

ORDINANCE NO. 2018-02

AN ORDINANCE OF HUDSON OAKS, TEXAS AMENDING ARTICLE 4.06 "PEDDLERS AND SOLICITORS" OF THE HUDSON OAKS CITY CODE IN ITS ENTIRETY; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Hudson Oaks, Texas is a Type A general-law municipality located in Parker County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council previously adopted regulations regarding peddlers and solicitors in the City, codified as Article 4.06 "Peddlers and Solicitors" of the Hudson Oaks Code of Ordinance; and

WHEREAS, the City Council has determined that it is necessary to revise multiple provisions of Article 4.06, and therefore desires to repeal Article 4.06 in its entirety and adopt a new Article 4.06 regulating peddlers and solicitors in the City.

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

SECTION 1.

That Article 4.06 "Peddlers and Solicitors" of the Hudson Oaks Code of Ordinances is hereby repealed in its entirety and is replaced with the following new Article 4.06 "Peddlers and Solicitors" to read as follows:

"ARTICLE 4.06 PEDDLERS AND SOLICITORS

Division 1. Generally

Sec. 4.06.001 Definitions

The following words, terms, and phrases, and their derivations, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contribution. Includes the words "alms," "money," "subscription," and "property" or any donations under the guise of a loan of money or property.

Peddler. Any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the goods, wares, merchandise, or property for sale. This definition also includes any person who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme to evade the provisions of this article.

Peddling. Includes all activities ordinarily performed by a peddler as indicated under the definition of "peddling" in this section.

Person. A natural person or any firm, corporation, association, club, society or other organization.

Solicitation. Includes all activities ordinarily performed by a solicitor as indicated under the definition of "solicitor" in this section.

Solicitor. Any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for future delivery, or for services to be performed in the future. This definition also includes any person who, without invitation, goes upon private property to request contribution of funds or anything of value.

Sec. 4.06.002 Penalty; civil remedies

(a) Violation of any of the provisions of this article shall be treated as an infraction, and shall, upon conviction, be punishable by a fine as provided in section 1.01.009 of this code.

(b) In addition to any criminal enforcement, the city or any individual may pursue any available civil remedies deemed appropriate and necessary.

Sec. 4.06.003 Claims of exemption

Any person claiming to be legally exempt from the regulations set forth in this article, or from the payment of a permit fee, shall cite to the city secretary the statute or other legal authority under which exemption is claimed and shall present to the city secretary proof of qualification.

Sec. 4.06.004 Entry upon signed premises

It shall be unlawful for any person, whether licensed or unlicensed, while conducting the business of a peddler or solicitor, to enter upon any residential premises in the city where the owner, occupant or person legally in charge of the premises has posted, at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Peddlers," "No Solicitors," or words of similar import.

Sec. 4.06.005 Hours of operation

No person, while conducting the activities of a peddler or solicitor, whether licensed or unlicensed, shall enter upon any private property, knock on doors or otherwise disturb persons in their residences between the hours of 9:00 p.m. and 9:00 a.m.

Sec. 4.06.006 Solicitations and sales in certain locations

(a) It shall be unlawful for any person to distribute, sell or offer for sale or distribution any goods, wares, merchandise or service, or solicit a ride, employment, donations, contributions or business within a roadway, or on any median or traffic island within the right-of-way of any street or highway within the city.

(b) It shall be unlawful for any person to distribute or sell or offer for sale or distribution any goods, wares or merchandise, or solicit a ride, employment, donations or contributions by a direct transaction or exchange with the occupant of any vehicle stopped or traveling on any street or highway within the city.

(c) An offense under this subsection occurs when the offer, solicitation or distribution is made regardless of whether a transaction is completed.

(d) For purposes of subsection (a), "roadway" is defined as that portion of a street or highway designed, improved or ordinarily used for vehicular travel, typically delineated by curbs, edgelines or the edge of pavement.

Secs. 4.06.007–4.06.030 Reserved

Division 2. Permit

Sec. 4.06.031 Required; exemptions

It shall be unlawful for any person eighteen (18) years of age or older to engage in peddling or solicitation activities within the city without first obtaining a permit issued by the office of the city secretary; provided, however, that the following are exempted from the provisions of this section:

- (1) Any solicitation made upon premises owned or occupied by an organization upon whose behalf the solicitation is made;
- (2) Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation; or

- (3) Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable person.

