

City of Magnolia, Texas

Ordinance No. 2009-146

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, REGULATING PEDDLERS AND SOLICITORS; MAKING CERTAIN FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTING AND APPLICATION; PROVIDING MATTERS RELATING TO THE SUBJECT; PROVIDING FOR ENFORCMENT AND PENALITIES FOR VIOLATIONS; PROVIDING FOR THE SEVERABILITY OF THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR THE REPEAL OF ORDINANCE NO. 30 PASSED JULY 11, 1972, AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING FOR PUBLICATION;

WHEREAS the City Council of the City of Magnolia finds that the unrestricted locations and operations of certain businesses that sell goods, wares, services or merchandise who does not have a fixed place of business in a permanent building in the city, or who goes from door to door or place to place selling or soliciting may be detrimental to the public health, safety and welfare of the citizens of the City of Magnolia; and

WHEREAS the City Council deems this ordinance an exercise of the police power of the state and of the city for the public safety, comfort, convenience and protection of the city and its citizens, and all the sections of this article shall be construed for the accomplishment of that purpose.

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

The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

Section 1. Definitions.

For purposes of this article:

- (a) Itinerant vendor, merchant, or peddler* shall mean any person selling goods, wares, services or merchandise who does not have a fixed place of business in a permanent building in the city which is either owned by such vendor or under lease to such vendor for a period of at least one hundred eighty (180) days, or who goes from door to door or place to place selling or soliciting orders for goods, wares, services or merchandise other than agricultural products produced or processed in this state;
- (b) Permanent structure* shall mean anything constructed or erected, which requires location on the ground, must comply with city building and zoning codes, must provide connection to the required city services, and shall be required to obtain a city certificate of occupancy permit.
- (c) Public right-of-way* shall mean the traveled portion of the road including any public property within ten feet of the curb line, and in the absence of a curb, the public property within ten feet of the outside edge of the road or highway. Right-of-way includes all medians within the public right-of-way.
- (d) Solicitation, soliciting, solicited or any other form of the word solicit* shall mean the act of asking, begging, pleading or communicating in any other such manner, whether orally, by written and/or printed material including, but not limited to, handbills or leaflets, hand signing or by any other method, direct or implied, by an individual or group of individuals for the purpose of educating, promoting, receiving or obtaining money, alms, gifts or items of value, real or intrinsic for said individual or group of individuals, or for-profit organization, a non-profit organization, joint venture, joint stock company, partnership, club,

company, corporation, business trust, establishment, religious institution or religion, association or any other organization or affiliate thereof.

(e) *Solicitor* shall mean the person soliciting.

(f) *Temporary structure* shall mean a structure that is manufactured off-site; is brought to the site; and is temporary in nature.

Section 2. Compliance generally.

It shall be unlawful for any itinerant vendor, merchant or peddler, or any person as agent, employee or servant of any such vendor, merchant or peddler, to sell, offer or exhibit for the purpose of taking order for sale thereof, any goods, wares, services, merchandise or other personal property or for any person to engage in soliciting at any location in the city without having complied with the provisions of this article.

Section 3. Exemptions from permit fee.

The payment of the permit fee shall not be applicable to the following; however, they are required to comply with all other provisions of this article:

(a) The provisions of this article shall not apply to sales made to dealers by commercial travelers or sales agents in the usual course of business.

(b) Vendors of farm produce, if raised on land owned or leased by the vendor within the state, may be sold by any member of the owner's or lessee's household.(optional)

(c) Sales of goods, wares and merchandise donated by the owners thereof, the proceeds of which are to be used and applied to some charitable, educational or religious organization who have their principal place of activity within the City.

(d) Sales of goods, wares and merchandise by duly authorized, nonprofit charitable organizations. (Registered as such with the Secretary of State for the State of Texas.)

(e) Persons engaged in interstate commerce.

(f) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.

Section 4. Penalty.

Unless stated otherwise, violations of this article shall be punished as provided in section 19.

Section 5. Prohibited locations.

(a) *Use of streets.* No itinerant vendor, merchant, peddler or solicitor shall have any right to any location in the public streets, nor shall any be permitted a stationary location, nor shall they be permitted to operate in any congested areas where their operation might impede or inconvenience the public. For the purpose of this article the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

(b) *Right-of-way.* No itinerant vendor may locate in the public right-of-way or state highway department right-of-way.

(c) *Trespass.* Any peddler or solicitor who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, shall be deemed guilty of criminal trespass and may be punished as provided in V.T.C.A., Penal Code § 30.05.

(d) *Temporary usage.* It shall be prohibited to sell any merchandise or goods from a temporary structure.

