

**ORDINANCE NO. 03062023-01**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELKHART, TEXAS ESTABLISHING REGULATIONS RELATED TO SOLICITORS, CANVASSERS, AND HANDBILL DISTRIBUTION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS,** the City Council has determined that in order to prevent and deter deceptive practices and fraud, it is necessary to require door-to-door solicitors to register and to regulate those activities; and

**WHEREAS,** the City Council has determined that solicitations, canvassing, and handbill distribution at residences and other private property at certain times and under certain circumstances greatly intrudes on the privacy and personal property rights of the citizens of Elkhart and can result in litter; and

**WHEREAS,** it is the intent of the City Council to not infringe on any rights protected by First and Fourteenth Amendments to the United States Constitution; and

**WHEREAS,** the City Council finds that the regulations as set out herein related to solicitors, canvassers, and handbill distribution should be established to provide for the efficient enforcement of same throughout the City and that these regulations are in the best interest of the City and the public health, safety, and general welfare of the citizens of the City and the public.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKHART, TEXAS THAT:**

**SECTION ONE. PURPOSE**

The purpose of this Ordinance is to provide for the general health, public safety, and welfare, comfort, convenience, and protection of the City and the residents of the City by:

(1) Prohibiting door-to-door solicitation and canvassing activity at residences during the times when such activity is most intrusive and disruptive to citizens' privacy;

(2) Regulating the manner in which any solicitation activity, canvassing activity, or handbill distribution may occur to promote good order, prevent litter, and protect citizens from aggressive and intimidating practices; and

(3) Requiring solicitors to register with the city to aid crime detection and deter deceptive practices and fraud.

The provisions of this Ordinance shall be construed to accomplish these purposes.

## **SECTION TWO. DEFINITIONS**

In this Ordinance:

Administrator means the City Secretary or some other employee of the city designated by the City Secretary.

Canvasser means a person who engages in canvassing activities.

Canvassing or canvassing activity means the act of:

(1) Traveling either by foot or vehicle, going door-to-door, house-to-house, building-to-building; or

(2) Occupying space in or traveling on or through any public place in the city;

Personally contacting persons to communicate in any manner, whether orally, by written or printed materials including, but not limited to, handbills, leaflets, hand signing or by any other method, direct or implied, for any purpose other than selling or taking orders for goods, wares, merchandise or services or collecting money.

City means the City of Elkhart, Texas.

Dark means the time of day identified by the United States Naval Observatory as being after the end of civil twilight on a particular day in the city.

Handbill means 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.

Handbill distribution means traveling either by foot or vehicle, going door-to-door, house-to-house or building-to-building without personally contacting persons to distribute or leave on or at each premises handbills for any purpose.

Non-profit organization means an organization or entity that is exempt from the payment of tax pursuant to section 501(c)(3) of the Internal Revenue Code.

Selling means 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 activities means

(1) the act of:

(a) Traveling either by foot or vehicle, going door-to-door, house-to-house, building-to-building; or

(b) Occupying space in or traveling on or through any public place in the city; while personally contacting persons to ask, barter or communicate in any 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, for the purpose of selling or taking orders for goods, wares, merchandise, or services.

*Solicitor* means a person who engages in solicitation activities

### **SECTION THREE. EXEMPTIONS**

(a) This Ordinance does not apply to:

(1) The activity of a person with an appointment calling upon or dealing with manufacturers, wholesalers, distributors, brokers, or retailers at their place of business and in the usual course of business;

(2) The activity of a person acting at the request or invitation of the owner or occupant of a residence;

(3) Sales made under the authority of and by judicial order;

(4) The activity of a government employee acting within the course and scope of their official duties serving, delivering, or posting official notices including notices of code violations, water restrictions, utility outages, burn bans, special event impacts, or security issues; or

(5) The activity of a person under the authority of a permit issued under regulations applicable to food establishment rules.

(b) It shall be an affirmative defense to prosecution for any offense under this chapter that the activity of the defendant is listed in subsection (a).

### **SECTION FOUR. GENERAL REGULATIONS**

(a) A person commits an offense if the person engages in solicitation or canvassing activity at a residence:

(1) Before 9:00 a.m.; or

(2) After Dark or 9:00p.m., whichever is earlier on a given day.

