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales. Provided, as set forth below, nothing herein shall exempt such sales from complying with other sections of the City Code of Ordinances which regulate such sales.
- (G) Any person participating in an organized multi-person bazaar or flea market.
- (H) Any person conducting an auction as a properly licensed auctioneer.
- (I) Any officer of the court conducting a court-ordered sale.
- (J) Any special event which makes a significant contribution to the cultural, economic or social welfare of the City, is sponsored or organized by the City, chamber of commerce, City civic organizations, school or other governmental entity, religious and charitable organizations, is held at a particular time and location, and is for the purpose of the sale or distribution of goods or services on public property, including but not limited to a fair, festival, public exhibition or civic event, rodeos and conventions.

These exceptions to definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirements of this Code of Ordinances, including, without limitations, that any person selling goods and services under these exceptions shall pay sales taxes on any sales when required to do so under applicable law.

ARTICLE II. LICENSING AND REGISTRATION.

SECTION 18-3. LICENSING; EXEMPTIONS.

- (A) ***Other licenses or permits required.*** No person shall conduct business as a peddler, solicitor, or transient merchant within the city limits without first having obtained the appropriate license, permit or meeting other requirements from the appropriate state and county department or agency. Certain persons who are already licensed by the state, including, without limitation, insurance salesman, and are subject to comprehensive state laws and regulations shall not be required to obtain a city license.
- (B) ***City license required.*** Except as otherwise provided for by this chapter, no person shall conduct business within the corporate limits of the City as a peddler or a transient merchant without first obtaining a City license.

Solicitors need not be licensed, but are required to register with the City pursuant to Section 18.7.

- (C) **Application.** An application for a City license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to begin conducting a business operation within the City. Application for a license shall be made on a form approved by the City Council and available from the office of the City Manager. All applications shall be signed by the applicant. All applications shall include the following information:

- (1) The applicant's full legal name.
- (2) Any and all other names under which the applicant has or does conduct business, or to which the applicant will officially answer to.
- (3) A physical description of the applicant (hair color, eye color, height, weight, any distinguishing marks or features, and the like).
- (4) Full address of applicant's permanent residence.
- (5) Telephone number of applicant's permanent residence.
- (6) Full legal name of any and all business operations owned, managed, or operated by applicant, or for which the applicant is an employee or an agent.
- (7) Full address of applicant's regular place of business, if any exists.
- (8) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines.
- (9) The name, local address and local telephone number of the local supervisor or person in charge of local business operations under the license and the name, local address and telephone number of each agent, representative or other person who will be transacting business in the city.
- (10) The type of business for which the applicant is applying for a license.
- (11) Whether the applicant is applying for a twenty-one (21) day or less than twenty-one (21) day license.
- (12) The dates during which the applicant intends to conduct business. If the applicant is applying for a daily license, the number of days he or she will be conducting business within the city, with a maximum of twenty-one (21) consecutive days.
- (13) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up his or her business with an adequate legal description and copy of the survey and a notarized statement that the transient merchant is the owner of or has the consent of the owner to conduct business on the owner's property.
- (14) A statement as to whether or not the applicant has been convicted within the last ten (10) years of any felony, gross misdemeanor or

