ORDINANCE NO. 2011-1040
AN ORDINANCE REGULATING ITINERANT VENDORS AND SOLICITATION

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS REPEALING AND REPLACING ORDINANCE NO. 82-594 TO PROVIDE RULES AND REGULATIONS OF PEDDLERS/ ITINERANT VENDORS AND SOLICITORS WITHIN THE CORPORATE LIMITS OF THE CITY OF FULSHEAR, TEXAS; REPEALING ALL ORDINANCES OR RESOLUTIONS IN CONFLICT WITH THE TERMS HEREOF; PROVIDING A PENALTY; AND PROVIDING FOR THE SEVERABILITY OF THE PROVISIONS OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Fulshear, Texas (the "City") has determined that the provisions of this ordinance are necessary to prevent fraud, to prevent criminal activity and to protect the privacy of the City's residents; and

WHEREAS, the City of Fulshear may enforce Ordinances necessary to protect the health, life and property and to preserve the good government, order and security of the municipality and its inhabitants; and

WHEREAS, the City Council has also taken into account the First Amendment rights of those persons who would engage in solicitation within the City and has determined that the measures set forth in this ordinance strike an appropriate and lawful balance protecting such First Amendment rights while protecting the City's citizens from fraud, crime and invasion of privacy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS:

SECTION 1.0
PURPOSE: The purpose of this Ordinance is to repeal and replace Ordinance No. 82-594 to provide rules and regulations of peddlers/ itinerant vendors and solicitors within the City.

SECTION 2.0
DEFINITIONS: As used in this Ordinance, the following terms shall be defined as follows:

1) ***Peddler/ Itinerant Vendor***: means all persons, firms and corporations, as well as, their agents and employees who engage in temporary or transient commercial activities within City limits by carrying goods or merchandise and selling or offering for sale for immediate delivery such goods or merchandise from house-to-house, business-to-business, from vehicles parked on City streets, private property, or vacant lots or from a location rented, leased or occupied temporarily for the exhibit and sale or for the purposes of taking orders for sale thereof.

2) ***Permittee***: means any individual to whom a permit is issued pursuant to this Ordinance.

3) ***Temporary***: means any such business transacted or conducted in the City for which definite arrangements have not been made for hire, rental or lease of premises for a period of at least one hundred and twenty (120) days in or upon which such business is to be operated or conducted.

4) ***Transient***: means such business of any such peddler/ itinerant vendor as may be operated or conducted by persons, firms or corporations, or by their employees or agents who reside away from the City or who have fixed places of business in places other than the City who move stocks of goods or merchandise or samples thereof into the City with the purpose or intention of removing them or the unsold portion thereof away from the City before the expiration of one hundred twenty (120) days.

5) ***Solicitor***: means any person who solicits or attempts to solicit, from house-to-house, business-to business, or upon public property, funds or orders for services, commercial goods, wares, merchandise, subscriptions or publications to be delivered at a future date or time.

SECTION 3.0

PERMIT REQUIRED: It is unlawful for any itinerant vendor/ peddler or solicitor to engage in business within the City without first obtaining a permit from the City.

SECTION 4.0

PERMIT APPLICATION REQUIRED: Any peddler/itinerant vendor or solicitor desiring to engage in activities as a peddler or solicitor within the City must file a written application for permit with the City, which application shall provide the following information:

1) Applicant's name, telephone number, address, birth date, physical description, full face photograph and either:

    a) Driver's license number and listing of the state issuing said number, or

    b) Social Security number and an official, government issued picture identification card; and

2) If the applicant is peddling or making solicitations for any commercial, charitable or political organization, the name, telephone number, address of such organizations and contact person; and

3) Full and complete list of goods to be sold and services to be delivered; and

4) For each individual involved in the peddling or solicitation a campaign contribution: name, telephone number, address, birth date, physical description, full face photograph and either:

    a) Driver's license number and listing of the state issuing said number, or

    b) Social Security number and an official, government issued picture identification card;

5) Description (year, make, type) and license plate number and state of all vehicles to be used in soliciting and peddling; and

6) Authorization to conduct criminal background check on the applicant and all individuals involved in the peddling or solicitation campaign; and

7) The names of any cities where applicant has worked in the previous 180 days; and

8) Proof of Bonding; and

9) Applicant must provide original identifying documents to the City upon request.

