

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HEWITT, TEXAS AMENDING BY REPLACING AND REPEALING IN ITS ENTIRETY CHAPTER 50 OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT, TEXAS “PEDDLERS AND SOLICITORS;” ESTABLISHING A PERMIT REQUIREMENT AND AN APPLICATION PROCESS; ESTABLISHING FEES; ESTABLISHING IDENTIFICATION CARD REQUIREMENT; ESTABLISHING REGULATIONS FOR COMMERCIAL AND/OR NON-COMMERCIAL SOLICITATION WITHIN THE CITY OF HEWITT AND MAKING CERTAIN PRACTICES OR CONDUCT OF SOLICITATION A VIOLATION; PROVIDING FOR AN EXEMPTION; PROVIDING FOR DENIAL OR REVOCATION OF A PERMIT; PROVIDING FOR AN APPEAL; PROVIDING FOR A VIOLATION OF THE REGULATIONS TO BE AN OFFENSE PUNISHABLE BY A FINE NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS; MAKING EACH VIOLATION OR EACH DAY OF A CONTINUING VIOLATION A SEPARATE OFFENSE; ESTABLISHING AN EFFECTIVE DATE; ADOPTING A SEVERABILITY CLAUSE; AND DIRECTING THE CITY SECRETARY TO PUBLISH THE CAPTION OF THIS ORDINANCE IN THE CITY’S OFFICIAL PUBLIC NEWSPAPER

WHEREAS, the current Chapter 50 of the City of Hewitt Code of Ordinances completely bars commercial solicitation within the City of Hewitt; and

WHEREAS, such an absolute bar has been held to be unconstitutional; and

WHEREAS, the remainder of the Chapter is due for updating; and

WHEREAS, the Hewitt City Council finds that it is in the best interest of the citizens of the City of Hewitt to create enforceable, detailed and clear regulations regarding solicitation within the City of Hewitt, Texas.

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

1. The foregoing recitals are adopted and made findings of fact.

2. Chapter 50 of the Code of Ordinances of the City of Hewitt, Texas “PEDDLERS AND SOLICITORS” is hereby amended by replacement and is repealed in full, including each Article, Division or Section thereof, and a new Chapter 50 of the Code of Ordinances of the City of Hewitt, Texas is ADOPTED which reads as follows:

Chapter 50 - PEDDLERS AND SOLICITORS

ARTICLE 1. - SOLICITORS

Sec. 50-1. - Definitions.

The following words and phrases, when used in this chapter, shall have the meanings ascribed by this section:

Applicant means the person that applies for an identification card;

Master Permit means a permit issued to a person who will be soliciting in the City through employees, contractors, agents, or volunteers. This grants the employees, contractors, agents, or

volunteers no individual permit or right to solicit; rather, their permission to solicit is completely dependent on the Master Permit and ends on the expiration or revocation of the Master Permit.

Commercial solicitation means for-profit solicitation that is for private gain as opposed to being for charitable, philanthropic, fraternal, civic, political, educational, religious or benevolent purposes;

City means the City of Hewitt, Texas;

Disqualifying Offense means-

- criminal homicide (Chapter 19 Texas Penal Code)
- kidnapping (Chapter 20 Texas Penal Code)
- a sexual offense (Chapter 21 Texas Penal Code)
- an assault offense (Chapter 22 Texas Penal Code)
- Robbery (Chapter 29 Texas Penal Code)
- Burglary (Chapter 20 Texas Penal Code)
- Theft (Chapter 31 Texas Penal Code) committed against a person with whom the applicant came in contact while engaged in a home solicitation business
- Fraud (Chapter 32 Texas Penal Code) committed against a person with whom the applicant came in contact while engaged in a home solicitation business
- Weapons violations (Chapter 46 Texas Penal Code) punishable as a felony
- Criminal Attempt to commit any of the offenses listed above

Identification Card are cards issued by the City identifying the Applicant and/or the solicitor's contractors, agents, employees, and volunteers which represents that they are allowed to solicit within the City;

Individual Permit means a permit issued to an Applicant who is the sole person proposing to solicit within the City;

Non-commercial solicitation means not-for-profit solicitation that is for charitable, philanthropic, fraternal, civic, political, educational, religious or benevolent purposes;

Permit means either a Master Permit or Individual Permit unless otherwise stated.

Permitee means the person issued the Master or Individual Permit by the City.

