

CITY OF DOUBLE HORN, TEXAS

PEDDLER ORDINANCE NO. 2023-ORD038

AN ORDINANCE OF THE CITY OF DOUBLE HORN, TEXAS, ADOPTING REGULATIONS RELATED TO SOLICITORS, PEDDLERS, AND CANVASSERS AND CREATING LICENSING REQUIREMENTS OF SAME; PROVIDING DEFINITIONS; LICENSE REQUIREMENTS, AND FEES; PROVIDING FOR SEVERABILITY, REPEALER, PENALTIES AND AN EFFECTIVE DATE.

WHEREAS, the City Council seeks to promote the health, safety, and general welfare within the City of Double Horn, Texas ("City") when peddlers, solicitors, and canvassers engage in door-to-door communications with its citizens; and

WHEREAS, pursuant to Texas Local Government Code Section 215.031, the City has authority to license, tax, suppress, prevent, or otherwise regulate hawkers, peddlers, and pawnbrokers and pursuant to Section 215.033 to charge fees; and

WHEREAS, pursuant to Texas Local Government Code Section 51.00, the City has general authority to adopt an Ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, The First Amendment protects a peddler's, solicitor's, and canvasser's right to engage in certain door-to-door communications and also protects a resident's right to choose to engage in said communications; and

WHEREAS, The City has an interest in protecting its citizens' interests in privacy, crime prevention, and protection from fraud; and

WHEREAS, The City seeks to adopt an ordinance that uses the least restrictive means to balance First Amendment protections with the protection of its citizens' interests.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Double Horn, Texas:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. PEDDLERS, SOLICITORS, CANVASSERS AND OTHER VENDORS

A. Definitions

For the purpose of this article, the following words as used herein shall be considered to have the meaning herein ascribed thereto:

Canvasser. A person who attempts to make personal contact with a resident at his/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, issues, or candidate, including presenting petitions for signature, directly or indirectly, 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 noncommercial event or service.

Itinerant vendor or hawker. 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. A temporary business is one that continues for forty-five days or less; and exists whether solicitation is from a stand, vehicle, or freestanding.

Peddler. A person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service.

Residence. Includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Solicitor. A person who attempts to make personal contact with a resident at his/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.

B. Notice regulating soliciting.

- (1) Every resident desiring to prohibit peddlers, solicitors, or canvassers from entering upon their property to seek an audience with them shall install a sign upon or near the main entrance door to the residence indicating the determination by the occupant to not be disturbed by peddlers, solicitors, or canvassers, using phrases such as "NO SOLICITORS INVITED."

C. Duty of peddlers, solicitors, and canvassers.

(1) It shall be the duty of every peddler, solicitor, and canvasser upon going onto any premises in the city upon which a residence as herein defined is located, to first examine the notice provided for in this article, if any is attached, and be governed by the statement contained on any notice. If the notice indicates that the residents do not wish to be disturbed, then the peddler, solicitor, or canvasser, whether licensed or not, shall immediately and peacefully depart from the premises and shall not leave any material, merchandise or literature whatsoever on the premises.

(2) Any peddler, solicitor, or canvasser on private property, or who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the property owner or occupant.

D. Uninvited visitation prohibited.

It is hereby declared to be unlawful and shall constitute a nuisance for a peddler, solicitor, or canvasser to go upon any premises and ring the doorbell upon or near any door, or to knock or otherwise create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant, in defiance of the notice exhibited at the residence in accordance with the provisions of this Ordinance.

E. Time limit on soliciting, peddling, or canvassing.

It is hereby declared to be unlawful and shall constitute a nuisance for any person, whether registered under this article or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof prior to 9:00 a.m. or after 8:00 p.m. of any day, except when the peddler, solicitor, or canvasser has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any property.

F. Distribution of handbills and commercial flyers

In addition to the other regulations contained herein, a solicitor or canvasser leaving handbills or commercial flyers in the city shall observe the following regulations:

- (1) 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.
- (2) No handbill or flyer shall be left at or attached in any way to a vehicle.
- (3) Handbills or flyers that are left on private property must be placed in such a manner as to prevent such handbill or flyer from being blown about. Mailboxes may not be used for such purposes.

(4) No handbill or flyer shall be placed at or attached to any privately owned property in a manner that causes damage to such privately owned property.