(b) A person commits an offense if the person engages in solicitation activities, canvassing activities, or handbill distribution at a premises with a posted notice that such activity is not welcomed or invited. It shall be presumed that there is notice that solicitation or canvassing activity is not welcomed or invited when there is exhibited in a conspicuous place on or near the main entrance of the premises, a sign, not less than four inches by three inches in size, containing the words "No Solicitors," "No Trespassing," or words of similar meaning in letters not less than two-thirds of one inch in height.

(c) A person who is not the owner or tenant of a premises commits an offense if the person removes, defaces, or otherwise renders illegible a sign placed by the owner or tenant of the premises pursuant to subsection (b) of this section.

(d) A person commits an offense if the person engages in solicitation activities, canvassing activities, or handbill distribution and remains or lingers on a premises after being informed by the owner or tenant that they are not welcome.

(e) A person commits an offense if the person engages in solicitation activities, canvassing activities, or handbill distribution in an aggressive or intimidating manner. The term “aggressive or intimidating manner” means:

(1) Blocking the path of a person who is the object of the activity; or

(2) Following behind, ahead or alongside a person who walks away from the solicitor after being solicited, approached, accosted, or offered a handbill, leaflet, or any other item.

(f) A person commits an offense if the person engages in solicitation activities, canvassing activities, or handbill distribution and distributes, deposits, places, throws, scatters, or casts a handbill at a residence except by:

(1) Handing or transmitting the handbill directly to the owner or occupant then present in or upon the premises; or

(2) Without using adhesive or tape, placing or depositing the handbill in a manner that secures the handbill and prevents it from being blown away, except that mailboxes may not be used when the use is prohibited by federal postal laws or regulations.

(g) A person commits an offense if the person secures a handbill at a residence in the manner described by subsection (f)(2) of this section:

(1) In a place that is more than five feet from the front door of the residence; or

(2) When another handbill has already been left or secured at the residence and has not been removed from the outside of the residence.

## **SECTION FIVE. SOLICITATION FROM A VEHICLE**

(a) A person commits an offense if the person conducts solicitation activities from a vehicle and:

(1) The solicitation is conducted at a location within the right-of-way of any street or highway in the city which is designated as a highway or freeway, major or minor arterial on the city's thoroughfare plan; or

(2) The person stops the vehicle within a roadway to conduct business before the vehicle has been approached, called, or waived down by a prospective customer.

(b) A person commits an offense if the person operates a vehicle from which solicitation activities are conducted upon any street or highway within the city in a manner that blocks or impedes access to or from any alley, street or driveway, or impedes the flow of traffic on any public street or highway.

## **SECTION SIX. PENALTY**

(a) Any person, firm, or corporation violating any of the terms and provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined an amount not to exceed \$500.00. Each such violation shall be deemed a separate offense and shall be punishable as such hereunder.

(b) In case of any willful violation of any of the terms and provisions of this chapter, the city, in addition to imposing the penalties provided in subsection (a), may institute any



appropriate action or proceeding in any court having proper jurisdiction, to restrain, correct, or abate such violations; and the definition of any violation as a misdemeanor shall not preclude the city from invoking the civil remedies given it by the laws of the state.

(c) The court trying a civil or criminal cause under subsections (a) or (b) shall have the right and power upon judgment or conviction of any person for violation of any of the provisions of this chapter to decree and to make as a part of the judgment or conviction in such cause the forfeiture of the registration certificate required by this chapter. When a registration certificate is forfeited in this manner, no further certificate shall be issued to that person for one year from the date of judgment or conviction.

## **SECTION SEVEN. REGISTRATION REQUIRED FOR SOLICITATION; FEES**

(a) A person commits an offense if the person engages in solicitation activities in the city without a valid registration certificate issued by the administrator.

(b) A registration certificate shall be valid for one year following the date of its issuance unless a shorter period is requested by the applicant.

(c) An applicant for a registration certificate shall pay a non-refundable application fee at the time the application is submitted, and if required, shall submit a bond.

(d) The amount of the non-refundable application fee shall be

(1) Annual permit fee for person, firm, corporation, or organization and a single agent, employee, or volunteer: \$ 50.00;

(2) Annual permit for each additional agent, employee, or volunteer: \$ 10.00.