(e) *Public Places* No peddler or solicitor to sell or take orders for or offer to sell or take orders for or display any goods, wares, merchandise, photographs, newspapers or magazines on any public square, park, street, road, highway or alley within the city without having first obtained a special events permit as provided in section 20.

(f) *Posted Premises* It shall be unlawful for any peddler or solicitor to enter upon any private premises when the same are posted with a sign stating "No Peddlers Allowed" or "No Solicitations Allowed" or other words to such effect.

Section 6. Sale of animals.

The sale of animals within the city limits shall be prohibited by peddlers, vendors, or solicitors. Any persons found selling animals in violation of this section shall be guilty of a class "C" misdemeanor.

Section 7. Soliciting.

- (a) It shall be unlawful for any person to solicit within the city without first obtaining a permit from the Permit Department.
- (b) It shall be unlawful to solicit in the public right-of-way and/or roadway.
- (c) It shall be unlawful for a person younger than 17 years to solicit under this article.
- (d) It shall be unlawful for any person to cause a child ten years of age or younger to solicit, except for nonprofit organizations (i.e. Girl Scouts, etc.). For purposes of this section, the term "cause" shall mean to aid, direct, hire, encourage, permit or allow.
- (e) All sales must be on private property and not located on any roadway.
- (f) It shall be unlawful for any person to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at any intersection or crossing of streets within the city limits, where, in the opinion of the police chief, such solicitation or distribution would cause the blocking of traffic so as to create a traffic hazard.

Exceptions. If, in the opinion of the police chief, it would not create a traffic hazard for solicitation of funds and advertising at an intersection of streets within the city, the person desiring to solicit funds or to advertise, or to distribute any item at such intersections, shall first make an application for permission to do so by making the application at the city hall. The application shall set forth the name of the organization, the location of the intersection where such solicitation shall transpire and the length of time the proposed solicitation shall take place, not to exceed 48 consecutive hours. If the solicitation is to be done by a person under the age of 18 no such permit shall be issued unless such person shall have proper adult supervision as to be determined by the police chief. Any permit for the solicitation of funds shall be acquired prior to any actual solicitation and any further solicitation shall require an additional permit. Such permit shall be signed by the Police Chief or his designee.

Section 8. Required.

It shall be unlawful for any person to engage in business in the city as an itinerant vendor, merchant, peddler, or engage in soliciting without a permit issued by the Magnolia Permit Department during regular business hours at city hall.

Section 9. Waiver by city administrator.

The city administrator is hereby authorized to waive certain permitting requirements for good cause based upon such findings as the city council may determine in its sole discretion. No such waiver shall be arbitrary or discriminatory.

Section 10. Application.

Applicants for permits under this division must file with the special services division an application in writing on a form obtained from the Magnolia Permit Department which shall contain the following information:

- (a) Date of registration;
- (b) Name of registrant;
- (c) Driver's license number;
- (e) Date of birth;
- (f) Social security number;
- (g) Home address: legal and local;
- (h) Name, street address and telephone number of the organization or person represented, or through which orders to be solicited are cleared;
- (i) Nature of items or services to be sold or solicited;
- (j) Will payment or deposit be received in advance of final delivery;

- (k) Has registrant ever been convicted of a felony of any nature or any other crime of moral turpitude in this state or any other state; if so, give place, date, and crime of which convicted; and
- (l) Facts showing explicitly that the registrant is engaged in interstate commerce.
- (m) Full name, street address, date of birth and telephone number of each solicitor working under this permit (copy of each solicitor's driver's license/photo ID required);
- (n) Location where, and days on which, peddling or solicitation will occur, if approved;
- (o) The full name, street address and telephone number of each individual who will be directly in charge or control of the peddling or solicitation;
- (p) A statement to the effect that if the permit is granted, such permit will not be used as, or be represented to be, an endorsement by the city or any of its officers or employees;
- (q) All food related businesses must submit a copy of their health department permit issued by Montgomery County Health Department; and
- (r) Any other information that the city deems necessary for the administration of this article:
 - (i). The application must be signed by the applicant, if the person applying is an individual; if the applicant is a partnership, by the partner charged with disbursing funds solicited; if the applicant is a corporation or an association, by its officer charged with dispersing the funds solicited. The person 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.
 - (ii). Information provided by applicant is subject to verification by the police department.
 - (iii). Such application shall also show satisfactory written proof of the individual's authority to represent the company, association or partnership, when applicable.
 - (iv). The application shall be accompanied by all applicable fees, as established in section 18-11. No permit provided for by this division shall be issued until such fees have been paid by the applicant.
 - (v). The application shall be accompanied by an executed copy of a waiver of liability in favor of the city on a form provided by the city.
 - (vi). The application shall be accompanied by an insurance policy evidenced by a certificate of insurance signed by an agent authorized to bind coverage indicating that the applicant has obtained, at his sole expense, insurance coverage (1) that is written by an insurance company with an A- or better rating by AM Best and that is admitted and licensed to do business in the state; (2) that is in full force and effect for the duration of the permit period; (3) that provides at least \$1,000,000.00 of liability coverage per person and \$5,000,000.00 per occurrence, and \$100,000.00 for property damage and with no deductible; (4) that insures the applicant and all persons who will be soliciting; (5) that name the city, its officers, employees, and elected representatives as additional insured; (6) that provides that any insurance or self-insurance maintained by the city shall apply in excess of and not contribute with it; (7) that is written on an occurrence basis; and (8) that is otherwise acceptable to and approved by the city attorney.

