

**ORDINANCE NO. 857/08/10**

**AN ORDINANCE REGULATING SOLICITING AND PEDDLING, AND REPEALING  
ORDINANCE NO. 776/04/02**

BE IT ORDAINED by the Mayor and Board of Aldermen of the City of Brownsville as follows:

**SECTION I.**

The Code of Ordinances of the jurisdiction is hereby amended by repealing Ordinance Number 776/04/02 and the following is adopted in its place:

**SECTION II. DEFINITIONS**

1. Definitions. For purposes of this Ordinance, the following words shall have the following meanings:

(a) "Solicitor" means any person or persons engaged in the activity of door-to-door solicitation by going to and into any residence or business located within the jurisdiction, without being requested or invited to do so by the owner or occupant thereof, and is a term used interchangeably with the terms "peddler", "canvasser", "hawker", or "itinerate merchant".

(b) "Soliciting" or "Peddling" relative to door-to-door solicitations are interchangeable terms for the purposes of this Ordinance and mean and include the activity of a solicitor passing from one residence or business to another for the purpose of selling, canvassing, peddling, or offering goods, wares, merchandise or personal services for sale, or soliciting charitable contributions or patronage or services from any person or business by word of mouth, gesture, or by distributing handbills or other printed materials, or offering any such merchandise or service by traveling by foot, vehicle or any other type of transportation, from house-to-house or business-to-business, within the jurisdiction.

(c) "Clerk" or "Office of the Clerk" refers to that local governmental position whose official capacity oversees regulation and licensure of the activities hereby covered.

(d) "Law Enforcement" refers to that agency of the jurisdiction principally charged with protecting and serving the Public's safety in the jurisdiction, including the activities hereby covered.

(e) "Registered Solicitor" means any person who is subject to this Ordinance who has obtained a valid permit from the appropriate authority of the jurisdiction.

(f) "Residence" means any living unit contained within any building or structure that is occupied by any person as a dwelling.

### **SECTION III. REGISTRATION REQUIREMENTS.**

1. Registration. All persons desiring to engage in soliciting in the jurisdiction shall first apply with the Clerk's Office or its designee, at a cost Twenty-five Dollars (\$25.00) per application, for a 10 day permit for soliciting. Upon submission of the fee and permit application, the permit will be executed by or for the Clerk, shall be maintained in the Clerk's Office, and a legible copy shall be provided to and carried by the registered solicitor at all times while soliciting. The registered solicitor will conspicuously display the permit on his or her person while engaged in soliciting in the jurisdiction and, upon request, will allow an agent of Law Enforcement of the jurisdiction or an occupant of a residence to inspect the permit.

2. Permit Application. The jurisdiction will provide a standard form for use for registration of solicitors. Each applicant shall state upon oath or affirmation that the information submitted in the application is truthfully provided. The applicant shall supply upon the form the following information:

- (a) Applicant's true, correct, and legal name, including whether self-employed or the name and address of the entity employing the applicant for soliciting, as the case may apply.
- (b) Address of applicant's permanent home and address of any temporary lodging or residence of the applicant.
- (c) The purpose for which the soliciting will be done.
- (d) A brief description of the method of presentation that will be made (such as presentation of samples and taking of written orders).
- (e) The begin date and anticipated end date when soliciting is planned.

3. Proof of Identification Required. The application shall be accompanied by a true copy of one of the following:

- (a) A valid drivers license; or
- (b) A valid United States Uniform Service Identification, or
- (c) A valid visa or passport, or
- (d) Valid identification issued by any agency of a state for the purpose of identification of the holder.

4. Fingerprints. The applicant shall either provide the jurisdiction a standard set of the applicant's complete fingerprints or submit to fingerprinting by Law Enforcement of the jurisdiction or its designee. If the jurisdiction charges applicant a fee for fingerprinting, the fee shall not exceed \$10.00 per set of fingerprints

5. Disqualification. A person is disqualified from holding a permit for soliciting under this Ordinance if that individual is reported as a registered sex offender (as that term is defined under applicable law) or has been convicted of a felony in the immediately previous ten years.

6. Form of Permit. Each permit shall be numbered, shall list the name of the registered solicitor, the expiration date of the permit, and shall be marked or signed by the Clerk's Office as being approved thereby.

7. Records. The Clerk's Office will maintain for public inspection a record of every permit application received and acted upon, together with any information pertaining thereto, copies of all permits and renewed permits so issued, and all denials of applications. Each application shall be numbered in consecutive order as filed, and each permit issued shall be assigned a number exclusive to the registrant. Every permit renewed shall be identified with the duplicate number of the application upon which it was initially issued.

8. Renewal. Permits issued under this Ordinance shall be valid for ten (10) days running from the date of issuance of the permit and shall automatically expire at sunset on the ten (10th) day of issuance, subject to earlier renewal, if applicable. A registered solicitor is entitled to renewal of the applicable permit upon payment of a renewal fee of no greater than \$25.00 each, unless having been convicted of violation of felony or any ordinance of the jurisdiction.

