

ORDINANCE NO. 2018 _____

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 REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION

WHEREAS, the amendment of Chapter 14, Article II of the Code of Ordinances of the City of Dalhart, Texas is necessary to protect the public safety, health and welfare of the City of Dalhart.

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

SECTION I

Section 1: 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 or 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 or 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 or 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.

E. "Transient Retail Business" shall mean the sale or offering for sale of any goods, wares, services or merchandise to the general public, without utilizing a fixed business location.

F. "Fixed Business Location" shall mean a location which complies with the zoning and building codes of the City of Dalhart and which is occupied by the same business for at least thirty (30) consecutive days.

G. "Central Preparation Facility" shall mean a fixed business location that provides supplies as well as cleaning and servicing operations for a mobile food establishment.

H. "Criminal Trespass" as defined by Vernon's Texas Statutes and Codes Annotated:

(a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

(b) For purposes of this section:

- (1) "Entry" means the intrusion of the entire body.
- (2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;

EXEMPTIONS: Local (counties of Dallam, Hartley, Moore, and Sherman) non-profit organizations and school-sponsored groups are exempt from the permit requirement. No permit is required for a canvasser as defined in Section 1.

Section 2: Transient retail business license-Required.

No person shall operate a transient retail business in the City of Dalhart without a license issued by the City of Dalhart. Each location shall constitute a separate business.

Section 3: Types of permits. Transient retail business permits will be classified as one of the following:

MOBILE FOOD ESTABLISHMENT

A. A Mobile Food Establishment or Mobile Food Unit is a vehicle mounted, self or otherwise propelled, self-contained food service operation, designed to be readily movable (including, but not limited to catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. Mobile units must completely retain their mobility at all times. A Mobile Food Unit does not mean a stand or a booth. The regulatory authority may require a mobile food establishment operator to demonstrate that the vehicle is readily moveable.

B. Application for a Mobile Food Establishment permit shall be made to the City of Dalhart Police Department and shall contain the name and permanent address of the principal owner of the business. The applicant shall state the principal occupation of the business and identify the goods and services to be offered for sale by the business.

The applicant will provide:

- (1) A copy of valid US-issued photo identification;
- (2) A copy of current inspection certificate from the Texas Department of State Health Services;
- (3) A copy of registration for the vehicle;
- (4) A copy of proof of vehicle insurance;
- (5) A copy of the Texas Tax ID certificate for the business;
- (6) A letter from the property owner giving the business owner permission to conduct business at the property. The mobile food establishment must not be placed within 300 feet of a fixed business location which sells the same products unless both the fixed business location and the mobile food unit are owned by the same person or entity.

C. There will be a 24-hour waiting period after application is submitted for a background check and investigation to be conducted. No registered sex offenders will be issued a permit.

D. A Mobile Food Establishment permit issued shall require a fee of four hundred dollars (\$400.00) that will expire at the end of 120 days. The permit holder will be able to apply for a new permit only after 120 days have passed from the expiration date of an issued permit. A permit for a fee of twenty-five dollars (\$25) may be issued that expires at the end of 7 days.

E. A mobile food unit that holds a 120-day permit must present the vehicle to a central preparation facility every 24 hours for servicing.

F. The permit holder must have the city-issued vendor identification visible at all times.

G. Failure to obey the laws and policies regarding transient sales permits will result in the permit being revoked and the permit holder being asked to leave the premises. Failure to obey the laws and policies regarding transient sales permits by any permit holder may result in no further permits being issued to that individual and/or transient business. Notice will be placed on the city website and social media informing residents of the mobile food units holding valid permits.

PEDDLER'S PERMIT (DOOR-TO-DOOR SALES)

A. Application for a transient retail business permit for a peddler or door-to-door sales shall be made to the City of Dalhart Police Department and shall contain the name and permanent address of the principal owner of the business. The applicant shall state the principal occupation of the business and identify the goods and services to be offered for sale by the business.

