

CITY OF AUSTIN, LONOKE COUNTY, ARKANSAS

ORDINANCE No. 09-2012

AN ORDINANCE REPEALING AUSTIN ORDINANCE No. 1-91; ESTABLISHING RULES AND REGULATIONS FOR ITINERANT MERCHANTS, SOLICITORS, AND VENDORS IN THE CITY OF AUSTIN, ARKANSAS; AND FOR OTHER PURPOSES.

WHEREAS, an appropriate ordinance concerning itinerant merchants, solicitors, and vendors in the City of Austin is necessary; and,

WHEREAS, because a regulation in the Austin Municipal Code is needed to address particular issues and problems with itinerant merchants and vendors in order to insure equality of opportunity while providing for the needs, health, and safety of the citizens of Austin, the following ordinance shall be adopted:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN, ARKANSAS, THAT:

**SECTION ONE:** Austin Ordinance No. 1-91 is repealed in its entirety.

**SECTION TWO: Purpose.**

The purpose of this Ordinance is to: protect against criminal activity, including burglary and fraud; minimize unwelcome disturbances to citizens and their privacy; insure equality of opportunity for itinerant peddlers, merchants, and vendors of merchandise and services and solicitors of books sales and magazine subscriptions; establish requirements for such merchants to be licensed to conduct business within the City; and, preserve the public health, safety, and welfare.

**SECTION THREE: Definitions.**

For purposes of this Ordinance, the term "Itinerant Merchant, solicitor, or Vendor" means any business, entity, individual, and/or party not conducting business in or from a permanent location upon private property (owned or leased) within the City limits who goes upon any private residence and/or business within the City, not having been invited by the occupant thereof, for the purpose of selling and/or taking orders for goods, merchandise, books, magazines, or personal property of any nature. This definition also includes any person who makes deliveries to purchasers of any of the above.

#### **SECTION FOUR: Permit Requirements and Exemptions**

It shall be unlawful for any person to engage in itinerant peddling, soliciting, or vending within the City of Austin without first obtaining a permit issued by Austin City Hall.

All solicitations, sales, and activity must occur within the hours of 9:00 a.m. until 6:00 p.m., Monday through Friday. Further, all itinerant merchants, solicitors, or vendors will conduct their business in compliance with all applicable Austin ordinances, emphasizing those applicable to health and safety (i.e., health code, fire and safety provisions, setback requirements, etc.).

Exceptions will be made for those soliciting on behalf of a local charitable, educational, political, or religious entity or event.

#### **SECTION FIVE: Permit Application.**

Every person subject to the provisions of this Ordinance shall file with Austin City Hall an application on a form furnished by the Department the following information:

- (1) Proof of age, address, and identification of Applicant, as verified by the Applicant's driver's license, articles of incorporation (if a corporation), or other legally recognized form of identification;
- (2) Brief description of the business or activity to be conducted;
- (3) Hours and locations in which solicitation will occur;
- (4) If employed or acting as an agent, the name, address, and telephone number of the employer/principal, with appropriate credentials in written form verifying said relationship;
- (5) A statement verifying whether or not Applicant has been convicted of a felony, misdemeanor, or ordinance violation (other than traffic offenses), the nature of the offense, 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 law, Applicant is required to have in order to conduct the proposed business or which would exempt Applicant from the licensing requirements of this Ordinance; and,

(7) Submission of or to a photograph of Applicant to be maintained by City Hall.

**SECTION SIX: Bond Requirements.**

Applicants requiring deposits, taking orders requiring payment (C.O.D.), or who require a contract financing the sale of merchandise or services for future delivery or performance shall furnish to the Department a bond in an amount equal to Twenty five Percent (25%) of Applicant's gross sales during the previous calendar year or Two Thousand Five Hundred Dollars (\$ 2,500.00), whichever is greater.

**SECTION SEVEN: Identification.**

At the time the Permit Application is submitted, Applicant shall submit to Austin City Hall a photo badge or identification paper which shall be worn, carried, or displayed in such a way as to be conspicuous at all times while Applicant is working in the City. The badge or identification card must display the name of the Applicant (as it appears on the Application), the company or entity represented, and the complete address and/or City and State of the Applicant/company's permanent location. Badges are not transferable and must be provided for each representative.

**SECTION EIGHT: Review and Permit Issuance.**

Upon receipt of an application, City Hall shall review the application in a timely manner under the terms of this Ordinance to ensure the protection of the public health, safety, and general welfare. If the Department finds the application satisfactory, the reviewing party must endorse approval on the application and shall, upon payment of the prescribed fees and costs, issue the permit to Applicant.

Permit forms shall show the permit number, name, address, and telephone number of Applicant, the nature of merchandise or services to be sold or provided, the date of issuance, hours of authorized operation, length of time that the permit shall be in effect, and the vehicle license number of any vehicle(s) to be used in conducting the business authorized by the permit. The original (or a photographic copy thereof) of the Permit shall be with Applicant at any time business is conducted within the City limits. Further, the Department will maintain a copy of the permit and its attachments for a period of no less than

three (3) years. Attached to the Department's copy of the permit shall be a photograph of Applicant and a copy of the badge(s) presented by Applicant.