SECTION 5.0
BONDING REQUIRED: Applicants for a Peddlers/Itinerant Vendor or solicitor permit seeking to sell goods and services must provide proof of a Bond in the sum of not less than two thousand five hundred dollars ($2,500) and it shall be executed by the Peddler/ Itinerant Vendor or solicitor and surety satisfactory to the City Administrator, which bond shall be payable to the City for the use and benefit of any person entitled thereto and conditioned that the principal and surety will pay for all damages to persons caused by or arising from the wrongful, illegal or fraudulent conduct of the peddler/itinerant vendor while conducting sales or exhibits in the City. The Bond shall remain in full force and effect for one year.

SECTION 6.0
BONDING EXEMPTED: Any applicant or permittee exempted by Section 10.0 of this Ordinance shall be exempted from the requirement for Bonding. Further, any applicant of permittee exempted from Fees as delineated in Section 9.0, Item 1) is likewise exempted from the Bonding requirement.

SECTION 7.0
PERMIT CONDITIONAL: The application shall contain express provisions stating that issuance of a permit shall be conditioned upon compliance with all requirements of this Ordinance and other applicable laws.

SECTION 8.0
FEES: All peddlers/itinerant vendors and solicitors not exempted by Section 9.0 shall pay a permit fee to the City of $60.00.

SECTION 9.0
FEES EXEMPTED: The following are exempt from the permit fee:

1) Any individual soliciting or peddling for a non-commercial purposes such as non-profit organizations or youth educational organizations such as Boy Scouts, Girl Scouts, Little League groups, FFA, or local school groups, as indicated through the provision of a certifying letter from such an entity; and

2) Any individual engaged in interstate commerce.

SECTION 10.0
PERMIT EXEMPTIONS: The following are excluded from the permitting provisions of this Ordinance:

1) Participants in events sponsored by the City; and

2) Religious proselytizing or distribution of religious literature; and

3) Political speech; and

4) Canvassers who attempt only to distribute handbills or to solicit political support or to determine opinions or sentiments.

Persons who are exempt from the permitting requirements shall be subject to the provisions of Sections 16 (Hours and places of solicitations) and 17 (No solicitors signs); and are encouraged to notify the City as to the approximate dates of the door-to-door activities, and the areas in which they will be working.

SECTION 11.0
PERMIT DENIAL:

1) A copy of the application for permit will be referred to the City Administrator and the Police Department who will undertake an investigation of the applicant's record and background, such as shall be reasonably necessary to protect the public. An application for permit under this Ordinance may be denied where:

    a) Required application information is incomplete or incorrect;

    b) Applicant is currently wanted on warrant for arrest;

    c) Applicant has been convicted of any offense reportable by the City to the Texas Department of Public Safety or the Federal Bureau of Investigation under "Index Crimes" Part I or Group A of the National Incident Base Reporting System or Crime Index programs or other law enforcement reporting system (e.g. aggravated assault, burglary, forcible rape, larceny-theft, motor vehicle theft, murder, non-negligent manslaughter, and robbery).

2) If the City Administrator or their designee denies a permit on one or any of the aforementioned grounds, applicant may appeal this decision in writing to the City Council, which may affirm, modify or reverse the decision of the City Administrator or their designee. An appeal to the City Council may be perfected by written notice to the City Administrator or their designee delivered within ten calendar days of the date the City Administrator's or their designee's decision is delivered to the permittee. Any decision of the City Administrator or their designee which is not properly appealed shall be final.

SECTION 12.0
PERMIT ISSUANCE, DURATION:

1) If the City Administrator or their designee finds that the application is completed in conformance with Sections 4.0 through 10.0, the application for permit shall be placed on the next Regular Council meeting agenda for consideration and approval by the City Council. If approved, the City shall issue a Certified Permit, signed by the City Administrator or their designee and exhibiting the City Seal. Each permit will be valid for 120 days from date of issue.

2) The City shall retain one copy of the approved permit for official records. The permit may not be represented as an endorsement or approval by the City of the purposes of a solicitation or a product offered by the permittee.

