

**CITY OF OAK POINT, TEXAS
ORDINANCE NO. 2007-08-02**

AN ORDINANCE OF THE CITY OF OAK POINT, TEXAS, AMENDING CHAPTER 7, OFFENSES AND NUISANCES, OF THE CODE OF ORDINANCES OF THE CITY OF OAK POINT BY THE ADDITION OF A NEW ARTICLE 7.1000 TO BE ENTITLED "RESTRICTIONS FOR SOLICITORS AND CANVASSERS"; PROVIDING EXCEPTIONS; PROVIDING FOR INCORPORATION OF PREMISES; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 AND THAT EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES SHALL BE DEEMED A SEPARATE OFFENSE; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Oak Point (the "City") is a Type A General Law Municipality; and

WHEREAS, the City Council of the City (the "City Council") has investigated and determined that the City should adopt restrictions for solicitors and canvassers, as set forth herein; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and in the best interest of the citizens of the City to protect the safety of citizens, peddlers, solicitors or canvassers by providing reasonable times in which to conduct such activities; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and in the best interest of the citizens of the City to prevent nuisances, litter and invitations to vandalism; and

WHEREAS, the City Council has investigated and determined that it will

be advantageous and in the best interest of the citizens of the City to reduce the opportunity for crime to occur; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and in the best interest of the citizens of the City to provide a means for an occupant to identify whether a person appearing at the door of a residence has complied with this Ordinance; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and in the best interest of the citizens of the City to prevent fraud and deceit that may occur in door-to-door solicitations or canvassing; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and in the best interest of the citizens of the City to establish reasonable regulations of certain commercial activities and the solicitation of funds.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OAK POINT, TEXAS, THAT:

SECTION 1.
INCORPORATION OF PREMISES

The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2.
RESTRICTIONS FOR SOLICITORS AND CANVASSERS

Chapter 7, Offenses and Nuisances, of the Code of Ordinances of the City of Oak Point, Texas, is hereby amended by the addition of a new Article 7.1000 to be entitled "Restrictions for Solicitors and Canvassers" and to read in its entirety as follows:

"ARTICLE 7.1000. RESTRICTIONS FOR SOLICITORS AND CANVASSERS

Sec. 7.1001. Purpose and intent.

The purpose of this Ordinance is to secure the general health, safety and welfare for the residents of the *City* by insuring the peaceful enjoyment of their homes and property and allowing them to travel by vehicle or foot safely throughout the *City* by enforcement of the following regulations: 1) to prohibit door-to-door *solicitation* during those times when such *solicitation* is most

intrusive and disruptive; 2) to minimize unwelcome disturbances by solicitors while traveling by foot or vehicle throughout the *City*; 3) to regulate the locations in which any *solicitation* activities can commence; and 4) to aid crime prevention and detection by requiring solicitors to obtain all required State and local permits.

Sec. 7.1002. Definitions.

Accessory Use - shall mean a use customarily incidental to the main or principle use of the property.

Charitable Purposes - shall mean the collection of money or the *selling* of goods to support philanthropic or other nonprofit objectives, including the benefit of the poor, needy, sick or handicapped persons; the benefit of a patriotic or veterans' association or organization; the benefit of any fraternal, social or civic organization; or the benefit of any educational institution.

City - shall mean the City of Oak Point, Texas.

City Approved/Authorized or Sanctioned Event - shall mean an event or activity for which the *City* has issued a permit or has authorized to occur.

City Manager - shall mean the City Manager of the *City* or the City Manager's designated representative.

Curb - shall mean the line adjacent to the edge of the *roadway* which may be either a raised or lowered or a marked or unmarked surface.

Handbill - shall mean and includes any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any manner.

Minor - shall mean a person under the age of 18.

Notice of Property Owner(s) Permission - shall mean a statement with the property owners signature which grants a person or person(s) permission to conduct *solicitation* activities as *seasonal sales* or a temporary business on a specified property.

Permanent Established Business - shall mean an established place of business operating in a permanent structure on a continuous basis.

Public Street Right-of-Way - shall mean the street, median, *curb* and the area four (4) feet outside the *curb*.

Political Purposes - shall mean the collection of money or any form of communication related to a political issue, a particular candidate to a position of non-partisan office, a political committee, as defined by state law, or to a political party.

Religious Purposes - shall mean the collection of money for the support of a church, religious society, or other religious sect, group or order.

Roadway - shall mean the traveled portion of the street upon which vehicles traverse and circulate, to include the area from back-to-back of the outer *curb* lines, or where a *curb*

does not exist, said roadway includes the travel area from the outer edges of the surfaced and prepared portions of the road.