Section 11. Fee.

(a) In addition to the \$30.00 processing fee, before any permit shall be issued under the provisions of this article, the applicant shall pay a fee, based upon the duration he desires to engage in business in the city, as follows:

- (i) Per day . . . \$ 5.00.

(b) Additionally, a \$10.00 fee for each individual solicitor is required each time a person or organization submits a permit application. The purpose of the \$10.00 fee is to defray the cost of providing the individual permits that are required to be worn on each individual solicitor's person. No application will be processed until the required fees are tendered to the city. Permit fees are nonrefundable and shall not be prorated.

Section 12. Denial.

(a) The City permit department may deny to a person a permit under this division because of a person's conviction of a felony or misdemeanor if the crime directly relates to the conduct of a peddler's business.

(b) In determining whether a criminal conviction directly relates to an occupation, the police department shall consider:

- (i) The nature and seriousness of the crime;
 - (ii) The relationship of the crime to the purposes for requiring a license to engage in the occupation;
 - (iii) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
 - (iv) The relationship of the crime to the ability, capability or fitness required to perform the duties and discharge the responsibilities of the permitted occupation;
 - (v) The evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
 - (vi) Other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the chief of police in the community where the person resides; and any other persons in contact with the convicted person; and
- (VII) It shall be the responsibility of the applicant to the extent possible to secure and provide to the permit department the recommendations of the prosecution, law enforcement and correctional authorities as required under this article; the applicant shall also furnish proof in such form as may be required by the permitting authority that he has maintained a record of steady employment and has supported his dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he has been convicted.

Section 13. Issuance.

Upon completion and presentation of the application and compliance with all processes and requirements of this Ordinance, the city shall issue a permit under this division to the applicant unless grounds for denial exist under section 12. Such permit shall contain the signature of the issuing city employee and shall show the name, address and kind of goods to be sold thereunder, the date of issuance, the expiration date of such permit and shall have attached a photograph of the permittee. A permanent record of all permits issued shall be kept on file at city hall.

Section 14. Transfer.

No permit issued under the provisions of this division shall be transferred or assigned.

Section 15. Expiration.

Every permit or license issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit or license be issued for a period of time in excess of 12 months.

Section 16. Exhibition.

It shall be unlawful for any itinerant vendor, merchant or peddler to fail to conspicuously display on or about their person the permit issued by the city. "Conspicuously displayed" shall mean displayed to the front and visible to whomever the permit holder is conversing with at all times they are engaged in a permitted activity. Failure to do so shall be punished by fine and/or revocation of permit as described in sections 17 and 19.

Section 17. Revocation.

- (a) Permits issued under the provisions of this division may be revoked by the city after notice and hearing, for any of the following causes:
 - (i) Fraud, misrepresentation or false statement contained in the application for permit;
 - (ii) Fraud, misrepresentation or false statement made in the course of carrying on his business as peddler;
 - (iii) Any violation of this ordinance, city ordinances or state law;
 - (iv) Conviction of any misdemeanor or any felony if the crime directly relates to the conduct of a peddler's business;

(v) Conducting the business of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety and general welfare of the public.

(b) Notice of hearing for the revocation of a permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, certified mail, return receipt requested, to the permit holder at his address given in the application for permit at least five days prior to the date set for hearing. A revocation for the reason enumerated in subsection (a)(iv) above shall be under the same guidelines mention in section 12.

Section 18. Appeal.

