

ORDINANCE NO. 150507-1

AN ORDINANCE REGULATING PEDDLERS, SOLICITORS AND IN CERTAIN CIRCUMSTANCES, CANVASSERS, ESTABLISHING REGISTRATION REQUIREMENTS FOR THE PEDDLERS 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, avoiding petty annoyances that disrupt their quiet enjoyment of their homes and protecting them from those who would fraudulently seek information regarding their homes and security for criminal purposes; 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 canvass for support for particular religious, ideological, or political causes or for reasons of prompting commerce; and

WHEREAS, 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 interest 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 THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHINA GROVE TEXAS, THAT;

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, when personal contact with the occupant of the residence may or may not occur. 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 (1) who is distributing door to door (without personal contact with an occupant of the residence) a handbill or flyer advertising a product or an event or service.
- (d) “**Applicant**” is a person who has submitted a written application to the city for a permit pursuant to this ordinance.
- (e) “**Permittee**” is a person who has submitted a written application to the city for a permit pursuant to this ordinance.

SECTION TWO. EXEMPTIONS.

In addition to any statutory exemption provided by state statute (as amended), the following are excluded from permitting provisions:

- (a) Newspaper carriers;
- (b) Students participating in public or private school approved fund raisers;
- (c) Religious proselytizing or distribution of religious literature;
- (d) Political speech/activity;

SECTION THREE. WRITTEN APPLICATION REQUIRED.

It is unlawful for any peddler or solicitor to engage in business within the city without first obtaining a permit. Any person subject to the provisions of the Ordinance shall file with the City Secretary an application in writing or a form to be furnished by the City, which shall provide the following information:

- (a) Each Applicant’s name, driver’s license number or State issued identification number, telephone number, address, birth date, physical description;

- (b) Provide government issued identification of the applicant that includes a photograph.
- (c) If the Applicant is peddling or soliciting for a commercial organization, the name, telephone number and address of such organization, as well as the name, telephone number and address of an immediate supervisor; goods to be sold and vehicle information.
- (d) Full and complete list of goods to be sold and/or services to be delivered;
- (e) Description (year, make, model, color) and the issuing state and plate number for any and all vehicles to be used in soliciting and peddling;
- (f) Applicant must provide two (2) recent photographs of passport size, which show the head and shoulders of the applicant in a clear and distinguishing manner.

Upon a determination that the Applicant has provided an administratively complete application, City Hall will forward the application to the Chief of Police for review and approval. Applicants must provide original identifying documents to Chief of Police upon request.

SECTION FOUR. FEE. An initial application processing fee and any applicable renewal fee shall be charged to defray necessary administrative costs associated with processing the application pursuant to the City's schedule of fees.

SECTION FIVE. STANDARDS FOR APPROVAL & DENIAL.

- (a) A copy of the application for permit will be referred to the police department which will undertake a civil investigation of the applicant's record and background, such as shall be reasonably necessary to protect the public. An application for permit under this article may be denied where:
 - (1) Any required application information is determined to be incomplete or incorrect;
 - (2) Applicant is currently wanted on warrant(s) for arrest;
 - (3) Fraud or misrepresentation made on the application;
 - (4) An Applicant having a felony conviction or any misdemeanor involving moral turpitude during solicitation activities or a conviction of a sexual offense or is a registered sex offender regardless of time; and,
 - (5) An Applicant having a conviction of any misdemeanor involving moral turpitude during solicitation activities or a conviction of a sexual offense or is a registered sex offender regardless of time; and,
 - (6) The civil investigation of the applicant's record and background demonstrates denial is appropriate to protect the public.

- (b) An Applicant denied a permit shall have the right to appeal to the City Council. In such case, the Applicant must submit a written notice of the appeal within 3 business days of the denial of the permit. A hearing shall be preferentially set at a meeting of the City Council as soon as a quorum of council can be reasonably established. The hearing shall be conducted by the presiding officer. The burden of proof shall be a preponderance of the evidence and shall be placed upon the City to demonstrate denial of a permit is appropriate under this section. After conducting the hearing, the City Council shall, by majority vote, either sustain the action of Chief of Police or issue an order to grant the permit. Any decision by the City Council shall be final.

SECTION SIX. REGISTRATION DOCUMENTATION.

- (a) The issuing officer shall issue to each Applicant, documentation or certification of registration (hereafter “registration documentation”) within five working days that shall be dated for the date of actual registration and that documentation is only valid for the date of registration and the 30 days immediately following the date of issuance.
- (b) The Permittee is required to notify the Chief of Police before any peddling or soliciting under the issued permit is conducted on any new calendar date other than the date stated on the issued permits. If the permit date has expired, Permittee must reapply for a new permit in accordance with this ordinance.
- (c) The Chief of Police will retain the application and a copy of the approved permit as required by law. The permit may not be represented as an endorsement or approval by the city or the purposes of a solicitation or a product offered by the Permittee.
- (d) Only those peddlers or solicitors whose names are listed on the approved application may conduct business under the issued permit. If any new peddlers or solicitors join the campaign after the original permit is issued, they must submit the information required in Section Three of this ordinance.