Seasonal Sales - shall mean goods offered for sale on a private or *City* owned property, on a short term or seasonal basis, apart and separate from the permanent structure and shall include such items Christmas trees, firewood, pumpkins, and snow cones at a generally fixed location on private or *City* owned property. "Seasonal Items" shall not include items such as furniture, clothes, vehicles, farm and garden equipment and tools, pottery, statues, decorator items, fencing, lumber, building supplies, toys, animals and live stock.

Selling - shall mean to sell, dispense, peddle, hawk, display, offer to sell or solicit for sale by offering or exposing for sale any goods, wares, merchandise or services.

Solicitation - shall mean the act standing or sitting, traveling either by foot or vehicle, going door-to-door, house-to-house, building-to-building, or displaying goods along any street or in a parking lot in order to personally contact persons for the purpose of asking, bartering or communicating in any other such manner, whether orally, by written or printed materials including but not limited to *handbills* or leaflets, hand signing or by any other method, direct or implied, by an individual or group for the purposes of:

a) *selling* or taking orders for goods, wares, merchandise or services;

b) collecting money for any purposes; or

c) operating a *temporary business* or conducting *seasonal sales* on public or privately owned property, whether improved or unimproved, for the purposes of soliciting, *selling*, or taking orders for any goods, wares, merchandise or services.

Solicitor - shall mean a person who engages in *solicitation* activities.

Solicitor's Permit - shall mean a permit issued by the *Director* which allows a person to conduct *solicitation* activities within the *City*.

Temporary Business - shall mean engaging in a business on a private or *City* owned property, apart and separate from a permanent structure for the purposes of *solicitation* activities with the intent to discontinue such activity upon the expiration of a time period, generally less than 180 days. Temporary businesses may include the sale of food items, *selling* or taking orders for goods, wares, merchandise or services; or collecting money for commercial, charitable, political, personnel or *religious purposes*.

Vendor's Vehicle - shall mean any vehicle from which sales of food or beverage items designed for immediate consumption are offered for sale, such as the sale of ice cream.

Sec. 7.1003. Permit required for solicitors; fee.

(a) A person commits an offense if the person engages in solicitation activities in the city without

first obtaining a solicitor's permit from the *City Manager*.

(b) A solicitor's permit shall be valid for six months following the date of issuance unless a shorter period is requested by the applicant.

(c) An applicant for a solicitor's permit shall pay a permit fee at the time the application is submitted, and if required, shall submit a bond. The amount of the solicitor's permit fee shall be \$100.

(d) A non-profit organization or person conducting solicitation activity on behalf of a non-profit organization is exempt from payment of a permit fee.

Sec. 7.1004. Solicitor's permit application.

Any person/organization desiring to conduct *solicitation* activities within the *City* shall make a written application on a form provided by and reviewed by the *City Manager* for a *solicitor's permit*. The application shall contain the following information:

(a) The name, driver's license or state issued identification, date of birth, phone number and address of each person/organization applying for a permit.

(b) Valid state driver's license number or a state-approved identification card number with a photograph (The *City Manager* will make a photocopy and attach to the application).

(c) If a vehicle is used, a description of the same, together with the license number and the VIN number.

(d) Except otherwise stated herein, two photographs of the applicant, measuring at least 1.5" x 1.5" and showing the head and shoulders of the applicant in a clear and distinguishing manner, which shall have been taken within the preceding 60 days before filing the application.

(e) Proof of possession as determined by the *City Manager* 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 *solicitation*. Copies of all such licenses and permits must be attached to the application.

(f) If the solicitor is:

i. employed by another - the name and physical business address (not a P.O. Box) of the employer must be provided;

ii. acting as an agent - the name, the physical address (not a P.O. Box), and telephone number of the principle being represented, with credentials in written form establishing the relationship and authority of the employees or agent to act for the employer or principal must be provided; or

iii. volunteer - the name and physical address (not a P.O. Box) of the business or organization being represented must be provided.

(g) The nature of *solicitation* activity (i.e. the merchandise to be sold

or offered for sale; or the nature of the services to be furnished; or the type of pamphlets/*handbills* that will be distributed).

(h) The approximate time period within which the *solicitation* is to be made, giving the date of the beginning of the *solicitation* activity and its projected conclusion and how often the applicant will solicit in the *City* during the year.

(i) Names of all other communities in which the applicant has conducted *solicitation* activities in the past six (6) months.