Sec. 4.06.032 Permit for sponsoring juvenile peddlers or solicitors

- (a) No person under the age of eighteen (18) shall be permitted to engage in peddling or solicitation except as provided in this section.
- (b) A permit shall be obtained by a sponsoring person, company or organization for the conduct of any peddling or solicitation activities involving, in whole or in part, a sales force of one (1) or more persons under eighteen (18) years of age.
- (c) The sponsor shall be responsible for supervising and controlling the conduct of all persons, including juveniles, peddling or soliciting under the sponsor's permit.
- (d) The sponsor shall provide to each individual in its sales force a badge or other easily readable form of identification which identifies the name of the sponsor and the name of the individual. The sponsor shall require all individuals in its sales force to wear such identification so that it is clearly visible at all times when the individuals are peddling or soliciting.
- (e) The sponsor shall comply with the requirements of the state Youth Employment Act.
- (f) A person wishing to comply with this section by getting a permit for sponsoring juveniles must make application at least 48 hours before the permit is needed.

Sec. 4.06.033 Application

Every person subject to the provisions of this article shall file with the city secretary an application in writing on a form to be furnished by the office of the city secretary, which shall provide the following information:

- (1) Proof of age, address and identification of the applicant, to be provided through the applicant's driver's license, articles of incorporation (for sponsors), or other legally recognized form of identification.
- (2) A brief description of the business or activity to be conducted.
- (3) The hours and location for which the right to peddle or solicit is desired.
- (4) If employed, the name, address and telephone number of the employer, or, if acting as an agent, the name, address and telephone number of the principal who is being represented, with credentials in written form establishing the relationship and the

authority of the employee or agent to act for the employer or principal, as the case may be.

(5) A statement as to whether the applicant has been convicted of a felony, misdemeanor or ordinance violation (other than traffic violations), the nature of the offense or violation, the penalty or punishment imposed, the date when and place where such offense occurred, and other pertinent details thereof.

(6) Proof of possession of any license or permit which, under federal, state or local laws or regulations, the applicant is required to have in order to conduct the proposed business.

(7) Two (2) photographs of the applicant which shall have been taken within sixty (60) days immediately prior to the date of filing of the application. The photographs shall measure 1-1/2 inches by 1-1/2 inches and show the head and shoulders of the applicant in a clear and distinguishing manner.

(8) The state driver's license number of all persons who will operate a motor vehicle for the permittee must be provided.

(9) Proof of liability insurance (as required by state law) must be provided at the time of request for this permit. Such proof shall be in a format permitting retention by the city secretary.

(10) A copy of a limited sales tax permit issued by the state, or proof that the goods sold are not subject to such sales tax.

(11) A statement of the type of goods or wares to be sold.

(12) The fingerprints of each agent selling within the city.

(13) A copy of a current health certificate if merchandise of edible quality is to be sold; provided, however, this shall not apply to the sale of candy, nuts or other edibles prepared and packaged by a nationally recognized manufacturer or a state manufacturer meeting standards imposed by state and local health codes, if such packages are unbroken.

Sec. 4.06.034 Fee

At the time the application is filed with the department, the applicant shall pay a fee to cover the cost to the city of processing the application and investigating the facts stated therein. The application fee shall be ten dollars (\$10.00) for each solicitor or peddler and shall not be refundable.

Sec. 4.06.035 Issuance

(a) Upon receipt of an application, the city secretary, or authorized representative, shall review the application. Within thirty days of receipt of the application, the city secretary shall approve the application and upon payment of the prescribed fee, issue the permit to the applicant unless a grounds for denial exists under section 4.06.036.

(b) The permit shall show the name, address and photograph of the permittee, the class of permit issued, the kind of goods or services to be sold or delivered, the date of issuance, and the length of time that the permit shall be in effect. The permit shall also show the permit number and identifying description of any vehicle to be used in carrying on the business for which the permit is issued.

(c) A record of all permits issued shall be maintained by the department for a period of at least two (2) years.