Person means any individual, corporation, business trust, estate trust, partnership, association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity;

Public property or *public place* means any property open or devoted to public use or owned by the city and any area dedicated to the public use for sidewalk, street, highway, or other transportation purposes including any curb, median parkway, shoulder, sidewalk, alley, drive, or public right-of-way;

Private premises means any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes whether occupied or vacant and shall include any yard, grounds, walls, driveway, porch, steps, vestibule, or mailbox belonging or appurtenant to such dwelling; house, building, or other structure;

Roadway means the paved portion of a public street;

Solicitation or *soliciting* means the act of asking, bartering, or communicating in any other such manner, whether orally, in writing, hand signing, or any other method, either directly or by implication, for the purpose of receiving or obtaining money, alms, gifts, or items of value, or taking orders for any goods, merchandise, or services, whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money, goods, or services actually takes place.

Sec. 50-2. Permit required to engage in solicitation.

(a) It shall be unlawful for any Person to engage in Solicitation within the City without a valid, unexpired Permit issued by the City, whether an Individual Permit or Master Permit as applicable;

(b) It shall be unlawful for any person operating as an employee, contractor, agent, or volunteer of another person to engage in Solicitation within the City without the person for whom they are soliciting having a valid, unexpired Master Permit issued by the City.

Sect. 50-3. Identification Card Required for Commercial Solicitors or Non-Commercial Solicitors who are paid to Solicit.

Every Person engaging in Commercial Solicitation, or in Non-Commercial Solicitation where the solicitors are paid to solicit, within the City must have a City-issued Identification Card. It shall be unlawful for any person required to have an Identification Card to solicit without visibly displaying the City-issued identification card. It shall be unlawful for a person to represent, in connection with a solicitation, that the issuance of the identification card by the city constitutes an endorsement or approval of the purposes, means, methods, services, or merchandise by the city or any of its officers or employees.

Once a Master Permit is granted each person covered by the Master Permit will be issued an Identification Card as set forth below. Each person to receive an Identification Card under a granted Permit must come to the police department to be photographed and have their Identification Card made; a picture identification must be provided to verify the person being photographed is the person to whom the Identification Card is being issued. A fee of \$5.00 per Identification Card shall be added to the total Permit Fee.

Sec. 50-4. - Application for Permit—Commercial solicitation.

- (a) A person seeking a Permit for the purpose of conducting commercial solicitation shall file an application with the chief of police on the application form provided by the chief of police. Such application shall contain at a minimum the following information:
- (1) The full name and address of the Applicant.
 - (2) Whether the person applying is a natural person, partnership, corporation, or association and:
 - a. The business or residence address, telephone number, and e-mail address and facsimile number, if applicable, of the Applicant;
 - b. If a partnership, the name of all partners and the principal business address, telephone number, and e-mail address and facsimile number, if applicable, of each partner;
 - c. If a corporation or any other entity required to be registered with the Texas Secretary of State, the person applying shall state whether it is organized under the laws of this state or is a foreign corporation, and must show the mailing address, address of the registered agent, business location, telephone number, name of the individual in charge of such corporation and the individual's e-mail address and facsimile number, if applicable, and, if a foreign corporation, the place of incorporation; and
 - d. If an association, the application shall show the association's principal business address and telephone number and shall show names and principal business or residence addresses, telephone numbers, and e-mail addresses and facsimile numbers of the officers and directors or trustees of the association. If the association is a part of a multi-state organization or association, the applicant also shall include the mailing address and business location of its central office, in addition to the mailing address and business location of its local office.
 - (3) The full name, mailing and physical address, telephone number, and e-mail address and date of birth of all individuals who will be in direct charge or control of the solicitation, including an individual Applicant [plus other identifiers required for a criminal history check to be conducted].
 - (4) The full name, mailing and physical address, telephone number, and e-mail address and date of birth of each individual who will be soliciting for the Applicant under a Master Permit [plus other identifiers required for a criminal history check to be conducted].