G. Solicitation in public right-of-way

(1) A person may solicit in or upon the public right-of way, except those areas prohibited in this Ordinance, upon issuance of a License by the City.

(2) A person may conduct solicitation in or upon the public right-of-way, except those areas prohibited in this Ordinance, if the solicitor has obtained a License or who is a member of an organization that has obtained a License.

(3) Solicitation for any purpose in the public right-of-way shall be conducted only during the hours of daylight, specifically one-half (1/2) hour after sunrise and one-half (1/2) hour before sunset.

(4) It shall be unlawful for a person younger than eighteen (18) years of age to solicit in the public right-of-way without a parent or guardian in attendance with the person younger than eighteen (18).

(5) It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway unless the solicitor has been granted authorization pursuant to section 552.0071 of chapter 552 of the Texas Transportation Code.

(6) It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway of residential streets so that their presence impedes the flow of traffic.

(7) It shall be unlawful for a person to solicit in the public right-of-way that is within 1,000 feet of any public or private elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when such school is in session. The measurement of the distance shall be made from the nearest property line of the public or private elementary or secondary school.

(8) The term public right of way does not include any streets owned and maintained by the Double Horn Property Owners Association.

H. Fee

The city council shall by resolution or ordinance set a fee for the issuance of Licenses.

I. Penalty

Any person who violates or fails to observe any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00). Every day the violation continues and every occurrence or the doing of any act or thing prohibited, or the neglect or refusal to do any act or thing required by this Ordinance, shall constitute a separate offense. It shall not be necessary for the complaint to allege or for proof to be made that the act was knowingly done, nor shall it be necessary for the complaint

to negate any exception contained in this article concerning any prohibited act, but any such exception made herein may be urged as defense by any person charged by such complaint.

J. Enforcement

In the event that a person who is issued a License violates the terms of the License or this Ordinance, the City may revoke the License.

3. LICENSE

A. License Required. Except as otherwise set out in this Ordinance, no person shall act as a peddler, canvasser or solicitor, without first obtaining a License in accordance with this Ordinance. Canvassing activities do not require a license.

B. Exceptions

(1) This Ordinance shall not apply to a federal, state or local government employee or a utility employee in the performance of his/her duty for his/her employer.

(2) This Ordinance shall not apply to students who are enrolled in a Marble Falls Independent School District school or a private school and are selling or soliciting under the direction and with the approval of the governing board of the school district or private school, provided such persons are supervised by a person 18 years or older and provided they respect the city's "no visit" list.

(3) Lemonade Stands, Boy Scout product or Girl Scout cookie sales or other student-oriented sales or stands, if conducted on private property with the permission of the property owner.

C. Application

(1) Any person or organization may apply for one or more peddler or solicitors Licenses by completing an application form at City Hall during regular office hours.

(2) The peddler license shall be issued promptly after application, but in all cases within three (3) days of completion of an application, unless it is determined within that time that:

- (a) The applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years;
- (b) Any statement upon the application appears to be false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

D. Contents of Application.

(1) The applicant (person or organization) shall provide the following information:

- (a) Name of applicant.
- (b) Number of peddler licenses required.

- (c) The name, physical description, and photograph of each person for which a card is requested. In lieu of this information, a driver's license, state identification card, passport, or other government-issued identification card (issued by a government within the United States) containing this information may be provided, and a photocopy taken.
- (d) The permanent and (if any) local address of the applicant.
- (e) The permanent and (if any) local address of each person for whom a License is requested.
- (f) A brief description of the proposed activity related to this peddler or solicitors' license. (Copies of literature to be distributed may be substituted for this description at the option of the applicant).
- (g) Date and place of birth for each person for whom a card is requested.
- (h) A list of all misdemeanor and felony convictions of each person for whom a license is requested for the seven years immediately prior to the application.
- (i) The motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used by each person for whom a card is requested.
- (j) If a License is requested for a peddler:
 - (A) The name and permanent address of the business offering the event, activity, good, or service (i.e., the peddler's principal).
 - (B) A copy of the principal's sales tax license as issued by the State of Texas, provided that no copy of a license shall be required of any business which appears on the city's annual report of sales tax payees as provided by the Texas Comptroller's Office.
 - (C) The location where books and records are kept of sales which occur within the City and which are available for city inspection to determine that all city sales taxes have been paid. (11) If a license is requested for a solicitor:
 - (D) The name and permanent address of the organization, person, or group for whom donations (or proceeds) are accepted.
 - (E) The web address for this organization, person, or group (or other address) where residents having subsequent questions can go for more information.
- (k) Any other information the applicant wishes to provide, perhaps including copies of literature to be distributed, references to other municipalities where similar activities have occurred, etc.