SECTION SEVEN. DISPLAY OF IDENTIFICATION CARD. Each Permittee shall be issued a permit and such permit shall be worn on the outer clothing of the individual during door to door solicitation activities, so as to be reasonably visible to any person who might be approached by said person. Upon request or demand, the peddler or solicitor will exhibit the permit to indicate compliance with all of the relevant requirements of this article.

SECTION EIGHT. NON-TRANSFERABILITY. Permits issued under the provision of this article are not transferable in any situation and will be clearly marked “Not transferable.”

SECTION NINE. REVOCATION OF CARD. A registration document may be revoked for any of the following reasons:

- (a) Any violation of this Ordinance by the Applicant or by the person for whom the particular card was issued.
- (b) Any of the permit application requirements (See Section Five) are discovered to be no longer true or invalid during the permit period or in the course of carrying on the activity.
- (c) Conducting the activity in such a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.

The Chief of Police may suspend any permit upon a determination of violations of this article. Notice of suspension of a permit issued under this Ordinance shall be provided in writing and shall set forth specifically the grounds for the suspension. Notice shall be hand delivered or mailed, postage prepaid, to the Permittee at the address shown on the permit application or at the last known address of the Permittee. Any person whose permit has been suspended shall have the right to appeal such action to the City Council in accordance with Section Five.

SECTION TEN. DISTRIBUTION OF HANDBILLS AND COMMERCIAL FLYERS. In addition to the other regulations contained herein, a solicitor or peddler 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 property having a “no solicitor” sign of the type described in paragraph 11A or B.
- (d) Any person observed peddling, soliciting or distributing handbills or flyers shall be required to identify himself/herself to the police (by producing evidence of timely registration documentation and government issued picture identification) upon demand.

SECTION ELEVEN. POSTED PROPERTIES, DECLARATION OR ACCEPTABLE TIMES TO SOLICIT DOOR TO DOOR AND RESTRICTION OF SOLICITATION AT ALL OTHER TIMES. No peddler, 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”, “no canvassing” or “no peddling” (or words to that effect) in letters of at least two inches in height.
- (b) Enter a gated community or subdivision owned in common and maintained by a restrictive covenant property or home owner’s association when, a clearly posted sign is posted at each entrance and is visible from the public right of way indicating a prohibition against peddling, soliciting and/or canvassing applicable to the entire gated community or subdivision. Such sign need not exceed on square foot in size and may contain words such as “no soliciting”, “no canvassing” or “no peddling” (or words to that effect) in letters of at least two inches in height.
- (c) 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”, “no solicitors” or “no canvassers” and which is clearly visible to the peddler, solicitor or canvasser, regardless of size.
- (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 on Monday through Saturday of each week, two hours after sunrise and one hour before sunset.
- (g) Provided, however, the above prohibitions shall not apply when the peddler or solicitor has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any posted property. See Section Two for those persons deemed by council to have such an express invitation from all residents of the city.

SECTION TWELVE. SOLICITATION ON PRIVATE PROPERTY. Solicitation that includes display and storage of merchandise not in compliance with the City’s regulations on zoning and any amendment made thereafter is prohibited.

SECTION THIRTEEN. PROHIBITING SOLICITATION IN PUBLIC RIGHTS-OF-WAY. The city recognizes that Texas Transportation Code §552.007-0071 regulates “Solicitation by

Pedestrians” in roadways. China Grove, pursuant to state law, grants authorization for employees or agents of the City of China Grove, Texas to stand in a roadway to solicit a charitable contribution if all legal requirements are met (See Tex. Trans. Code §552.0071(b)-(f)). Otherwise, the City of China Grove, Texas is immune from this ordinance.

SECTION FOURTEEN. VIOLATION (STANDARD CRIMINAL OFFENSE). Any person found to be in violation of this Ordinance, unless otherwise specifically stated, shall be fined a maximum of \$500 for each offense. Each instance of conduct violating this ordinance shall be considered a separate and independent violation of this ordinance. Such fine shall be in addition to all assessments, penalties and expenses provided by other law, including but not limited to those provided by Texas Local Government Code Chapter 54. However, it shall be a defense to prosecution if any person charged with a violation of this ordinance presents at or prior to trial, a Texas statute or other legal authority under which establishes a legal exemption as a matter of law.

SECTION FIFTEEN. SEVERABILITY. It is hereby declared to be the intention of the City Council 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, sentence, clauses, phrases and words or this ordinance since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional or invalid portion of the ordinance.

SECTION SIXTEEN. REPEALER. All ordinances or portions of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION SEVENTEEN. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after passage and publication if and as required by law.

PASSED AND ADOPTED THE 7th DAY OF May 2015.

CITY OF CHINA GROVE, TEXAS

Eugene D. Ripps
Eugene D. Ripps, Mayor

Attest:
Susan Conaway
Susan Conaway, City Secretary

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Attest:
Susan Conaway