- (15) A list of the three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.
 - (16) Proof of any required state or county license or permit.
 - (17) Written permission of the property owner or the property owner's agent for any location to be used by a transient merchant and proof that the applicant has adequate restrooms, utilities and parking to protect the public health and safety of its customers.
 - (18) A general description of the items to be sold or services to be provided.
 - (19) Any and all additional information as may be deemed necessary by the City Manager and/or his designee.
 - (20) The applicant's drivers license number or other acceptable form of identification.
 - (21) The license plate number, registration information, vehicle identification number (VIN) and physical description for any vehicle to be used in conjunction with the licensed business operation.
 - (22) If the applicant is conducting sales or business transactions in intrastate commerce or is otherwise required to pay sales tax on applicant's business transactions within the City, his current state sales tax permit number along with satisfactory written proof that the applicant's permit is current and valid.
 - (23) If the applicant is a transient merchant, proof that the business to be conducted is in a properly zoned location.
 - (24) The applicant must sign a statement that he or she will not make any false or fraudulent representation as to the goods to be sold, or the applicant's authority to sell such goods or his identity.
- (D) ***Fee.*** All applications for a license under this chapter shall require a fee of one hundred dollars (\$100.00) for each issuance. The city licensing fee may be increased or changed from time to time by action of the City Council. A license issued hereunder shall expire at the end of twenty-one (21) days from its issuance or at an earlier date if the license is for a period of less than 21 days. Any changes in the information required in the application shall require the reissuance of the license by submitting a new application. At the end of the twenty-one (21) day period or any lesser time period set forth in the license, the applicant must apply for a new license.
- (E) ***Procedure.*** Upon receipt of the application and payment of the license fee, the City Manager will, within five (5) regular business days, determine if the application is complete. An application will be considered complete if all required information is provided. If the City Manager or his designee determines that the application is incomplete, the City Manager or his designee must inform the applicant of the required,

necessary information that is missing. If the application is complete, the City Manager or his designee must order an investigation, including background checks, necessary to verify the information provided with the application. The City Manager, upon receipt of the application, shall refer the original application to the police department for investigation of the applicant. The investigation shall include review of felony and misdemeanor convictions and traffic offenses which have occurred in the past ten years. The police department shall then return the application with its recommendation to the City Manager. Within ten (10) regular business days of receiving a complete application, the City Manager or his designee must issue the license unless grounds exist for denying the license application under Section 18-4, in which case the City Manager must deny the request for the city peddler or transient merchant license. If the City Manager denies the license application, the applicant will be notified in writing of the decision, the reason for denial and the applicant's right to appeal the denial by requesting in writing, within ten (10) days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within thirty (30) days of the date of the request for a hearing. The decision of the City Council following the public hearing can be appealed by filing in a court of competent jurisdiction sitting in Brazoria County, Texas.

- (F) ***Duration.*** A license granted under this chapter shall be valid for twenty-one (21) days from the date of issuance. All other licenses granted to peddlers and transient merchants under this chapter shall be valid only during the time period indicated on the license.
- (G) ***Professional fundraisers not exempt.*** A professional fundraiser working on behalf of an otherwise exempt group or person shall not be exempt from the licensing requirements of this chapter.
- (H) ***License exemptions.***
 - (1) No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for any product grown, produced, cultivated, or raised on any farm.
 - (2) No license shall be required for any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement for the primary purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, freedom of the press, freedom of religion, and the like. This exemption will not apply if the person's exercise of constitutional rights is merely incidental to what would properly be considered a commercial activity.
 - (3) No license shall be required of officers or members acting on behalf of nonprofit, charitable, governmental or religious organizations. Such organizations shall be required to register under Section 18-7 only if the exercise of constitutional rights is merely incidental to what would properly be considered a commercial activity.

- (I) ***Bond(s)***. All transient merchants who are licensed under this chapter shall post a bond in a form approved by the City Attorney, with a good and sufficient surety in an amount of \$15,000, executed by such person as municipal and a corporate surety authorized to transact business in Texas, who has appointed a resident agent for purposes of notice and service of process with a permanent location and mailing address in Brazoria County, Texas, conditioned on the merchant conforming to all laws relating to transient merchants, complying with all material written or oral statements and representations made in regard to the merchandise offered for sale, as well as on the faithful performance of any warranties made with the merchandise and further conditioned for the delivery of goods, wares, merchandise, and services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any purchaser or customer for any defects in material or workmanship that may exist in goods, wares, merchandise or services sold by the principal of such bond, at the time of delivery for which defects may be discovered by the purchaser or customer within thirty (30) days after delivery. Such bond shall be for the use and benefit of all persons that may make any purchase, give any order or enter into any contract with the principal on such bond or the principal's employees or agents.

