

**ORDINANCE NO. 08-03**

**AN ORDINANCE OF THE CITY OF TOLAR, TEXAS, AMENDING THE TOLAR CODE OF ORDINANCES, AS AMENDED, BY AMENDING CHAPTER 1, SECTION 12, BY REPEALING SECTION 12; PARKING OF VEHICLES FOR PURPOSE OF VEHICLE SALES; ADDING PROVISIONS FOR STREET AND DOOR-TO-DOOR SOLICITORS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOLAR, TEXAS;**

**Section 1.** That the Tolar Code of Ordinances, Chapter 1, Section 19(b)(12) be, and the same is, hereby by repealed in its entirety and replaced with a revised Article 6-2 which shall read as follows:

**STREET AND DOOR-TO-DOOR SOLICITORS**

**Section 1: DEFINITIONS**

For the purposes of this section the terms defined in this subsection have the meanings ascribed to them:

(A). *Canvass*" shall mean, for the purposes of this ordinance, to examine or discuss in detail; to make subject of discussion or debate; go through places or among people asking, requesting or engaging for vote/opinions concerning religious, political, or other topics of public concern but in no event shall be construed to mean solicitation of funds or soliciting merchandise as provided herein.

(B). *"Peddler"* means any person with no fixed place of business who goes from house to house, from place to place, or from street to street, or who may establish a stand or at a temporary location not requiring a certificate of occupancy, carrying or transporting goods, wares, merchandise, or services and offering or exposing the same for sale, or making sales and deliveries to purchaser and includes mobile vending or sale of merchandise.

(C). *"Solicitor"* means any person who goes from house to house, from place to place, or from street to street soliciting or taking or attempting to take orders for any goods, wares, or merchandise, including books, periodicals, magazines, handbills, services, or personal property of any nature whatsoever for future delivery. "Solicitor" does not include any person taking or attempting to take orders to be filled by goods, wares, or merchandise delivered to the purchaser from other states.

(D). *"Transient merchant"* means any person, firm or corporation who engages temporarily in the business of selling and delivering goods, wares, or merchandise within the city, and who, in the furtherance of such purpose, hires, leases, uses or occupies any building, structure, vacant lot, motor vehicle, trailer, or railroad car.

(E). *"Center Median"* shall mean any area in the middle of any street or highway, designed to provide a barrier to keep traffic on one side of the street from going to the other side of the street. A center median may be raised concrete strip or a grass strip.

(F). *"Right-of-Way"* shall mean the traveled portion of any public street, roadway, or highway and the area immediately adjacent thereto, dedicated to the public use except a paved sidewalk or area utilized for pedestrian use, but does not include a crosswalk across the roadway.

## **Section 2: PERMIT REQUIRED**

(A) No peddler, solicitor, transient merchant, outdoor retailer or outdoor commercial promotion shall sell or offer for sale any goods, wares, or merchandise within the city unless a permit therefore shall first be secured as provided in this section. A religious organization, educational organization, public service organization or a Tax Exempt organization under Sections 501(c)(3),(4),(8),(10) or (19) of the Internal Revenue Code are exempt for the required permit.

(B) Any person desiring to make home solicitation transactions, outdoor retail sale or outdoor commercial solicitation within the City shall make written application, on a form provided by the City, to the Police Department for a master permit. The application shall contain the following:

(1) The name, social security number, date of birth and address of the person applying and desiring to make home solicitations;

(2) Whether the master permit is for an individual (natural person), a partnership, or a corporation; and

(a) If an individual, the individual's business or residence address and telephone number;

(b) If a partnership, the name of all partners, the principal business address, and telephone number of each partner;

(c) If a corporation, the person registering must state whether the corporation is organized under the laws of the state or is a foreign corporation, the mailing address, business location, telephone number, names of all officers and directors or trustees of such corporation, and, if a foreign corporation, the place of incorporation and registered agent for the state;

(3) The approximate time period within which the solicitation is to be made, giving the date of the beginning of the solicitation and its projected conclusion and how often the applicant will solicit in the City during the year;

(4) Names of other communities in the state in which the applicant has made home solicitation during the last six months;

(5) The nature of the merchandise or goods to be sold or offered for sale or the nature of the services to be furnished;

(6) Whether such applicant, upon any order obtained, will demand, accept or receive payment or the deposit of money in advance of final delivery;

(7) Whether the applicant or any person employed by the applicant to solicit, has been convicted of a felony or a misdemeanor involving moral turpitude in the past five years;

(8) Names, addresses, telephone numbers and social security numbers of the adults who shall be responsible for supervising any solicitor;

(9) Names, addresses and telephone numbers of two persons as references, excluding relatives and persons living with the applicant;

(10) Valid state driver's license number or a state-approved identification card number with a photograph; except for minors who must have a picture identification card.