#### **SECTION IV. EXEMPTION FROM FEES.**

1. The registration only provisions of this Ordinance applies to:
  - (a) Persons making solicitations solely for a church, religious organization or charitable organization, including any unincorporated association or corporation under the supervision and control of any church, charitable organization or religious organization, if the church or organization is tax-exempt under the provisions of the United States Internal Revenue Code; provided, however, that any person who seeks to solicit a charitable contribution shall first file with the Clerk's Office a notice describing the charitable purpose, signed by at least two officers or authorized representatives of the charitable organization.
  - (b) Local school students, church youth and civic organizations soliciting contributions to finance either events sponsored by the applicable school, church or civic organization or extracurricular social, athletic, artistic, scientific or cultural programs, as the case may apply; provided that the solicitation and its

purpose have been approved by the principal of the students' school or the president, adult sponsor or coach of the organization promoting the solicitation.

- (c) Persons canvassing for the purpose of distributing political literature or materials on behalf of a political party, candidate or public issue or introducing themselves as supportive of a candidate, political party, cause or issue.

2. Notwithstanding the exceptions herein set forth, solicitors involved in the exempted solicitations shall nonetheless remain subject to and comply with all other laws and ordinances of the jurisdiction and the rights of residents and property owners in the jurisdiction.

## **SECTION V. DECEPTIVE PRACTICES PROHIBITED.**

1. No solicitor shall intentionally make any materially false or fraudulent statement in the course of soliciting in the jurisdiction.

2. No solicitor shall represent, directly or by implication, that the jurisdiction or any of its sub-divisions endorse the solicitation or that the granting of a permit implies any endorsement of the solicitor's products or services or of the individual solicitor.

## **SECTION VI. PERMIT REVOCATION.**

1. Any permit for soliciting issued under this Ordinance may in the discretion of the Clerk or the chief of the Law Enforcement agency of the jurisdiction be revoked or suspended upon the registrant being convicted of a violation of this Ordinance or any felony or serious misdemeanor, subject to any successful appeal thereof. Notice of revocation shall be given immediately in writing to the registrant, by personal service or by certified mail to the local address listed on the application. Immediately upon the giving of such notice, the permit shall become null and void and shall remain so unless the revocation is ordered rescinded or unless the Clerk or the chief of the Law Enforcement agency of the jurisdiction decides only to suspend permit privileges until such time as the grounds for revocation or suspension have been removed or satisfactorily explained.

## **SECTION VII. APPEAL.**

1. Any applicant whose registration is not timely issued or any registrant whose permit privileges have been revoked or suspended as herein outlined shall have the right to appeal such action to the chief executive of the jurisdiction, or his or her designee, for a hearing and reconsideration. Any appeal must be demanded in writing, personally delivered or sent by certified mail to the Clerk or legal representative of the jurisdiction, within fourteen (14) days of the action giving rise to the appeal. The notice of appeal must state facts sufficient to provide reasonable notice of the action complained of and the grounds of appeal. The right of appeal is not in derogation of any other rights in law or equity. The appeal will be heard by, and at the next docketed regular session of, the legislative body of the jurisdiction, or within fourteen (14) days of the appeal being noticed, whichever is earlier. The applicant or registrant

and any affected owners or occupants of residences in the jurisdiction have the right to be heard in any such appeal. A controlling decision on the appeal will be issued in writing within three (3) days of having heard the appeal.

#### **SECTION VIII. RESIDENTIAL NOTICE.**

1. Any adult owner or tenant of a residence desiring to secure protection under this Ordinance shall give notice of his or her desire to refuse solicitors by displaying a clearly visible weatherproof placard no smaller than 15 square inches stating in bold lettering, "No Soliciting" or "No Trespass", or words to that same effect, which shall be posted on or near the main entrance door of the resident's dwelling.

2. The display of the placard shall be deemed to constitute notice to any solicitor that the inhabitant of the residence does not desire to invite solicitors.

3. A solicitor's intentional avoidance of any such signage as herein outlined shall be a violation of this Ordinance. The conspicuous nature and clarity of the message of such signage will go to the weight of proof relative to the solicitor's intent.

#### **SECTION IX. PERMITTED TIMES.**

1. It is a violation of this Ordinance for any person, whether registered as a solicitor or not, to solicit any occupant of a residence in the jurisdiction before 8:00 a.m. or after sunset (as determined by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, [www.noaa.gov](http://www.noaa.gov)), local time, unless the owner or adult occupant of the residence has granted the individual permission or an appointment to come to the residence outside of said hours.

#### **SECTION X. PENALTY.**

1. Any person who engages in soliciting, without complying with the registration requirements of this Ordinance, or who otherwise fails to comply with the provisions of this Ordinance, is chargeable with a violation and shall, on conviction, be fined not more than Fifty and 00/100 Dollars (\$50.00) per violation plus costs.

#### **SECTION XI. CONFLICTING ORDINANCES VOID.**

1. Any ordinance or provision of the jurisdiction's Code of Ordinances which conflicts with the provisions of this Ordinance is herewith repealed.

#### **SECTION XII. SEVERABILITY**

1. If any provision of this Ordinance is held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such finding shall not affect the validity of the remaining provisions, which are adopted separately and independently.

This Ordinance shall become effective immediately upon passage.

Passed on 1<sup>st</sup> Reading May, April 8, 2008

Passed on 2<sup>nd</sup> Reading May 13, 2008

Webb F. Banks  
WEBB F. BANKS, MAYOR

William Jerry Taylor  
WILLIAM JERRY TAYLOR, CLERK