3) Only those peddlers/ itinerant vendors or solicitors whose names are listed on the approved application may conduct business under the issued permit. If any new peddlers/ itinerant vendors or solicitors join the campaign after the original permit is issued, they must supply the City with the information required in Section 4.0. The permit shall list the name and other identifying information of the permittee and all persons who have been listed in accordance with Section 4.0, Item 4 above and have been approved to conduct peddling or solicitation under the permit.

SECTION 13.0
PERMIT OPERATIONS:

1) The permittee is required to notify the City Administrator no less than 5 business days before any peddling or soliciting under the issued permit is conducted. At this time, the permittee will update any information required under Section 4 that has changed.

2) The permittee shall inform each individual that is involved in the peddling or solicitation campaign of all requirements of this Ordinance and applicable law and shall suspend activities by any person who fails to comply with such requirements.

3) The permittee shall not permit any person other than those persons listed on the permit to be engaged in peddling or solicitation.

4) Each peddler/itinerant vendor or solicitor will carry his or her permit or a copy thereof at all times while engaging in business in the City. Upon request or demand, the peddler/itinerant vendor or solicitor will exhibit the permit to indicate compliance with all of the relevant requirements of this Ordinance.

SECTION 14.0
PERMITS NONTRANSFERABLE: Permits issued under the provisions of this Ordinance are not transferable in any situation and will be clearly marked "Not transferable."

SECTION 15.0
PERMIT SUSPENSION AND REVOCATION:

1) The City Administrator or their designee may, upon documented complaint or violation of law, suspend and confiscate a permit issued under this Ordinance.

2) Peddlers/ itinerant vendors and solicitors whose permits are suspended have three business days during which to request an administrative review of the suspension by the City Administrator or designee. If request for administrative review is not made within three business days, the permit is revoked.

3) Upon permittee's request, the City Administrator or designee shall provide the permittee with written notice containing particulars of any and all complaints against him or her, and the time, date and place for an administrative review of the suspension.

4) The City Administrator or their designee will conduct an administrative review to determine whether the permit shall be restored or revoked.

5) After notice and review, the City Administrator or designee may revoke any permit issued under this Ordinance for the following reasons:

   a) Fraudulent statements, omissions on permit application or in conduct of permitted business; or

   b) Violation of law; and/ or

   c) Endangerment of public welfare, health or safety.

6) If the City Administrator or designee revokes a permit, applicant may appeal this decision in writing to the City Council, which may affirm, modify, or reverse the decision. An appeal to the City Council may be perfected by written notice to the City Administrator delivered within ten calendar days of the date the City Administrator's or designee's decision is delivered to the permittee. Any decision of the City Administrator or designee which is not properly appealed shall be final.

7) Revocation of any permit shall bar the permittee from eligibility for any person under this Ordinance for a period of one year.

SECTION 16.0
HOURS AND PLACES OF SOLICITATIONS:

1) No peddler/ itinerant vendor or solicitor may conduct door to door activities defined in Section 1.0 except between the hours of nine (9) a.m. and seven (7) p.m.

2) No peddler/itinerant vendor or solicitor may in any way block, obstruct, or unduly hinder passage on public streets within the City limits.

3) No person regardless of exemption status defined herein; shall sell or offer for sale by auction or otherwise, any vehicle, goods, wares, merchandise, produce, other farm products or any other article on any portion of a public right-of-way adjacent to a paved sidewalk or roadway within the City.

SECTION 17.0
NO SOLICITORS SIGNS: Any peddler/ itinerant vendor or solicitor who conducts or attempts to conduct business at a place where a sign clearly indicates that solicitors or peddlers/ itinerant vendors are unwelcome is in violation of this Ordinance.

SECTION 18.0
VIOLATION AND PENALTY: Any person violating the provisions of this Ordinance is guilty of a Class "C" misdemeanor and upon conviction shall be fined not more than $500.00 for each offense. Each day a person violates the provisions of this Ordinance shall be considered a separate offense.

SECTION 19.0

REPEALING CLAUSE: All provisions in conflict with the provisions of this Ordinance shall 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 20.0

SEVERABILITY CLAUSE: That if any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this ordinance which shall remain in full force and effect.

SECTION 21.0

EFFECTIVE DATE: This Ordinance shall be effective after the 1st day of August, 2011.

Thomas C. Kuykendall, Jr., Mayor

ATTEST:

D. Gordon Offord, City Secretary