- (5) The application must contain a certification by the Applicant that the Applicant and the Applicant's solicitors have not been convicted of any Disqualifying Offense.
 - (6) The time period within which the solicitation is to be conducted, giving the date of the beginning of solicitation and its projected conclusion, how often the applicant expects to engage in solicitation during the specified time period, and during what times of day that the applicant will engage in solicitation;
 - (7) A description of the methods and means by which the solicitation is to be accomplished;
 - (8) The nature of the merchandise to be sold or offered for sale or the nature of the services to be furnished;
 - (9) Whether such Applicant, upon any such order so obtained, will demand, accept, or receive payment or deposit of money in advance of final delivery; and
 - (10) Identification of any other cities where Applicant has solicited during the 12 months prior to the application.
- (b) The Applicant shall not provide a post office box as its address on the application for a permit.
 - (c) The application must be signed by the Applicant, if the person applying is an individual; if the person applying is a partnership, by a partner; if the person applying is a corporation or an association, by its authorized representative. The individual signing the application shall sign the application and swear before an officer authorized to administer oaths that he has carefully read the application and that all the information contained therein is true and correct.
 - (d) Information provided by Applicant is subject to verification by the police department. By submitting the Application, the Applicant and any solicitors covered by its Permit consent to the City's Police Department conducting a criminal background check.
 - (e) Such application shall also show satisfactory written proof of the signatory's authority to represent the company.
 - (f) The application must be accompanied by a copy of a valid state sales tax certificate, if applicable.
 - (g) A nonrefundable fee of \$30.00, per Application is due and is to be paid. For an individual Applicant an additional fee of \$25.00 is to be paid to cover the cost of a Texas Department of Public Safety criminal history check. For an Applicant for a Master Permit an additional fee of \$25.00 for each individual listed on the application who shall be engaging in solicitation for the Applicant is to be paid to cover the cost of a Texas Department of Public Safety criminal history check (whether paid by the Master Permit Applicant or individual solicitors—there is only one Permit). No Permit provided for by this chapter shall be issued until such fees have been paid. Individuals who file a verified statement indicating their indigent status (with supporting information) which is found true by the finance director are exempt from paying this fee.
 - (h) No person who is required to register as a sex offender or has been convicted of a Disqualifying Offense may solicit in the City and no Permit of Identification Card shall issue to such a person.
 - (i) If a vehicle is to be used in the Solicitation, the year, make, model and color of the vehicle, along with its license plate number and proof of current registration and required liability insurance.

Sec. 50-5. - Application for Permit—Non-commercial solicitation.

- (a) A person seeking a Permit for the purpose of conducting non-commercial solicitation shall file an application with the chief of police on the application form provided by the chief of police. Such application shall contain at a minimum the following information:
 - (1) The name, address, telephone number, and contact person for the soliciting organization;
 - (2) Information showing the not-for-profit nature of the soliciting organization and its charitable, philanthropic, fraternal, civic, political, educational, religious or benevolent purpose;

- (3) The time period within which the solicitation is to be conducted, giving the date of the beginning of solicitation and its projected conclusion, how often the applicant expects to engage in solicitation during the specified time period, and during what times of day that the applicant will engage in solicitation;
 - (4) A description of the methods and means by which the solicitation is to be accomplished;
 - (5) The nature of the merchandise to be sold or offered for sale or the nature of the services to be furnished;
 - (6) Whether such applicant, upon any such order so obtained, will demand, accept, or receive payment or deposit of money in advance of final delivery;
 - (7) A statement that the Applicant has verified that none of the persons to be involved in Solicitation are required to register as a sex offender or a conviction for a Disqualifying Offense.
 - (8) If the solicitors *are paid* to solicit, the Permit fee shall include an additional \$25.00 for each solicitor to cover the cost of Texas Department of Public Safety criminal history checks will be added to the Application Fee and must be paid.
 - (9) No person who is required to register as a sex offender or who has been convicted of a Disqualifying Offense may solicit within the City, and no Permit or Identification Card shall be issued to such persons.
- (b) An application fee of \$25 is required for a permit for non-commercial solicitation. If the solicitation is for a school or youth organization no application fee will be due. If solicitors are paid to solicit, they must have an Identification Card as set forth in Section 50-3 above and the \$5.00 per Identification Card fee must be paid. In addition, if solicitors are paid to solicit, the additional \$25 fee per solicitor set forth in Section 50-5 (a)(8) above must be paid.
 - (c) Non-Commercial Solicitors are subject to the same restrictions on the conduct of solicitations as Commercial Solicitors.

Sec. 50-6. - Exemption from Permit requirement.

A solicitor that is not offering goods or services or soliciting donations, but, rather is merely distributing information, conducting a poll, enlisting support for a measure or candidate, informing or inquiring about religious or political views, or similar activities is not required to obtain a Permit.