**SECTION NINE: Denial of Permit.**

Upon review of an application, the City Hall may refuse to issue a permit under this Ordinance for the following:

- (1) Location and/or time of solicitation would endanger the safety and welfare of the itinerant merchants, solicitors, or the public;
- (2) Information or an investigation reveals false or misleading information was provided on the application;
- (3) Applicant's conviction of a felony, misdemeanor, or violation involving a sex offense, controlled substance distribution offense, violent acts against person or property, or violation of another municipality's provisions regarding itinerant merchants/solicitation, such conviction being entered within the preceding five (5) years;
- (4) Applicant is a person against whom a judgment based upon, or conviction for, fraud, deceit, or misrepresentation has been entered within the preceding five (5) years;
- (5) No proof that Applicant has the authority to serve as an agent/employee of the company/principal represented;
- (6) Applicant's denial of such a permit in this or any other municipality within the preceding two (2) years, unless Applicant can and does show to the satisfaction of the Department that the reasons for such earlier denial no longer exist; or,
- (7) Any other articulate and legitimate reason that directly supports the purposes of this Ordinance as stated herein.

**SECTION TEN: Permit Costs and Expiration.**

All permits issued under the provisions of this Ordinance shall be valid for a period of 1 calendar day(s), with issuance not to exceed 5 business days. Permits shall be available for 1 day(s) at a cost of \$25.00 per day. Additional permits can be obtained at a fee of \$25.00 per day up to a maximum of a 5 day permit at a cost of \$125.00.

**SECTION ELEVEN: Solicitation on Private Property.**

It shall be unlawful for any person, whether licensed or unlicensed, while conducting the business of a peddler, itinerant merchant, or solicitor, to enter upon any residential and/or commercial 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 point of entry to the principal building on the premises, a sign bearing words to the effect of "No Solicitors/Peddlers."

**SECTION ELEVEN: Exclusions.**

Local civic, non-profit (i.e., charitable), educational, political, and religious organizations shall be exempt from the terms of this Ordinance, with the exception that no such solicitations will occur from 7:00 p.m. to 9:00 a.m. CST.

**SECTION TWELVE: Enforcement.**

City Hall, by and through the Code enforcement office (or his designated representative), and the Austin Police Department are hereby empowered to administer the provisions of this Ordinance and to revoke any such permit when deemed appropriate

It shall be the responsibility of the Code Enforcement Office to insure that each entity seeking to do business in the City is registered and/or licensed when necessary with appropriate government entities and is sufficiently licensed to collect any applicable sales taxes.

**SECTION THIRTEEN: Permit Revocation.**

Any permit issued hereunder may be revoked or suspended by the City Engineer (or his designated representative) after notice and hearing for any of the following reasons:

- (1) Fraud, misrepresentation, or false statement(s) made in the application for a Permit;
- (2) Fraud, misrepresentation, or false statement(s) made by the permittee during the course of conducting business;
- (3) Conducting business activities contrary to the provisions contained in the permit; and/or,

(4) Conducting peddling, solicitation, or business activities in such a manner as to create a public nuisance, constitute a breach of the peace, or endanger the health, safety, or general welfare of the public.

**SECTION FOURTEEN: Notice and Hearing.**

Written notice of a hearing for revocation of a permit issued under this Ordinance shall be provided and shall set forth specifically the grounds for proposed revocation, together with the date, time, and place of said hearing. Notice shall be mailed, postage prepaid, to Permittee at the address shown on the permit application or as updated by Permittee.

At the hearing, City Hall (or his designated representative) shall present information gathered in support of the grounds for revocation of said permit. Permittee shall then be given the opportunity to present information or materials in support of its position regarding the permit.

Upon conclusion of the hearing, City Hall shall issue, in writing, a decision regarding the permit status. Such a statement shall be provided to Permittee by mail, postage prepaid, to the address shown on the permit application.

**SECTION FIFTEEN: Appeals.**

Any person aggrieved by the action or decision of City Hall (and/or his designated representative) to deny, suspend, or revoke a permit applied for under the provisions of this Ordinance shall have the right to appeal such action or decision to the Mayor's Office (or his designated representative) within Fifteen (15) days of written notice of said decision.

Any appeal shall be submitted in written form to the Mayor's Office stating the grounds for such an appeal. The Mayor's Office shall then receive a packet of information from City Hall regarding the action taken regarding this permit.

The Mayor's Office shall set a hearing no later than Twenty (20) days from the date of receipt of Appellant's written statement. Written notice of the date, time, and place of said hearing shall be mailed to Appellant, postage prepaid, to the mailing address provided on the Permit.

At said hearing, the Mayor (or his designated representative) shall allow Appellant to present information and materials relevant to the action taken against said permit. If necessary, the Mayor shall receive information and materials from the City Hall regarding the permit in question.

Upon due consideration, the Mayor shall issue a written notice providing his decision regarding the Permit in question within ten (10) days of said hearing. Said notice shall be mailed, postage prepaid, to Permittee at the address on the permit.

The decision of the Mayor's Office (or his designated representative) shall be final and is binding on all parties concerned.

**SECTION SIXTEEN: Penalties.**

A business, entity, individual, and/or responsible party who violates any provision of this Ordinance shall be subject to arrest and/or issuance of a citation or affidavit for arrest for said violation(s) and brought before the Austin District Court. Any such party found guilty of such a violation shall be fined no less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00). Each violation of any provision of this Ordinance shall constitute a separate offense.

**SECTION SEVENTEEN: Severability.**

The provisions of this Ordinance are declared to be severable. If any clause, phrase, section, and/or sentence of this Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining clauses, phrases, sections, and/or sentences contained herein. It is specifically noted that the legislative intent provides that this Ordinance shall remain in full force and effect notwithstanding the validity/invalidity of any part.

**SECTION EIGHTEEN: Emergency.** Whereas, the foregoing is of great importance to the City of Austin, Arkansas, and this Ordinance being necessary for the immediate protection of the public health and safety, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage.

Passed:

Date:

Approved:

  
Mayor Bernie Chamberlain