(l) All statements made by the applicant upon the application or in connection therewith shall be under oath.

(m) The City Secretary shall cause to be kept in the city offices an accurate record of every application received and acted upon together with all other information and data pertaining thereto and all Licenses issued under the provisions of this Ordinance, and of the denial of applications.

(n) No License shall be issued to any person:

(A) Who has been convicted of the commission of a felony or a misdemeanor involving moral turpitude under the laws of the state or any other state or federal law of the United States;

(B) Who has been convicted of a violation of any of the provisions of this Ordinance; or,

(C) Who has had a License issued hereunder previously revoked as herein provided.

(o) During the time following the submission of an application for one or more 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 three days in **Section C. Applications**, the identification card will nonetheless be issued, subject, however, to administrative revocation under the **Enforcement Section or Section H** below upon completion of the investigation.

E. Bond required of Itinerant Vendors, Hawkers, and Peddlers

The application shall be accompanied by a bond in the penal sum of one thousand dollars (\$1,000.00), signed by the applicant and signed, as surety, by a surety company authorized to do business in the state, conditioned for the final delivery of goods, wares, merchandise, and services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of said bond at the time of delivery, or that may be discovered by such purchaser or customer within thirty (30) days after delivery, and which bond shall be for the use and benefit of all persons, firms, or corporations that may make any purchase or give any order to the principal on said bond, or to an agent or employee of the principal. Provided that, in case the applicant is a person, firm, company, partnership, corporation or association engaging in commercial solicitation through one or more agents or employees, such persons, firm, company, partnership, corporation or association shall be required to enter into only one bond, in the sum of five thousand dollars (\$5,000.00) as above required, which bond shall be made to cover the activities of all its agents or employees up to a maximum of five agents or employees. The foregoing notwithstanding, no bond shall be required of any nonprofit or charitable organization.

F. Display

Each license shall be worn on the outer clothing of the individual or otherwise displayed, so to be reasonably visible to any person who might be approached by said person.

G. Validity

Unless revoked, a license shall be valid within the meaning of this Ordinance for a period of ninety (90) days from its date of issuance, except that a License for an itinerant vendor or hawker shall be valid for a period of forty-five (45) days from its date of issuance. The License shall state the expiration date thereof.

H. Revocation and Appeal

(1) Grounds. Any License issued hereunder shall be revoked if the holder of the License violates any of the provisions of this Ordinance, or has made a false statement in the application, or otherwise becomes disqualified for the issuance of a License under the terms of this Ordinance.

(2) Appeal. The Licensee shall have ten (10) days from the date of revocation or denial in which to file notice of appeal to the City Council from the order denying or revoking the License. The applicant shall have at his or her option an appeal of the denial of his or her application before the City Council at its next regular meeting. After holding the hearing of the revocation or denial, the City Council shall by majority vote either sustain the action or issue an order reinstating the License. In the event of the filing of an appeal from a revocation issued under the provisions of this section, then, until such appeal has been determined by the City Council, such revocation order shall remain in place.

4. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

5. REPEALER

All Ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

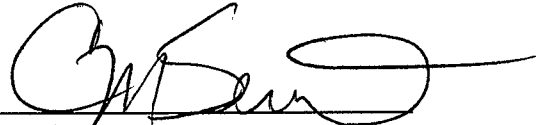
6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication as provided for by law.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, and Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 14th day of September 2023, by the City Council of the City of Double Horn, Texas.



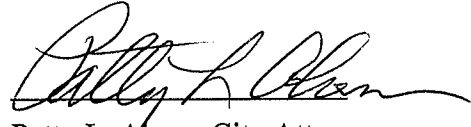
Cathy Sereno, Mayor

ATTEST:



Karen Maxwell, City Secretary

APPROVED AS TO FORM:



Patty L. Akers, City Attorney