SECTION 18-4. LICENSE INELIGIBILITY.

The following shall be grounds for denying a peddler or transient merchant license:

- (A) The failure of an applicant to obtain and demonstrate proof of having obtained any required state or county license or permit.
- (B) The failure of an applicant to truthfully provide any information requested by the City as part of the application process.
- (C) The failure of an applicant to sign the license application.
- (D) The failure of an applicant to pay the required fee at the time of application.
- (E) A conviction within the past ten (10) years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the business for which the license is being sought in a professional, honest and legal manner. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- (F) The revocation within the past five (5) years of any license issued to an applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant.
- (G) When an applicant has a bad business reputation: evidence of a bad business reputation shall include, but is not limited to, the existence of

more than three (3) complaints against an applicant with the Better Business Bureau, the Office of the Texas Attorney General or other state attorney general's office, or other similar business or consumer rights office or agency, within the preceding twelve (12) months, or three (3) complaints filed with the city against an applicant within the preceding five (5) years.

- (H) A transient merchant's license must be denied if the building official fails to certify that the location of the transient business is conducted in a properly zoned location, that the location has adequate parking for customers or agents exclusive of any public right-of-way, is connected to water, wastewater or other public utilities or has public restroom facilities which are necessary to conduct the transient merchants business in a safe and sanitary manner and which would cause a threat to the public health and safety if not so connected and is otherwise compliant with applicable Building Code and other City Code requirements.

SECTION 18-5. LICENSE SUSPENSION AND REVOCATION.

- (A) **Generally.** Any license issued under this section may be suspended or revoked at the discretion of the City Manager or his designee for violation of any of the following:
 - (1) Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.
 - (2) Fraud, misrepresentation or false statements made during the course of the licensed activity.
 - (3) Subsequent conviction of any offense to which the granting of the license could have been denied under Section 18-4.
 - (4) Engaging in any prohibited activity as provided under Section 18-8 of this ordinance.
 - (5) Failure to comply with signs or placards meeting the requirements of Section 18-9 or entering property for the purpose of conducting business peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or similar activity when the property is on a "no solicitations list" completed by the City Manager or his designee.
 - (6) Violation of any other provision of this chapter.
- (B) **Multiple persons under one license.** The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.
- (C) **Notice.** Prior to revoking or suspending any license issued under this chapter, the City Manager shall provide a license holder with written notice of the alleged violations and inform the licensee of his or her right to a

hearing before the City Council on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

- (D) **Public Hearing.** Upon receiving the notice provided in part (C) of this section, the licensee shall have the right to request a public hearing in writing. If no written request for a hearing is received by the City Manager or his designee within ten (10) days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of a mailed notice, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within thirty (30) days from the date of the request for the public hearing. Within five (5) regular business days after the hearing, the City Manager or his designee shall notify the licensee of the City Council's decision.
- (E) **Emergency.** If, in the discretion of the City Manager, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the City Manager may immediately suspend the person's license and provide notice of the right to a subsequent public hearing as prescribed in part (C) of this section.
- (F) **Appeal.** Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court of competent jurisdiction sitting in Brazoria County, Texas.

SECTION 18-6. LICENSE TRANSFERABILITY AND EXHIBITION OF LICENSE.

- (A) No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.
- (B) Photographic identification of the licensee, employee or agent attached thereto which shall be prepared by the Police Department. Upon demand, the licensee, the licensee's employees and agents must exhibit the license and the photo identification to the Mayor, City Secretary and the police or code enforcement officers of the City or any person to whom a sales or solicitation is attempted to be made. In addition, to exhibiting of the license and the photo identification, any licensee, the licensee's employees or agents shall also exhibit upon demand identification of and authorization from the company or other entity represented by such licensee. All the costs of City-issued photographic identification cards prepared by the Police Department shall be paid for by the licensee. The licensee shall pay an additional \$15.00 fee for each additional person's photo identification.
- (C) The licensee and all employees or agents of the licensee shall, at all times they are conducting business in the City, conspicuously display upon his or her outer clothing their license and photographic identification.