Sec. 50-7. - Issuance, duration, and form of Permit and Identification Cards.

- (a) A Permit applied for under this chapter shall be issued or denied by the chief of police after review of the application to determine compliance with this chapter, payment of the required fee, and within Ten (10) business days of receipt of the application. If the chief of police does not deny the issuance of the Permit within ten (10) business days of receipt of the application, the Permit shall be issued.
- (b) The Permit shall reflect the time period for which the solicitation has been permitted. The Permit expires at the end of that time period.
- (c) The duration of a Permit requested under this chapter for the purpose of private premises solicitation shall not to exceed one calendar year from the date of issuance.
- (d) The chief of police shall prescribe the form of the Permit and Identification Cards.

Sec. 50-8. - Transfer of Permit or Identification Card prohibited.

A Permit or Identification Card shall not be transferred or assigned to another person. Any attempt to transfer or assign a Permit or Identification Card is a cause for revocation.

Sec. 50-9. - Denial or revocation of Permit.

- (a) A Permit issued under this chapter may be revoked and the person who had the Permit may be prohibited from reapplying for the period covered by the original application, or an application for a Permit may be denied, when it has been determined that:
 - (1) An Applicant has knowingly given false or misleading information on an application;
 - (2) An Applicant (or a contractor, employee, agent or volunteer thereof) has a disqualifying criminal history;
 - (3) An Applicant has had three (3) or more final convictions for violation of city regulations in cities that it has operated in during the previous 12 months;
 - (4) An Applicant has been the subject of a fraud or deceptive business practices alert by any state office or agency during the previous 12 months;
 - (5) An Applicant has had solicitation permits revoked in two (2) or more cities during the previous 12 months and those revocations have not been reversed or are not the subject of a pending lawsuit as to the propriety of the revocation;
 - (6) An Applicant (or a contractor, agent, employee, or volunteer thereof) has been convicted of theft or fraud or a violation of any city, state, or federal law, in connection with solicitation within the City;
 - (7) An Applicant ((or a contractor, agent, employee, or volunteer thereof) has made or caused to be made, materially false statements or misrepresentations to members of the public with regard to the solicitation;
 - (8) An applicant (or a contractor, agent, employee, or volunteer thereof) violates any part of any of the provisions of this chapter, including but not limited to the requirement of no solicitation at residences where "no solicitation" signs or placards are present.
- (b) If the chief of police denies an application for a Permit, he shall notify the Applicant in writing within Ten (10) business days of receipt of the application of the denial and the basis of the denial.
- (c) Prior to revoking a Permit, the chief of police shall deliver written notice of the possible revocation, the basis of the revocation, and a statement that the Permittee has five (5) business days after delivery to comply with the notice to prevent revocation (but only if the matter can be cured) or to submit a rebuttal.
- (d) If the chief of police revokes the Permit, the chief of police shall send written notice of revocation to the Permittee within ten (10) business days which sets forth the basis of the revocation, and a statement informing the Permittee of the right to appeal a revocation.
- (e) If the chief of police denies the issuance of a Permit or revokes a Permit, the action is final unless the Applicant or Permittee files a written appeal to the city manager within 10 business days of delivery of the notice of revocation or denial. Failure to file an appeal in accordance with this section is a waiver of appeal, and the chief of police's decision shall be final.
- (f) After receipt of notice of revocation, the Permittee shall, on or before the date specified in the notice, discontinue engaging in solicitation in the City and surrender the Permit and any Identification Cards to the chief of police. If the revocation has been appealed, the revocation is stayed pending the City Manager's decision.

Sec. 50-10. - Appeal.

Should an Applicant be denied a permit or a Permittee have a permit revoked, the Applicant or Permittee may appeal the action to the city manager by submitting a letter to the city secretary within Ten (10) business days of the denial or revocation. The appeal shall set forth the reasons that the denial or revocation is in error in detail and provide a contact name and telephone number of a person to whom the City Manager may speak regarding the appeal. If a meeting can be arranged, the person may be heard by the City Manager in a face-to-face meeting. If a face-to-face meeting

cannot be arranged, the person may be heard telephonically. Cooperation of the appellant is required and inability to reach the contact person will not extend the time before a decision will be made. The City Manager will make a decision within 15 days of receiving the appeal.

Sec. 50-11. - Additional requirements for solicitation on private premises.