(j) Whether the applicant, upon any order obtained, will demand, accept or receive payment or the deposit of money in advance of final delivery.

(k) If the applicant has plead guilty, or nolo contendere to, or has been convicted of a felony, misdemeanor, or ordinance violation involving fraud, deceit, misrepresentation, a sex offense, trafficking a controlled substance, or any act of violence against persons or property within five (5) years preceding the date of application, description of each such conviction or plea must be listed. The description shall include the date of the offense.

Sec. 7.1005. Bond.

(a) *Solicitors* who require cash deposits or advance payments for future delivery or who require in an agreement to finance the sale of goods and services for future delivery, or for services to be performed in the future, shall furnish to the *City* a bond in the

amount of \$10,000.00 in conjunction with the application. The bond shall be signed by the applicant and a surety company authorized to do business in Texas. Such bond will be refunded 30 days after the last day that *solicitation* activity will take place as indicated on the application to ensure the following:

(1) final delivery of goods and services in accordance with the terms of any order obtained;

(2) purchasers are compensated for any loss, damages or injury that resulted from materials or workmanship that may exist in the goods sold or the services rendered; and

(3) violations resulting in a fine to this ordinance or other ordinances have not occurred.

Sec. 7.1006. Issuance of solicitor's permit.

(a) The *City Manager* shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless he/she finds one or more of the following to be true:

(1) The application for a *solicitor's permit* is incomplete as to the requirements noted herein;

(2) False and/or misleading statements are found to be included in the application for a *solicitor's permit*;

(3) An applicant is overdue in payment to the *City* of fees, taxes, fines or penalties assessed against or imposed upon the applicant;

(4) The applicant is a person against whom a judgment based upon fraud, deceit, or misrepresentation has been entered within five (5) years;

(5) Within five (5) years preceding the date of the application, the applicant has pleaded guilty or nolo contendere to, or has been convicted of, a felony, misdemeanor, or ordinance violation involving fraud, deceit, misrepresentation, a sex offense, trafficking a controlled substance, or any act of violence against persons or property; or

(6) The type of *solicitation* activity requires a bond, and the applicant has not complied with the bond requirements as indicated in Section 10;

(b) A denial and the reasons for denial shall be noted on the application, and the applicant shall be notified of the denial by certified mail and sent to the address shown on the application.

Sec. 7.1007. Revocation or suspension of solicitor's permit.

(a) A permit issued pursuant to this ordinance may be revoked or suspended by the *City Manager* for any of the following reasons:

(1) Fraud or misrepresentation in the application;

(2) Fraud or misrepresentation in the course of conducting *solicitation* activities;

(3) Conducting *solicitation* activities inconsistent with the conditions of the permit;

(4) Conducting *solicitation* activities in such a manner as to create or constitute a danger to the public health, safety and welfare;

(5) A judgment against the registrant involving a matter described in Section 7.1006(a)(4);

(6) Conviction of a crime as described in Section 7.1006(a)(5); or

(7) Violation of regulations described in Section 7.1009.

(b) Upon revocation, the *City Manager* shall deliver written notice to the permit holder stating the action and the reasons supporting such action. A written notice shall be delivered to the permit holder's place of business (as indicated on the application) or mailed to the permit holder's last known address. The *City Manager* or his designee shall have the authority to seize any and all permits and photo identification tags possessed by persons conducting business as a solicitor while official notification process is underway. At such time, any and all *solicitation* activities conducted under the authority of that permit shall cease.

Sec. 7.1008. Appeals.

(a) A person who is denied a *solicitor's permit* or an exemption, or whose registration is revoked or suspended by the *City Manager*, may appeal the decision to the City Council by filing a notice of appeal with the City Secretary within 15 days after the notice

of decision is delivered via certified mail to the address indicated on the application or the last known address of the solicitor.

(b) Within ten (10) days of the receipt of the notice of appeal, the *City Manager* shall set a time and place for a hearing on the appeal which shall be not later than 30 days from the date of receipt of the notice of appeal.

(c) Notice of the time and place of the hearing shall be delivered to the appellant by certified mail, sent to the address indicated on the application or the last known address of the solicitor.

(d) The decision of the City Council on the appeal is final. No other administrative procedures are provided by the *City*.

Sec. 7.1009. Regulation of solicitors; generally.

(a) Except at otherwise stated herein, no person shall engage in *solicitation* activities in the *City* without first registering and obtaining a *solicitor's permit* and photo identification tag from the *City Manager*. A *solicitor's permit* may be valid for up to six (6) months following the date of issuance. *Solicitor's permits* issued as a part of a short-term special event shall only be valid during the duration of that event.