The applicant will provide:

- (1) A copy of valid US-issued photo identification;
- (2) A copy of the Texas Tax ID certificate for the business.

B. There will be a 24-hour waiting period after application is submitted for a background check and investigation to be conducted. No registered sex offenders will be issued a permit.

C. A Peddler's or Door-To-Door sales permit issued shall require a fee of seventy-five dollars (\$75). The permit issued under these requirements will expire at the end of 7 days.

D. The permit holder must have the city-issued vendor identification visible at all times. Sales may be conducted between the hours of 9 a.m. and 7 p.m.

E. Failure to obey the laws and policies regarding transient sales permits will result in the permit being revoked and the permit holder being asked to leave. Failure to obey the laws and policies regarding transient sales permits by any permit holder may result in no further permits being issued to that individual and/or transient business. Notice will be placed on the city website and social media informing residents of the mobile food units holding valid permits.

MERCHANDISE BOOTH

A. Application for a transient retail business permit for a merchandise booth shall be made to the City of Dalhart Police Department and shall contain the name and permanent address of the principal owner of the business. The applicant shall state the principal occupation of the business and identify the goods and services to be offered for sale by the business.

The applicant will provide:

- (1) A copy of valid US-issued photo identification;
- (2) A copy of the Texas Tax ID certificate for the business.
- (3) A letter from the property owner giving the booth owner permission to conduct business at the property. The location must not be within 300 feet of a fixed business location which sells the same products unless both the location and the booth are owned by the same person.

B. There will be a 24-hour waiting period after application is submitted for a background check and investigation to be conducted. No registered sex offenders will be issued a permit.

C. A merchandise booth permit issued shall require a fee of one hundred dollars (\$100). The permit issued under these requirements will expire at the end of 30 days. The permit holder will be able to apply for another permit only after 30 days have passed from the expiration date of an issued permit.

D. The permit holder must have the city-issued vendor identification visible at all times.

E. Failure to obey the laws and policies regarding transient sales permits will result in the permit being revoked and the permit holder being asked to leave. Failure to obey the laws and policies regarding transient sales permits by any permit holder may result in no further permits being issued to that individual and/or transient business. Notice will be placed on the city website and social media notifying residents of the organizations holding valid permits.

Section 4: Investigation. During the time following the application for one or more transient retail business 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 this ordinance, 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 or her from canvassing the residents of the city.]

Section 5: 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 article 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 article.

B. Notice. If the issuing officer denies (or upon completion of an investigation revokes) the transient retail business license to one or more persons he shall immediately convey the decision to the applicant orally and shall within 2 working days 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 option an appeal of the denial of his 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. In the event of the filing of an appeal from a revocation issued under the provisions of this article, then, until such appeal has been determined by the city council, such revocation order shall be stayed.

Section 6: Hearing on appeal. If the applicant requests a hearing under Section 5, the hearing shall be held in accordance with the Administrative Procedure Act of the State of Texas, and review from the decision (on the record of the hearing) shall be had to the county court in which the city is located. The hearing shall also be subject to the Texas Open meetings and Records law.

Section 7: 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 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 property that has a “no solicitor” or similar 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 8: 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 9 a.m. and 7 p.m. Except that the above provisions shall not apply when the peddler, hawker, solicitor, or canvassers have 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 II REPEALER

All ordinances that are in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Dalhart not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION III SEVERABILITY

It is hereby declared to be the intention of the City Council of the City of Dalhart that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph or section in this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

SECTION V PENALTIES

Any person who violates any of the provision of Section I of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$500.00.

SECTION V
EFFECTIVE DATE

This ordinance shall take effect on and after adoption and publication as required by law.

PASSED AND APPROVED this _____ day of _____, 2018 by a vote of _____ (ayes)
to _____ (nays) to _____ (abstentions) of the City Council of the City of Dalhart.

ATTEST:

CITY OF DALHART, TEXAS

FRANCES CHILDERS, City Secretary

By: _____
PHILLIP HASS, Mayor

APPROVED AS TO FORM:

GREG OELKE