- (a) It shall be unlawful to engage in solicitation on a private premises or to go upon the private premises and ring the doorbell, rap, or knock upon the door, or create any sound in a manner calculated to attract the attention of the occupant for the purpose of engaging in solicitation between thirty (30) minutes after sunset and 9:00 a.m. of the following day.
- (b) Subsection (a) does not apply where the solicitor is on the private premises by express, prior invitation of the owner of the property or a person residing on the premises or when the person is personally known to the occupants of the property.
- (c) It shall be unlawful for any person to solicit without visibly displaying a City-issued identification card.
- (d) It shall be unlawful for a person engaged in solicitation to remain on a private premises after the owner or occupant has requested that person to leave.
- (e) It shall be unlawful for a person to return to a private premises to solicit when the person has already attempted to solicit at the location and has been told by the owner or occupant that they are not interested.
- (f) As further set forth below, it shall be unlawful to solicit at a private premises where there is posted a sign or placard communicating that the owner or occupant does not want to be solicited, such as "No Solicitors", "No Solicitation", or which otherwise purports to indicate that solicitation is unwelcome, unless the person has been invited upon the premises by the owner or occupant of the premises.

Sec. 50-12. - Supervision of child solicitors.

It shall be unlawful for any person to use children 16 years of age or younger for solicitation of funds unless said children are actively supervised by an adult person at least 21 years of age. There will be a presumption that a child is not actively supervised if the supervising adult is more than 50 feet away from the child or if there are five or more children for each adult.

Sec. 50-13. - Handbills.

- (a) It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast, or cause to be distributed, deposited, placed, thrown, scattered, or cast any handbill upon any private premises except by placing or depositing the handbills in a manner to secure and to prevent the handbills from being blown or drifting about such premises, sidewalks, streets, or other public places, except that mailboxes may not be used when prohibited by federal postal laws or regulations for handling or transmitting such and except when a handbill is delivered directly to the owner, occupant, or any other person then present in or upon such private premises and who is willing to accept it.
- (b) It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast, or cause to be distributed, deposited, placed, thrown, scattered, or cast any handbill upon private premises if requested by anyone at that location not to do so, or if there is a sign on the property prohibiting it.
- (c) It shall be unlawful for any person to distribute, deposit, place, throw, scatter, or cast, or cause to be distributed, deposited, placed, thrown, scattered, or cast any handbill upon any private premises which are uninhabited or vacant.
- (d) It shall be unlawful for any person to post or otherwise affix or attach any handbill, poster, or other device which is calculated to attract the attention of the public upon any structure, wall, or part thereof without the consent of the owner, agent, or occupant of the structure.
- (e) There shall be a rebuttable presumption that any person whose goods, services, or activities are promoted in the handbill in violation of this section is a person who distributed or caused to be distributed the handbill.

- (f) This section does not apply to a federal, state, county, or local government or public utility employee in the performance of their duties for their employer.

Sec. 50-14. - Solicitation and handbill placement forbidden if sign posted.

It shall be unlawful for any person to engage in solicitation or to place handbills at a private premises that has a posted sign indicating that the resident does not want such activities at their private premises. Examples of such a sign include, but are not limited to, "No Soliciting," "No Solicitation," "No Trespassing," or "Keep Out." This provision does not apply if the person has been invited upon the premises by the owner or occupant of the premises.

Sec. 50-15. – Violation an Offense.

A violation of a regulation or prohibition under this Chapter is an offense punishable by a fine not to exceed \$500.00. Each violation is a separate offense. Each day of a continuing violation is a separate offense.

ARTICLE II [Reserved]

3. Repeal of Conflicting Provisions. That all provisions of the ordinances of the City of Hewitt in direct conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Hewitt not in conflict with the provisions of this Ordinance shall remain in full force and effect.

4. Severability. Should any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

5. Effective Date. This Ordinance shall become effective when the caption of the Ordinance is published in the City's Official Newspaper.

6. Publication. The City Secretary is hereby ordered to publish the caption of this Ordinance in the City's Official Newspaper as soon as possible.

PASSED AND APPROVED this the ____ day of _____, 2020 at a Regular Meeting of the City Council of the City of Hewitt, Texas.

CITY OF HEWITT

BY: _____
Charlie Turner, Mayor

ATTEST:

Lydia Lopez, City Secretary

Approved:

Mike Dixon, City Attorney