

ORDINANCE NO. 2017-403

AN ORDINANCE REGULATING PEDDLERS, ITINERANT VENDORS, HAWKERS, SOLICITORS, AND CANVASSERS, ESTABLISHING REGISTRATION REQUIREMENTS FOR THE PEDDLERS, HAWKERS, AND SOLICITORS, ESTABLISHING PROTECTIONS FOR HOMEOWNERS DESIRING TO AVOID PEDDLERS, SOLICITORS AND CANVASSERS, REGULATING HANDBILLS AND PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

WHEREAS, many citizens of this community expect their local government to assist them in preserving their privacy and avoiding petty annoyances that disrupt their quiet enjoyment of their homes, 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 canvas 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 interests 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 PANORAMA VILLAGE, TEXAS, AS FOLLOWS:

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. 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 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 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.

D. “Itinerant Vendor” or “Hawker” is a person who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the city, soliciting, selling, or taking orders for, or offering to sell or take orders for any goods or services. A temporary business is one that continues for forty-five days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding.

Section Two. Exception.

A. 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 Three. License Required for Peddlers, Hawkers, and Solicitors, available for Canvassers.

No person shall act as a peddler, hawker, or solicitor within the city without first obtaining a Peddler License in accordance with this Ordinance. A canvasser is not required to have a Peddler License but any canvasser wanting a Peddler License for the purpose of reassuring city residents of the canvasser’s good faith shall be issued one upon request.

Section Four. Fee. The annual fee for the issuance of each Peddler License shall be:

A. For each peddler acting on behalf of a merchant, a fee of \$50.00 plus \$10.00 per person for an individual identification card.

B. For each solicitor (including a commercial solicitor advertising an event, activity, good or service for purchase at a location away from the residence), a fee of \$50.00 plus \$10.00 per person for an individual identification card.

C. For a canvasser requesting a Peddler License, no fee but a \$10.00 per person individual identification card.

Section Five. Application for Peddler License.

Any person or organization (formal or informal) may apply for one or more peddler licenses by completing an application form at the office of the issuing officer, during regular office hours.

The peddler license shall be issued promptly after application but in all cases within twenty-four business hours of completion of an application, unless it is determined within that time that:

A. The applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years;

B. With respect to a particular license, the individual for whom a card is requested has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven years;

C. The individual for whom the card is requested is a named sex offender as registered by the Texas Department of Public Safety; or

D. Any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

Section Six. Contents of Application.

The applicant (person or organization) shall provide the following information:

A. Name of applicant.

B. Number of peddler licenses required.

C. The name, physical description and photograph of each person for which a card is requested. In lieu of this information, a 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, and a photocopy taken. If a photograph is not supplied, the city will take an instant photograph of each person for which a card is requested at the application site. The actual cost of the instant photograph will be paid by the applicant.

D. The permanent and (if any) local address of the applicant.

E. The permanent and (if any) local address of each person for whom a license is requested.

F. A brief description of the proposed activity related to this peddler license. (Copies of literature to be distributed may be substituted for this description at the option of the applicant).

G. Date and place of birth for each person for whom a card is requested.

H. A list of all infractions, offenses, misdemeanors and felony convictions of each person for whom a license is requested for the seven years immediately prior to the application. This shall include identification as a registered sex offender where applicable.

I. The motor vehicle's make, model, year, color, and state license plate number of any vehicle which will be used by each person for whom a card is requested.

J. If a license is requested for a peddler:

1. The name and permanent address of the business offering the event, activity, good or service (i.e., the peddler's principal).
2. A copy of the principal's sales tax license as issued by the state of Texas, provided that no copy of a license shall be required of any business which appears on the city's annual report of Sales Tax payees as provided by the Texas Comptroller's office.
3. The location where books and records are kept of sales which occur within the city and which are available for city inspection to determine that all city sales taxes have been paid.