SECTION 18-7. REGISTRATION.

- (A) All solicitors and any person exempt from the licensing requirements of this ordinance under Section 18-3 shall be required to register with the City prior to engaging in those activities in accordance with Section 18-3. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Manager or his designee shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferrable.
- (B) Individuals that will be engaging in non-commercial door-to-door advocacy shall not be required to register.

ARTICLE III. PROHIBITED ACTIVITIES, PENALTIES AND IMMUNITY.

SECTION 18-8. PROHIBITED ACTIVITIES.

No peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manners:

- (A) Calling attention to his or her business or the items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.
- (B) Obstructing or interfering with the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.
- (C) Conducting business in a way as to create a threat to the health, safety and welfare of any specific individual or the general public.
- (D) Conducting business before 9 a.m. or after 7 p.m. or on any Sunday.
- (E) Failing to provide proof of license, or registration, and identification when requested.
- (F) Using the license or registration of another person.
- (G) Alleging false or misleading statements about the products or services being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.
- (H) Remaining on the property of another when requested to leave.
- (I) Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

SECTION 18-9. EXCLUSION BY PLACARD.

(A) Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or other person engaged in other similar activities shall enter onto the property of another for the purpose

of conducting business as a peddler, solicitor, transient merchant, non-commercial door-to-door advocate, or similar activity when the property is marked with a sign or placard:

1. At least four inches long.
2. At least four inches wide.
3. With print of at least 48 point in size.
4. Stating “No Peddlers, Solicitors or Transient Merchants,” “Peddlers, Solicitors, and Transient Merchants Prohibited,” or other comparable statement.

No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

(B) Any resident or owner of property in the City may register with the City to have his residence, business location or other property placed on a “no solicitations list”. The City Manager or his designee shall provide a copy of the most current “no solicitations list” to any applicant for a license or person registering with the City.

SECTION 18-10. PENALTY. Any individual found in violation of any provision of this chapter shall be guilty of a misdemeanor and upon being found guilty, shall be subject to a fine not to exceed \$500.00 for each violation and each day or part of a day during which the violation is continued, committed, or permitted shall constitute a separate violation.

SECTION 18-11. IMMUNITY. Nothing contained in this chapter is intended to be nor shall be construed to create any liability on the part of the City or its employees for any injury or damage resulting from the failure of the licensee or person registered hereunder to comply with the provisions of this chapter, or by reason or in consequence of any act or omissions in connection with the implementation or enforcement of this chapter on the part of the City or its employees.

SECTION 18-12. SEVERABILITY.

If any provision of this Ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 18-13. SAVINGS. That save and except as amended hereby, all the remaining sections, provisions, paragraphs and sentences of the Code of Ordinances of the City of Angleton, Texas shall remain in full force and effect.

SECTION 18-14. OPEN MEETINGS.

It is hereby found and determined that the meetings at which this Ordinance is considered are open to the public and that notice of the time, place and purpose thereof was given in accordance with the provisions of the Texas Government Code – Chapter 551, as amended, and that a quorum of the City Council was present.

SECTION 18-15. EFFECTIVE DATE. This Ordinance shall be effective not less than ten (10) days from the date of its passage in accordance with the City Charter and the City Secretary is hereby directed to cause the caption of this Ordinance to be published in the official newspaper of the city at least once within ten days after passage of the Ordinance.

PASSED AND APPROVED on the _____ day of _____, 2009.

CITY OF ANGLETON, TEXAS:

J. Patrick Henry, Mayor

ATTEST:

Shelly Deisher, City Secretary

Approved as to Form:

Herbert L. Prouty, Interim City Attorney