(11) All applications shall be on a form provided by the City and shall be sworn to or affirmed. The application shall be filed for public inspection.

(12) The application must be signed by the applicant if the person is an individual; if the person applying is a partnership, by a general partner; if the person applying is a corporation, by an officer. The individual signing the application will sign a statement that he has carefully read the application and that all the information contained therein is true and correct upon penalty of perjury.

(13) If a person applying for a master permit intends to contract with, employ or otherwise retain individuals to engage in solicitations, the person must identify all such individuals, along with their addresses and telephone numbers, and obtain an individual permit for each such individual.

(14) The permit fee shall be twenty-five dollars (\$ 25.00) All religious, educational, public service organizations and tax exempt organizations

under Sections 501(c)(3),(4),(8),(10) or (19) of the Internal Revenue Code are exempt from the permit fee.

**Section 3: HANDBILLS**

A person merely placing pamphlets, flyers, leaflets or similar matter door-to-door for the sale of goods or services only with no personal contact being made with any person residing in or occupying the premises shall also be required to obtain a permit. Such pamphlets, flyers, leaflets or similar matter may not be affixed to any fixture of a structure using tacks, nails, tape, glue or any other method that may cause damage or scarring to the fixture or structure or leave an adhesive residue on the door or structure when removed.

**Section 4: INVESTIGATION OF APPLICANT**

It shall be the duty of the Police Chief, or their designee, to investigate each applicant and make a report thereon before issuance of a permit.

**Section 5: ISSUANCE OF PERMIT**

(A). It shall be the duty of the Police Chief, or their designee, to issue or refuse to issue such permit not earlier than two (2) days; and not later than two (2) weeks from the time the application is received by the Police Chief.

(B). All fees charged hereunder shall be established by resolution of the City Council.

(C). It shall be the duty of every permittee authorized under this article to maintain and display the permit granted herein.

(D). Each Permit shall be valid for one calendar year from the date of issuance.

**Section 6: REVOCATION OF PERMIT**

(A). If, after the permit required by this Article has been issued, the City Manager, or other official of the City finds that the permit was obtained by false representation in the application, it may be immediately revoked by the City Manager or their designee.

(B). The City may also refuse to issue any permit permitted under this Article or any permit issued may be revoked, upon a finding that the applicant or holder of such permit of such permit has been convicted of violating any of the laws of the United States, of the State or of this City involving moral turpitude or is guilty of violating any of the provisions of the Article.

(C). The City, further recognizing the principle of law that no person has an inherent right to carry on his personal business on a public street

and that any grant of such license is a privilege rather than a vested right, may refuse to issue any permit permitted under this Article or any permit issued may be revoked, upon a finding that the conduct of the applicant or holder, including but not limited to his or her driving record, as related to the kind, type and character of the goods or services are to be generally offered (children as opposed to adults), is such that the need to protect such class from damage or injury, outweighs the granting of such party the privilege of carrying on his private business on the public streets.

**Section 7: APPEALS**

If the Police Chief fails or refuses to issue a permit required under this Article, the applicant shall have the right to appeal such failure or refusal to the City Manager. If, thereafter, the City Manager refuses to issue such permit, or if a permit is revoked by the City Manager after issuance, the applicant shall have the right of appeal to the Board of Adjustment.

**Section 8: PRACTICES PROHIBITED**

(A). Except as allowed under section 6-2-11(C) of this article, no person permitted under the provisions of this article shall, within the City of Tolar, call attention to business, goods, wares or merchandise which is being offered for sale by crying them out, by blowing a horn, by ringing a bell or by any loud or unusual noise.

(B). Within the City of Tolar, any person permitted under the provisions of this article may only sell or offer for sale goods, wares, merchandise, or services between the hours of 9:00 a.m. and 7:00 p.m., beginning May 1 and ending August 31 of the same calendar year or between the hours of 9:00 a.m. and 5:00 p.m. beginning September 1 of one calendar year and ending April 30 of the following calendar year.

(C). Failure to conspicuously display the permit granted herein shall be deemed a violation of this ordinance.