(b) All persons conducting *solicitation* activities must have proof of possession of any license or permit required under federal, state or county regulations and shall submit copies of such license(s) or permit (s) at the time of application (i.e. vehicle inspection report / food handlers permit).

(c) All *solicitation* on *City*-owned land must be approved by the *City Manager*. The *solicitor* may be required to enter into a contract agreement with the *City* prior to *solicitation* activities commencing and is subject to applicable *City*-use policies.

(d) All *solicitation* activity exclusively on private or *City* owned property (excluding door to door sales) is classified as either a *seasonal sales* or a *temporary business*. It shall be unlawful to conduct *permanent established business* on private or *City* owned property unless specifically authorized by the the Zoning Ordinance. Any *temporary business* activity must be consistent with the permitted use allowed in the zoning district and is subject to the restrictions applicable to that zoning district.

(e) Written permission to conduct such *solicitation* activity on private or *City* owned property shall be granted by the owner of the property.

(f) No person shall conduct *solicitation* activities by foot from a *public street right-of-way* unless the street is closed in association with a *City approved/sanctioned event*.

(g) *Solicitation* from a *vendor's vehicle* is permitted if the following conditions are met: a) location is not on the FM-720, McCormick, Yacht Club, Martop, or Naylor rights-of-way or on any street or road right-of-way designated as an arterial or collector on the *City's* Master Thoroughfare Plan; b) the vehicle must be approached, called or waived down by a prospective customer prior to stopping; c) the

vehicle shall be parked only when conducting business; and d) while parked the vehicle must comply with the regulations of this ordinance and other applicable ordinances.

(h) It shall be unlawful for any person to operate a *vendor's vehicle* upon the streets of the *City* unless the vehicle is equipped with warning lights that are in actual operation, whether or not the vehicle is stopped or moving.

(i) If a vehicle is used in *solicitation* activities, there must be a sign located in a conspicuous place on the vehicle, identifying the name of the person, company or organization that the person represents. If the name is an individual, it must be followed by the word "*solicitor*". The lettering on the sign must be at least two and one-half (2 ½") inches high.

(j) Every *solicitor* shall identify themselves as a *solicitor* upon approaching a person at a residence or at any other location in the *City* and explain their purpose, whether it be direct sales, *solicitation* of orders or services, or the demonstration of merchandise, or any combination of such purposes.

(k) *Solicitor's* shall conduct activities at a residence (i.e. door to door) only between 9:00 AM and 9:00 PM. *Seasonal sales* and *temporary business* activities shall be allowed to occur between 9:00 AM and 9:00 PM.

(l) All *solicitation* is strictly prohibited on a premises with a posted notice that *solicitor's* are not welcomed or invited. A person, desiring that no *solicitor* engage in *solicitation* on their

premises, shall exhibit in a conspicuous place upon or near the main entrance, a card, not less than one (1) inch by three (3) inches in size, located near the doorbell or knocker, and containing words such as "NO SOLICITORS", "NO TRESPASSING" or words of similar meaning.

(m) No person engaged as a solicitor shall remain or linger on a premises after having been verbally informed by the owner or tenant that they are not welcomed.

(n) It shall be unlawful to engage in an act of *solicitation* in an aggressive or intimidating manner, including any of the following actions:

(1) Touching the solicited person without the solicited person's consent;

(2) Blocking the path of a person being solicited;

(3) Following behind, ahead or alongside a person who walks away from the solicitor after being solicited;

(4) Shouting, making any outcry, blowing a horn or whistle, or using any sound device, including any loud speaker or sound amplifying system that exceeds the regulations of the City's noise ordinance, upon any of the streets, public places or upon private property for the purpose of attracting attention to the location of any goods, wares or merchandise.

(o) Except as otherwise stated herein, all persons granted permission to conduct *solicitation* activities in the City shall prominently display the photo

identification tag issued to them at all times.

(p) Every solicitor who is permitted to solicit edible merchandise shall keep all articles for sale to the public in a clean and sanitary condition, as well as the wagons, vehicles, or other conveyances used in the transportation of such merchandise and shall meet all applicable Federal, State and local regulations.

(q) It shall be unlawful for any solicitor to sell or offer to sell any unsound or unwholesome merchandise or give a false weight of measure to such offered for sale.

(r) All *minors* must be sponsored or employed by a person, company or organization. The person, company or organization that is sponsoring the *minor(s)* must be responsible for controlling the conduct of all sponsored individuals.