K. If a license is requested for a solicitor:

1. The name and permanent address of the organization, person, or group for whom donations (or proceeds) are accepted.
2. The web address for this organization, person, or group (or other address) where residents having subsequent questions can go for more information.

L. Any other information the applicant wishes to provide, perhaps including copies of literature to be distributed, references to other municipalities where similar activities have occurred, etc.

Section Seven. Investigation.

During the time following the application for one or more peddler licenses 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 24 business hours provided in Section 7, the identification card will nonetheless be issued, subject, however, to administrative revocation upon completion of the investigation. [If a canvasser requests a peddler license, the investigation will proceed as described above, but if the city refuses to issue the peddler license (or revokes it after issuance), the canvassers will be advised that the failure to procure a peddler license does not prevent him/her from canvassing the residents of the city.]

Section Eight. Denial or Revocation of License.

A. Grounds. Any license issued hereunder may be revoked if the license holder is convicted of a violation of any provisions of this Ordinance or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a license under the terms of this Ordinance.

B. Notice. If the issuing officer denies (or upon completion of an investigation revokes) the peddler license to one or more persons, he shall immediately convey the decision to the applicant orally and shall within 16 working hours after the denial prepare a written report of the reason for the denial which shall be immediately made available to the applicant.

C. Appeal; hearing. The licensee shall have ten (10) days from the date of revocation or denial in which to file notice of his appeal to the city council from the order denying or revoking the license. The applicant shall have at his/her option an appeal of the denial of his/her application before the city council, at its next regular meeting. After holding the hearing on the revocation or denial, the city council shall by majority vote either sustain the action or issue an order reinstating the license.

D. Stay of Revocation. In the event of the filing of an appeal from a revocation issued under the provisions of this Ordinance, then until such appeal has been determined by the city council, such revocation order shall be stayed.

Section Nine. Hearing on Appeal from Denial or Revocation.

If the applicant whose license has been denied or revoked requests a hearing before the city council, the hearing shall also be subject to the Texas Open Meetings and Open Records law.

Section Ten. Display of Peddler License.

Each peddler license shall be (when the individual for whom it was issued is acting as a peddler or solicitor) worn on the outer clothing of the individual or otherwise displayed, as so to be reasonably visible to any person who might be approached by said person.

Section Eleven. Validity of Peddler License.

A peddler license shall be valid within the meaning of this Ordinance for a period of one year from its date of issuance or the term requested, whichever is less.

Section Twelve. Revocation of Card by Municipal Court Judge.

A municipal court judge, in addition to imposing a fine, may institute proceedings to suspend or revoke the license of a person if the person is required by law to obtain a peddler license from the city and the judge finds the person guilty of violating this Ordinance relating to peddlers.

Section Thirteen. 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 city 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: (a) listed on the city "no visit" list, or (b) 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 license 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 Fourteen. General Prohibitions.

No peddler, hawker, 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, hawkers, 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. 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.

1. Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.
2. Enter upon the property of another except between the hours of 8:00 a.m. and 9:00 p.m. Except that the above prohibitions shall not apply when the peddler, hawker, solicitor, or canvassers has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any posted property.

D. For a commercial solicitor, peddler, or hawker to solicit for a purpose other than that set out in the application upon which the license was issued.

Section Fifteen. Solicitation in Public Right-of-Way.

A. Except for those areas prohibited by this Ordinance, a person may solicit for a charitable or political purpose in or upon the public right-of-way if they are at least three feet off of the paved road surface

B. A person may conduct commercial solicitation in or upon the public right-of-way, except those areas prohibited in this Ordinance, if the solicitor has obtained a license or who is a member of an organization that has obtained a license.

C. Solicitation for any purpose in the public right-of-way shall be conducted only during the hours of daylight so that the individual can be seen, specifically one-half (1/2) hour after sunrise and one half (1/2) hour before sunset.