Any person aggrieved by the action of the police department with reference to the revocation of a permit under this department shall have the right to appeal to the city administrator or his designee. Such appeal shall be taken by filing with the city administrator or his designee, within 14 days after notice of the action complained of has been mailed to such person's address given in the application, a written statement setting forth fully the grounds for the appeal. The city administrator or his designee shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in section 17 for notice of hearing on revocation. The decision and order of the city administrator on such appeal shall be final and conclusive. Upon such revocation, such permit or license shall immediately be surrendered to the city secretary and failure to do so shall be a misdemeanor.

Section 19. Activities for purposes not set out in application and Prohibited Hours.

(a) It shall be unlawful for any person(s) to engage in activities or purpose other than that set out in the application upon which the permit is issued.

(b) Activities described in the definitions in Section 1(a) and (d) shall be conducted only on Monday through Saturday.

(b) Activities described in the definitions in Section 1(a) and (d) shall not be conducted (i) before 9:00am or (ii) after 5:00pm or sunset on any day, whichever is earlier. "Sunset" means the time of day identified by the National Weather Service as the time for sunset on that day in the city.

(c) No activities described in the definitions in Section 1(a) and (d) or any activities by any exempt groups or individuals listed under section 3 (excluding subsection (f)) shall be permitted between sunset and 9:00a.m. the following day.

(d) No activities identified in sections (a) & (c) above shall be permitted at any time on a Sunday, New Year's Day, July 4th, Labor Day, Memorial Day, Thanksgiving Day, Christmas Eve Day or Christmas Day

Section 20. Penalty for violation.

Any person, firm, partnership, corporation, association, agent or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not less than \$50.00 nor more than \$500.00 for each offense. Each and every hour that such violation shall continue shall be deemed to constitute a separate offense.

Section 21. Special Event Permit.

(a) Special event means an activity which makes a significant contribution to the cultural, economic, or social welfare of the city.

(b) Notwithstanding other provisions of this Code, the city secretary may issue a special event permit to enable the holder to sell or distribute services or goods on public property during special events.

(c) A special event permit shall be issued for one day only. Events lasting more than one day shall require a separate permit for each day. An applicant or his agent shall be issued no more than five special event permits during any 12-month period. The time and location for which the permit is in effect shall be transcribed on the permit.

(d) An applicant for a special event permit shall file with the city secretary a written application upon a form provided for that purpose.

(e) An applicant for, or the holder of, a special event permit shall pay as a fee for the permit, which fee shall be used as rental for the use of public property, the sum of \$25.00 per day.

(f) After inspection or investigation, the city secretary shall approve or deny an application for a special event permit. If such application is approved, the city secretary shall issue a special event permit which shall state on its face the name of the person to whom it is granted and the expiration date. The city secretary shall designate on such permit the location or locations in which the special event permit holder is allowed to do business.

(g) The holder of a special event permit who fails to comply with the ordinances of the city or who violates any applicable laws, ordinances, or regulations of the city shall have the special event permit immediately revoked and such holder shall immediately return such special event permit to the city secretary.

(h) Except for the permitting requirements, the applicant for a special event permit and/or the holder of a special event permit shall comply with all of the sections of this chapter.

Section 22. Repealing Clause.

City of Magnolia, Texas, Ordinance No. 30, originally adopted the 11th day of July, 1972, is hereby repealed. All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency, hereby repealed.


Section 23. Severability Clause.

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there is one or more parts.

Section 24. Compliance Clause and Effective Date.

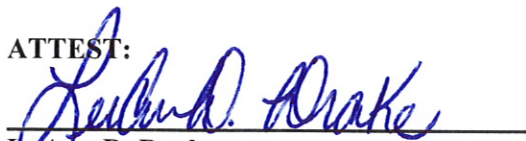
The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act. The Acting City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code at which time this Ordinance shall take effect.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF MARCH, 2009.



Jimmy W. Thornton, Jr.
Mayor, City of Magnolia

ATTEST:



LuAnn D. Drake
City Secretary

APPROVED:

Leonard V. Schneider, City Attorney

AFFIDAVIT OF PUBLICATION

BEFORE ME, the undersigned authority, on this day personally appeared,
Tracy Herron who on her oath stated:

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TION;

*Received & Filed
in the Office of*

MAR 20 2009

*City Secretary
City of Magnolia, Texas*

I am the Account Manager of the TOMBALL MAGNOLIA TRIBUNE a newspaper
published in Montgomery County, Texas and know the facts stated in this affidavit.
The attached matter is a true and correct copy of the publication of the citation
of which it purports to be a copy, as the same appeared in such newspaper in the
respective issues of:

3/16, 2009

_____, 2009

Tracy Herron
Tracy Herron, Account Manager

Subscribed and sworn to this 18th day of March, 2009