**Section 9: EXCLUSION BY RESIDENTS**

Any resident of the city who wishes to exclude peddlers, solicitors, or hand billers from premises occupied by him/her may place upon or near the usual entrance to such premises a printed placard or sign bearing the following notice: "*peddlers and solicitors prohibited*". Such placard shall be at least 3¾ inches long and 3¾ inches wide and the printing thereon shall not be smaller than 48-point type. No peddler, solicitor or handbill distribution shall enter in or upon any premises, or attempt to enter in or upon any premises, where placard or sign is placed and maintained. No person other than the person occupying such premises shall remove, injure or deface such placard or sign.

**Section 10: EXEMPTIONS**

(A). The sale or soliciting of orders for the sale of vegetables, poultry, eggs and other farm products produced by the vendor or of any other services, wares, merchandise or goods, from a stationary location, with or without a temporary structure, shall be prohibited on any street, street right-of-way or other public property or upon any private property, except such property as shall be properly zoned for such use and when the premises used for such purpose have been fully developed and permitted in accordance with the codes and ordinances of the City of Tolar.

(B). The provisions of this article shall not apply to commercial agents, employees, or local businesses with a fixed place of business within the City in the usual course of business for on premises outside retail or promotional sales, nor shall this ordinance apply to any City sponsored event and where a separate license agreement with the City has been obtained.

(C). Provisions of this article shall not apply to insurance salesmen, real estate salesmen; and, other licensed by the State.

(D). The provisions of this article do not apply to a public utility company, or other person(s) engaged in canvassing as defined herein.

**Section 11: SPECIAL REQUIREMENTS; ADDITIONAL REQUIREMENTS AND REGULATIONS FOR MOBILE VENDING**

(A). All vehicles used in such vending service shall obey all traffic laws. Violation of traffic laws, including but not limited to driving or parking such vending vehicles on the wrong side of the street, shall be grounds for revocation of the permit.

(B). All vehicles and other equipment used in the vending business shall be inspected and approved by the City Health Department or City Health Officer prior to issuance of any permit and shall be subject to periodic health inspections as deemed necessary by the City Health Officer. A permit shall be subject to immediate revocation upon recommendation by the City Health Officer. Such revocation may be made permanent or may be made temporary pending correction of the condition causing the revocation and the health officer's recommendation that the permit be reinstated.

(C). Vending vehicles shall limit the use of bells, music or other attention getting devices so as not to disturb the peace and tranquility of persons living or working within the area being served. Failure to do so, based upon complaints received by the City, shall be grounds for revocation of the permit.

(D). Vendors using vehicles in their service such as the ice cream vending vehicle, who customarily serve children at the street curb, shall

for safety purposes, be permitted to operate in residential areas only during daylight hours.

(E). Any vendor using a vehicle in such vending service, where such vending is done from the liability insurance covering such activity and the operation of such vehicle in at least the amount of \$100,000 liability for each occurrence. Failure to file such certificate or maintain such insurance coverage shall be grounds for revocation of the permit.

(F). It shall be the duty of every permittee authorized under this article to maintain and display the permit granted herein. Failure to conspicuously display the permit granted herein shall be deemed a violation of this ordinance.

**Section 12: PARKING OF VEHICLES FOR PURPOSE OF MOTOR VEHICLE SALE**

It shall be unlawful for any person to leave, stand or park any motor vehicle on any public property, including any street, highway, parking lot, alley or easement, or upon any private property to which the public generally has access, including shopping center parking lots, apartment complex parking lots or any other similar area, for the purpose of displaying such motor vehicle for sale.

**Section 13: CONSTRUCTION OF LAW**

This entire article is and shall be deemed an exercise of the police power of the State of Texas; and, of the City of Tolar for the public safety and general welfare of the City and citizens of the City."

**Section 2.** That all provisions of the Ordinances of the City of Tolar, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 3.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Tolar Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**Section 4.** That any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances, as amended hereby, shall be guilty of a misdemeanor and upon conviction in the Municipal Court of the City of Tolar, Texas, shall be subject to a fine not to exceed the sum of Two Hundred Dollars (\$200.00) for each offense, and each and every day such violation is continued shall be deemed to constitute a separate offense.

**Section 5.** That this ordinance shall take effect immediately from and after its passage as the law and charter in such cases provide.

**DULY PASSED** by the City Council of the City of Tolar, Texas, this the 21<sup>ST</sup> day of July 2008.

**APPROVED:**

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TERRY JOHNSON, MAYOR

**ATTEST:**

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JOYCE JOHNSON, CITY SECRETARY

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