

O R D I N A N C E

(Motion was made by Wayne Pinkard and seconded by  
Austin Karr that the following Ordinance be passed:.)

ORDINANCE NO. 91

AN ORDINANCE DEFINING AND PROHIBITING THE SALE BY ITINERANT MERCHANTS AND VENDORS, PROHIBITING THE SALE OF MERCHANDISE UPON OR FROM A TRUCK OR OTHER VEHICLE ON THE STREETS OF THE CITY, EXEMPTING THOSE ENGAGED WHERE SUCH SALES ARE FOR A CHARITABLE OF PHILANTHROPIC PURPOSE, PROVIDING FOR PENALTIES FOR THE VIOLATION OF NOT LESS THAN \$10 NOR MORE THAN \$200 FOR EACH OFFENSE AND DEFINING WHAT SHALL CONSTITUTE A SEPARATE OFFENSE; PROVIDING A SAVINGS CLAUSE AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT.

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

SECTION 1.

Exercise of Police Power

The entire Ordinance is and shall be deemed an exercise of the police power of the State of Texas and of the City of Magnolia, Texas, for the public safety, comfort, convenience and protection of the health, life, property and welfare of the City and citizens of the said City, and in accordance with the City's authority to regulate and provide for traffic safety on the streets of the CITY OF MAGNOLIA.

SECTION 2.

Definitions

A. Itinerant Vendor. The term "itinerant vendor" means and includes, and shall be construed to mean and include, all persons, as well as their agents and employees, who engage in the temporary or transient business in the City of selling, or offering for sale, any goods or merchandise, or exhibiting the same for sale, or exhibiting the same for the purpose of taking orders for the sale thereof, and who, for the purpose of carrying on such business, or conducting such business thereof, display, exhibit, sell, or offer for sale, such goods or merchandise upon or from a truck or other vehicle on the streets of the City, or who shall sell or offer for sale any goods or merchandise while upon the property of another, without the express written consent of the owner or occupant thereof; provided, however, the term "itinerant vendor" as defined herein, shall not include or be construed to include anyone engaged in interstate commerce or anyone upon whom the provisions

of the following sections would impose a direct and unlawful burden on interstate commerce.

B. Goods or merchandise. The phrase "goods" or "merchandise", as used in this Ordinance means and shall be construed to mean any personal property of any nature whatsoever.

C. Temporary. The word "temporary", as used in this Ordinance, means and shall be construed to mean any such business transacted or conducted in the City for which definite arrangements have not been made for the hire, rental or lease of premises for at least one month in or upon which such business is being operated or conducted.

#### SECTION 3.

##### Exemptions from Chapter

This Ordinance shall not apply to the sales of goods or merchandise where all of the proceeds therefrom are to be applied to any charitable or philanthropic purpose.

#### SECTION 4.

##### Sales of Goods or Merchandise on Public Property Prohibited

A. It shall be unlawful for any person to expose for sale or sell any goods or merchandise on any public sidewalk, public street, or other public property or to offer for sale or sell any goods, or merchandise to any person who is on a public sidewalk, public street or other public property.

B. It shall be unlawful for any person to expose for sale or sell any goods or merchandise while upon the property of another, without the express written consent of the owner or occupant thereof.

#### SECTION 5.

##### Penalty

Any person in violation of any provision of this Ordinance shall be guilty of a misdemeanor and on conviction shall be fined in any sum not less than \$10 nor greater than \$200, <sup>and</sup> ~~in~~ each and every day or fraction of a day during which this Ordinance or any part thereof, shall be violated, shall be deemed a separate offense and punishable as such.

SECTION 6.

Providing Savings Clause and  
Repealing Conflicting Ordinances

Each and every provision, paragraph, sentence and clause of this Ordinance has been separately considered and passed by the City Council of the CITY OF MAGNOLIA, TEXAS, and each separate provision would have been separately passed without any other provision, and if any provision hereof should be ineffective, invalid, or unconstitutional for any cause, it shall not impair nor effect the remaining portion nor any other part thereof, but the valid portion shall be in force just as if it had been passed alone and all Ordinances and parts of Ordinances in conflict herewith are hereby expressly repealed.

SECTION 7.

Providing for an Effective Date

This Ordinance shall become effective on the 10<sup>th</sup> day of November, 1981.

PASSED AND APPROVED THIS THE 10<sup>th</sup> day of November,

A. D. 1981.

CITY OF MAGNOLIA, TEXAS

ATTEST:

By: Cathy J. Luebert  
City Secretary

By: D. M. Boyd  
Mayor

APPROVED AS TO FORM AND CONTENT:

By: \_\_\_\_\_  
City Attorney