The non-refundable application fee shall be used for the purpose of defraying administrative expenses incident to the issuing of registration certificates.

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

## **SECTION EIGHT. APPLICATION**

A person desiring to conduct solicitation activities within the city shall make a written application on a form provided by the administrator for a registration certificate. The application shall contain or be submitted with the following information:

(a) The full name, date of birth, phone number and address of the applicant;

(b) A valid state driver's license number or a state-approved identification card number (the administrator will make a photocopy and attach to the application) of the applicant;

(c) Except as provided by section nine of this Ordinance, two photographs of the applicant, measuring 1.5 inches × 1.5 inches 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;

(d) If a vehicle or vehicles are used to conduct the solicitation activity, a description of each vehicle, its license plate number and vehicle identification number, the name and license number of the driver who will operate each vehicle, and adequate proof under state law that each

driver maintains financial responsibility for the vehicle they will operate shall be attached to the application;

(e) If the applicant is acting as an employee, agent or volunteer, the name and physical street address (not a post office box) and telephone number of the employer, principal or organization with credentials in written form establishing the relationship and authority of the employee, agent or volunteer to act for the employer, principal or organization;

(f) If applicable, the merchandise to be sold or offered for sale, the nature of the services to be furnished;

(g) The approximate time period within which the solicitation is to be made, stating the date of the beginning of the solicitation activity, its projected conclusion and the proposed dates and times of solicitation;

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

(i) If the applicant, or the applicant's employer or principal has pled guilty, or nolo contendere to, or has been convicted of a felony or misdemeanor involving fraud, deceit, theft, embezzlement, burglary, larceny, fraudulent conversion, misrepresentation, or misappropriation of property within ten years preceding the date of application, a description of each such conviction or plea, the name of the court and jurisdiction in which the complaint or indictment was filed and the date of the offense;

(j) If the applicant, or the applicant's employer or principal is a person against whom a civil judgment or administrative decision based upon fraud, deceit, theft, embezzlement, burglary, larceny, fraudulent conversion, misrepresentation, or misappropriation of property has been entered or ordered within ten years preceding the date of application, a description of judgment or action, the case or cause number, if any, and the court or administrative agency that rendered the judgment or decision;

(k) If the solicitation activity is to be conducted on behalf of a non-profit organization, proof of such status shall be attached to the application.

## **SECTION NINE. SOLICITATION BY MINORS; APPLICATIONS**

(a) A minor who conducts solicitation activities shall be sponsored or employed by a person over the age of 18, a corporation, firm or organization. The person, corporation, firm or organization that is sponsoring or employing the minor(s) is responsible for controlling the conduct of the minors and the minors shall be under the constant supervisor of a person 18 years of age or older.

(b) A person, corporation, firm or organization that sponsors or employs one or more minors as solicitors must submit one application and pay the nonrefundable application fee, in the amount set forth in section seven of this Ordinance, except as provided for in subsection (e) of section seven of this Ordinance, for the registration of the minors regardless of the number of minors who conduct solicitation activities. The sponsor or employer shall provide the administrator the name(s), date(s) of birth, address(es), and driver's license number(s) (if applicable), and a notarized parental consent for each minor that will be conducting solicitation activities. The parental consent form, which shall be provided by the administrator, shall acknowledge the release of the information set forth above.



(c) A minor who conducts solicitation activities is exempt from section eleven of this Ordinance and shall be required to carry while conducting solicitation activities only a copy of the approved solicitor's registration application.

#### **SECTION TEN. APPLICATION REVIEW AND REGISTRATION ACCEPTANCE**

(a) Upon receipt of an application, the administrator shall review the application to ensure compliance with this chapter.

(b) The administrator shall authorize the registration within 30 days of receipt of the application unless:

(1) An investigation reveals that the applicant or the applicant's employer, principal or organization falsified information on the application;

(2) Within ten years preceding the date of application, the applicant or the applicant's employer, principal or organization has pled guilty or nolo contendere to, or has been convicted of, a felony or misdemeanor described in section eight, subsection (i) of this Ordinance;

(3) Within ten years preceding the date of application, a civil judgment or administrative decision described in section eight, subsection (j) of this Ordinance has been entered or ordered against the applicant or the applicant's employer, principal or organization;

(4) The applicant provided no proof of authority to act on behalf of the employer, principal or organization;

(5) The application does not contain the information or documents required by section eight of this Ordinance.