D. It shall be unlawful for a person younger than eighteen (18) years of age to solicit in the public right-of-way.

E. It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway unless the solicitor has been granted authorization pursuant to § 552.0071 of Chapter 552 of the Texas Transportation Code. The restriction on solicitation in the traveled portion of the roadway does not apply to public residential streets.

F. It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway of residential streets so that their presence impedes the flow of traffic.

G. 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.

Section Sixteen. Violation.

Any person violating any part of this Ordinance or failing to observe any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00). Every day the violation continues shall be deemed as a separate offense.

Section Seventeen. 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, sentences, 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 Eighteen. Compliance with Texas Open Meetings Act

It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose

of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code

Section Nineteen. Effective Date After Publication.

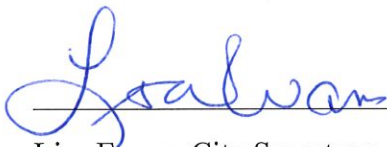
This Ordinance shall be in full force and effect from and after its publication as provided by law.

PASSED AND APPROVED this 1ST day of August, 2017.



Lynn Scott, Mayor

ATTEST:



Lisa Evans, City Secretary

APPROVED AS TO FORM:

Larry L. Foerster, City Attorney

APPLICATION FOR SOLICITATION-PEDDLER LICENSE
CITY OF PANORAMA VILLAGE, TEXAS

1. Full Name: _____
2. Mailing Address: _____
3. Permanent Residence Address: _____
4. Cell phone: _____ Office phone: _____
5. Date of Birth: _____ Place of Birth: _____
6. Occupation for which applicant desires to obtain permit: _____

7. Give complete description of merchandise, etc. (including grade and character of property) to be distributed or sold: _____

8. Name of company employed by, if any: _____
Address: _____
Phone No: _____ Website: _____
Texas Sales License No. _____
9. Have you ever been convicted of a felony or a misdemeanor in the past 7 years? _____
If yes, list all criminal offenses: _____

10. Are you a registered sex offender? _____
11. Driver's License No. _____
12. Motor vehicle's make, model, and year: _____

I HAVE READ AND AGREE TO COMPLY WITH THE TERMS AND CONDITIONS OF THE SOLICITATION ORDINANCE FOR THE CITY OF PANORAMA VILLAGE. SUBJECT TO CRIMINAL PENALTIES, I HEREBY DECLARE THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.

WITNESS MY HAND AND SIGNATURE AT CITY OF PANORAMA VILLAGE, TEXAS, this the _____ day of _____, 20_____.

Signature of Applicant

City Witness: _____ Date of Approval: _____

NOTE: APPLICATIONS WILL ONLY BE ACCEPTED ON MONDAYS AND TUESDAYS OF EACH WEEK

SUBMIT FOR EACH INDIVIDUAL APPLICATION THE FOLLOWING:

1. A photograph will be taken at the police office for the individual identification card for each applicant.
2. Applicant's driver's license or other government identification for examination
2. A certificate or letter from an official of the company for which applicant is employed, stating that applicant is an employee and/or agent of such company.
3. A copy of the State of Texas sales tax license of the company for which applicant is employed, if applicable.
4. A copy of all literature the applicant wishes to distribute in the City of Panorama Village.
5. License fee of Fifty Dollars (\$50.00) per individual peddler or solicitor license application.
6. Identification card fee of \$10.00 per individual

NOTE THESE PROHIBITIONS:

- Peddler and solicitor licenses are not transferrable to another individual
- All solicitation shall be conducted during hours of daylight so that the solicitor can be readily seen
- No solicitation in a public right-of-way unless at least three feet off of the paved road surface
- No solicitation is permitted on private property where a sign is clearly posted in the front yard, or at the door or entrance of a residence, that solicitation is prohibited on that property
- No handbill or flyer shall be attached to any sign, utility pole or other structure in a city public right-of-way
- No handbill or flyer can be left attached to any privately-owned property in a manner that causes damage to private property
- No handbill or flyer may be left on private property having a "no solicitation" sign

Signature of Applicant