Sec. 4.06.036 Denial

(a) Upon the city secretary's review of the application, the city secretary shall refuse to issue a permit to the applicant under this article for any of the following reasons:

(1) An investigation reveals that the applicant falsified information on the application;

(2) The applicant has been convicted of a felony, misdemeanor or ordinance violation involving a sex offense, trafficking in controlled substances, or any violent acts against persons or property, such conviction being entered within the five (5) years preceding the date of application;

(3) The applicant is a person against whom a judgment based upon, or conviction for, fraud, deceit or misrepresentation has been entered within the five (5) years immediately preceding the date of application;

(4) There is no proof as to the authority of the applicant to serve as an agent to the principal; or

(5) The applicant has been denied a permit under this article within the immediate past year, unless the applicant can and does show to the satisfaction of the city secretary that the reasons for such earlier denial no longer exist.

(b) The city secretary's disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified that this application is disapproved and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form, or at the applicant's last known address. The notice of denial shall be mailed within thirty (30) days of the receipt of the application.

Sec. 4.06.037 Expiration

All permits issued under the provisions of this article shall expire one (1) year from the date of issuance.

Sec. 4.06.038 Identification badge

At the same time the permit is issued, the city secretary shall issue to each permittee a badge, which shall be worn by the permittee in such a way as to be conspicuous at all times while the permittee is soliciting or peddling in the city.

Sec. 4.06.039 Exhibition

Every person required to obtain a permit under the provisions of this article shall exhibit the permit when requested to do so by any prospective customer or peace officer.

Sec. 4.06.040 Transfer

It shall be unlawful for any person other than the permittee to use or wear any permit or badge issued under the provisions of this article.

Sec. 4.06.041 Grounds for revocation or suspension

Any permit issued under this article may be revoked or suspended by the city secretary, after notice and hearing, for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the application for a permit;
- (2) Fraud, misrepresentation or false statement made by the permittee in the course of conducting solicitation or peddling activities;
- (3) a plea or conviction of a crime described in section 4.06.036(a)(2);
- (4) a judgment involving a matter described in section 4.06.036(a)(3);
- (5) the type of solicitation activity requires a bond, and the bond requirements have not been complied with or the bond has expired or is no longer valid; or
- (6) a violation of any of the regulations set forth in this article.

Sec. 4.06.042 Revocation procedure

Notice of a hearing for revocation or suspension of a permit issued under this article shall be provided in writing and shall set forth specifically the grounds for the proposed revocation or suspension and the time and place of the hearing. Notice shall be mailed, postage prepaid, to the permittee at the address shown on the permit application or at the last known address of the permittee.

Sec. 4.06.043 Appeals

- (a) Any person aggrieved by the action or decision of the city secretary to deny, suspend or revoke a permit applied for under the provisions of this article shall have the right to appeal such action or decision to the city administrator within fifteen (15) days after the notice of the action or decision has been mailed to the person's address as shown on the permit application form, or to his last known address.
- (b) An appeal shall be taken by filing with the city secretary a written statement setting forth the grounds for the appeal.
- (c) The city secretary shall transmit the written statement to the city administrator within ten (10) days of its receipt and the city administrator shall set a time and place for a hearing on the appeal.
- (d) A hearing shall be set not later than twenty (20) days from the date of receipt of the appellant's written statement.
- (e) Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of action or decision.
- (f) The decision of the city administrator on the appeal shall be final and binding on all parties concerned."

SECTION 2. CUMULATIVE

This Ordinance shall be cumulative of all provisions of ordinances and the Code of the City of Hudson Oaks, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and Code, in which event the conflicting provisions of such ordinances and Code are hereby repealed.

SECTION 3. SEVERABLE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of 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 and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4.
PENALTY**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than \$2000.00 for all violations involving zoning, fire safety, or public health and sanitation, including dumping or refuse, and shall be fined \$500.00 for all other violations of this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 5.
SAVINGS**

All rights and remedies of the City of Hudson Oaks are expressly saved as to any and all violations of the provisions of the Hudson Oaks City Code or any other ordinances regulating solicitation that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6.
PUBLICATION**

The city secretary of the City of Hudson Oaks is hereby directed to publish the caption, penalty clause, publication clause and effective date clause of this ordinance one time in the official newspaper of the City, as authorized by Section 52.011 of the Local Government Code.

**SECTION 7.
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 22nd DAY OF FEBRUARY, 2018.



A handwritten signature in blue ink, appearing to read 'Tom Fitzpatrick', is written over a horizontal line.

Tom Fitzpatrick
Mayor Pro-Tem

A handwritten signature in blue ink, appearing to read 'Shelley Scazzero', is written over a horizontal line.

Shelley Scazzero
City Secretary