(c) The denial and the reasons for the denial shall be noted on the application, and the applicant shall be notified of the denial by notice mailed to the applicant and the applicant's employer, principal or organization at the address shown on the application or the last known address. The notice of denial shall be mailed within 30 days of the receipt of the application.

#### **SECTION ELEVEN. REGISTRATION CERTIFICATE**

(a) Upon authorization of the registration, the administrator shall deliver a registration certificate for each solicitor.

(b) The registration certificate shall be in the form of a photo identification tag and shall contain the following information:

(1) The name and address of the solicitor;

(2) The solicitor's employer, principal or organization, if applicable;

(3) The kind of goods or services to be sold or offered for sale, if applicable;

(4) A description and license plate number of any vehicle to be used in carrying out the solicitation activities, if applicable;

(5) A registration number; and

(6) The dates of issuance and expiration of the certificate.

(c) The registration certificate shall be worn constantly in a conspicuous place by the permit holder while conducting solicitation activities in the city. A person commits an offense if the person engages in solicitation activities and fails or refuses to show or display the registration certificate upon the request of any person.

(d) A registration certificate shall be used only by the solicitor for whom it was issued and may not be transferred to another person. A person commits an offense if the person wears or displays a photo identification tag issued to another person.

(e) A person who uses a vehicle in conducting solicitation activities shall post a sign located in a conspicuous place on or in the window of the vehicle, identifying the name of the person, company, or organization that the person represents. If the name is an individual person, it must be followed by the word "solicitor." The lettering on the sign must be at least two and one-half inches high. A person commits an offense if the person violates this subsection.

## **SECTION TWELVE. REVOCATION OR SUSPENSION OF REGISTRATION**

A registration certificate issued pursuant to this chapter may be revoked or suspended by the administrator, after notice and hearing, for any of the following reasons:

(a) Fraud, misrepresentation, or false statement contained in the application for registration;

(b) Fraud, misrepresentation, or false statement made by a solicitor in the course of conducting solicitation activities;

(c) A plea or conviction of a crime described in section eight, subsection (i) of this Ordinance;

(d) A judgment involving a matter described in section eight, subsection (j) of this Ordinance; or

(e) A violation of any of the regulations set forth in this Ordinance.

## **SECTION THIRTEEN. APPEALS**

(a) A person who is denied a registration certificate or whose registration is revoked or suspended by the administrator may appeal the decision to the Mayor by filing notice of appeal with the Mayor within 15 days after the notice of the decision is mailed to the address indicated on the application or the last known address.

(b) Within ten days of the receipt of the notice of appeal, the Mayor shall set a time and place for a hearing on the appeal which shall be not later than 40 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 person by mail, sent to the address indicated on the application or the last known address of the appellant.

(d) At the conclusion of the hearing, the Mayor shall make a decision on the appeal. The decision of the Mayor on the appeal is final. No other administrative procedures are provided by the city.

**SECTION TWO. Cumulative Clause.** This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for 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 which has been initiated or has arisen under or pursuant to such other Ordinances on the date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

**SECTION THREE. Severability Clause.** If any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**SECTION FOUR. Savings Clause.** All provisions of the Code of Ordinances of the City of Elkhart, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

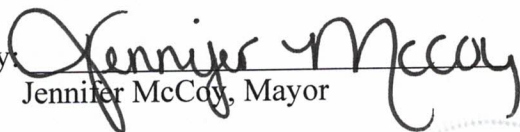
**SECTION FIVE. Penalty Clause.** Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense.

**SECTION SIX. Publication Clause.** The City Secretary of the City of Elkhart, Texas, is directed to publish this Ordinance or a caption that summarizes the purpose of this Ordinance, including the penalty for violating the Ordinance, as required by Texas Local Government Code, Section 52.011.

**SECTION SEVEN. Effective Clause.** This Ordinance shall become effective after the date of its passage and upon its publication as required by law.

**PASSED AND APPROVED** this the 06 day of March 2023 at a Regular Meeting of the City Council of the City of Elkhart, Texas.

CITY OF ELKHART

By:   
Jennifer McCoy, Mayor

ATTEST:

  
Jan Stuteville, City Secretary