(s) Applicants claiming a nonprofit status may be required to provide documentation of such status to the *City Manager*.

Sec. 7.10010. Exemptions.

(a) Any organization recognized as a "non-profit organization" as described in Section 501 (c)(3) of the Internal Revenue Code is exempt from payment of the permit fee.

(b) The sponsor of any organization recognized as a "non-profit organization" as described in Section 501 (c)(3) of the Internal Revenue Code or a sponsor of any "*City approved/authorized or sanctioned*

event" is only required to complete one (1) application for all its individuals/agents engaging in *solicitation* activities. The sponsor shall provide the City a list of name(s), date(s) of birth, address(es) and driver's license number(s) (if applicable) of all individuals/agents that will be conducting *solicitation* activities.

(c) The sponsor of a "non-profit organization" or a "City approved/authorized or sanctioned event" is exempt from section 7.1005(a)(9) of this ordinance.

(d) Any individual(s) conducting *solicitation* activities for a non-profit organization or part of a "City approved/authorized or sanctioned event" are exempt from Section 6 of this ordinance.

(e) Any person going from house-to-house, door-to-door, business to business, or other type of place-to-place when such activity is for the purpose of exercising that person's State or Federal Constitutional rights (i.e., freedom of speech, press, religion, etc.) is exempt from the regulations of this ordinance, except that this exemption is lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity or results in a disturbance or nuisance or any other act that is otherwise prohibited by law.

(f) Salespersons with an appointment calling upon or dealing with manufacturers, wholesalers, distributors, brokers or retailers at their place of business or homes and in the usual course of business are exempt.

(h) *Solicitation* in Public Right-of-Way- shall not apply to any public transportation system; taxi cabs; mail carriers; vehicles for hire such as commercial servicing or repair of any disabled motor vehicle; any commercial activity involving pick up, delivery or unloading.

(i) The terms of this ordinance shall not apply to residential yard or garage sales.

(j) The terms of this ordinance shall not apply to a *permanent established business*.

(k) *Solicitation* activity on a property that is determined by the City Manager to be an *accessory use* is not subject to the regulations of this ordinance.

SECTION 3. CUMULATIVE REPEALER

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of said Ordinances except those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim or lawsuit that has been initiated or has arisen under or pursuant to any of the Ordinances or sections thereof that have been specifically repealed on the date of adoption of this Ordinance shall continue to be governed by the

provisions of such Ordinance or section thereof and for that purpose the Ordinance or section thereof shall remain in full force and effect.

SECTION 4.
SEVERABILITY

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 5.
SAVINGS CLAUSE

All rights and remedies of the City of Oak Point are expressly saved as to any and all violations of the provisions of any Ordinances affecting and which 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.
PENALTY CLAUSE

6.01 Any person violating any of the provisions of this Ordinance shall

be deemed guilty of a _____ and, upon conviction, shall be fined, except as otherwise provided herein, in a sum not to exceed Five Hundred Dollars (\$500) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

6.02 If the City Council of the City of Oak Point determines that a violation of this Ordinance creates a threat to the public safety, the City of Oak Point may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity. The City of Oak Point is not required to give bond as a condition to the issuance of injunctive relief.

SECTION 7.
PUBLICATION

The City Clerk of the City of Oak Point is hereby directed to publish in the Official Newspaper of the City of Oak Point the Caption, Penalty, and Effective Date Clause of this Ordinance as required by Section 52.011 of the Texas Local Government Code.

SECTION 8.
ENGROSSMENT AND ENROLLMENT


The City Clerk of the City of Oak Point is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the City Council of the City of Oak Point and by filing this Ordinance in the Ordinance records of the City.

**SECTION 9.
EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its date of passage, in accordance with law.

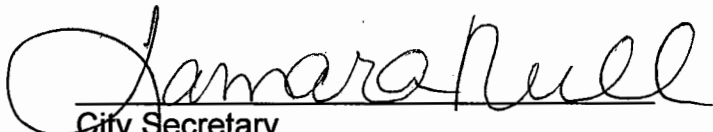
AND IT IS SO ORDAINED.

DULY PASSED AND APPROVED by the City Council of the City of Oak Point, Texas, this the 20th day of August, 2007.



Tom Kanuch, Mayor
City of Oak Point, Texas

ATTEST:



City Secretary
City of Oak Point, Texas

APPROVED AS TO FORM AND CONTENT:

City Attorney
City of Oak Point, Texas