

Office of the City Manager

City of Richland Hills, Texas

Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council
From: Curtis E. Hawk, City Manager
Date: April 2, 2013
Subject: Amendments to Article IV, Itinerant Merchants and Vendors, Peddlers and Solicitors, Chapter 18, Code of Ordinances

City Council Action Requested:

No action requested. Discussion Item only.

Background Information:

This item was before City Council at the February 19, 2013 Council meeting as a discussion item in order to inform Council of problems with the current ordinance. A draft ordinance that would replace the existing ordinance in its entirety was presented to Council by the City Manager and City Attorney. At the end of the discussion Council was informed that the proposed amended ordinance would be brought back to Council for consideration at a later date.

Several questions were raised by Council during the discussion, and as well, the discussion led staff to look at several other points that should be addressed. The ordinance now before you for discussion includes a number of changes that have been made as a result of the discussion on February 19th. These changes are indicated by use of highlight/double underline and ~~double strike through~~ in the proposed amended ordinance attached to this agenda item page.

Board/Citizen Input:

N/A

Manager's Memo to Council,
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Financial Impact:

No additional funds will be required.

Staff Contacts:

Curtis E. Hawk, City Manager
817-616-3806
chawk@richlandhills.com

Attachment: Proposed Ordinance Amending Article IV, Chapter 18, Municipal Code

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF RICHLAND HILLS, ARTICLE IV, ITINERANT MERCHANTS AND VENDORS, PEDDLERS AND SOLICITORS, OF CHAPTER 18, "BUSINESSES" AND AMENDING APPENDIX A TO SET FORTH THE APPLICATION FEES FOR SUCH ACTIVITIES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Richland Hills, Texas is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; 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 Richland Hills and can result in litter; and

WHEREAS, the City Council finds that regulations addressing all these concerns are in the best interest of the health, safety and welfare of the citizens of Richland Hills; 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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS, THAT:

SECTION 1.

Article IV, "Itinerant Merchants and Vendors, Peddlers and Solicitors" of Chapter 18, "Businesses," of the Code of Ordinances of the City of Richland Hills, Texas is hereby amended to read as follows:

“ARTICLE IV. SOLICITORS, CANVASSERS AND HANDBILL DISTRIBUTION.

DIVISION 1. - GENERALLY

Sec. 18-171. - Purpose.

The purpose of this article 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 article shall be construed to accomplish these purposes.

Sec. 18-172. - Definitions.

In this article:

Administrator means the city secretary ~~assistant police chief~~ or some other employee of the City of Richland Hills designated by the city manager ~~chief of police~~.

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;
and

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 Richland Hills, Texas.

City Manager means the city manager of the city.

City Secretary means the city secretary of the city.

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.

Minor means a person who has not been emancipated and who is under the age of seventeen.

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.

~~Police Chief means the police chief of the city.~~

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

Solicitation Activities means traveling either by foot or vehicle, going door-to-door, house-to-house or building-to-building 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 or collecting money for any purpose.

Solicitor means a person who engages in solicitation activities.

Traffic Safety Vest means a high visibility vest made of fluorescent orange or yellow material that may be clearly seen at any time of the day.

Please note: This ordinance establishes different rules depending upon whether a person going door to door is classified as a solicitor, a canvasser, or a handbill distributor. By way of example only and to further explain the difference between each classification, a person leaving written material or information of any kind (advertising goods and services, political material, or religious information for example) on a door without contacting occupants of the premises is a handbill distributor. If a person going door to door knocks on the door and hands the written material to the occupant or engages the occupant in conversation, the person is a canvasser. If the person going

door to door knocks on the door and hands written material to the occupant, or engages the occupant in conversation and asks for money in exchange for goods and services, a political campaign, a charity or for any purpose, then the person is a solicitor.

Sec. 18-173. – Exemptions.

- (a) This article 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 Article III “Food Service Establishments,” of Chapter 18 of this Code.

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

Sec. 18-174. General Regulations.

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

- (1) before 8:30 a.m.; or
- (2) after dark or 9 p.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 (4) inches by three (3) inches in size, containing the words “NO SOLICITORS,” “NO TRESPASSING,” or words of similar meaning in letters not less than two-thirds (2/3) 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).

(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):

- (1) in a place that is more than five (5) 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.

(h) A person commits an offense if the person engages in solicitation activities, canvassing activities or handbill distribution without wearing a traffic safety vest.

(i) A person commits an offense if the person is registered or is required to be registered with the State of Texas or any other state as a sex offender and engages in solicitation activities, canvassing activities or handbill distribution.

Sec. 18-175. 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.

Sec. 18-176. Penalty.

(a) Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars (\$500.00) for each offense under this article. Each attempted or completed act of handbill distribution or solicitation or canvassing activity shall constitute a separate and distinct offense.

(b) In case of any willful violation of any of the terms and provisions of this article, 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 article 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 article. When a registration certificate is forfeited in this manner, no further certificate shall be issued to that person for one (1) year from the date of judgment or conviction.

Secs. 18-177—18-190. - Reserved.

DIVISION 2. – REGISTRATION

Sec. 18-191. - 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 (1) 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 set forth in the Appendix A of the code. If a person, firm, corporation or organization engages in solicitation activity through two or more agents, employees or volunteers the non-refundable application fee for each additional agent, employee or volunteer shall be set forth in Appendix A of the code. 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 and the bond requirement set forth in this section.

Sec. 18-192. 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 18-193(c), two photographs of the applicant, measuring 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;

(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, and if so, a copy of the bond required by section 18-194;

(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 (10) 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 (10) 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.

Sec. 18-193. Solicitation by Minors; Applications.

(a) A minor who conducts solicitation activities shall be sponsored or employed by a person over the age of eighteen, 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 eighteen (18) years of age or older.

(b) A person, corporation, firm or organization that sponsors or employs one or more minors as solicitors may submit one (1) application and pay one non-refundable application fee, in the amount set forth in chapter 30, 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 **form** 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 **and shall be signed by the parent or legal guardian of the minor.**

(c) A minor that does not submit an application is exempt from section 18-196 and shall be required to carry while conducting solicitation activities only a copy of the approved solicitors registration application.

Sec. 18-194. Bond.

(a) Solicitors who require cash deposits or advance payments for future delivery of goods or for services to be performed in the future or who require an agreement to finance the sale of goods for future delivery or for services to be performed in the future, shall furnish to the city a bond with the application in the amount determined in subsection (c), signed by the applicant and a surety company authorized to do business in Texas:

- (1) conditioned upon the final delivery of goods or services in accordance with the terms of any order obtained;
- (2) to indemnify purchasers for defects in material or workmanship that may exist in the goods sold and that are discovered within 30 days after delivery; and
- (3) for the use and benefit of persons, firms, or corporations that may make a purchase or give an order to the principal of the bond or to the agent or employee of the principal of the bond.

(b) If a person, firm, or corporation is engaging in solicitation activities through one or more agents, employees, or volunteers only one bond is required for the activities of all the agents, employees or volunteers.

(c) The amount of the bond is determined by the number of solicitors as follows:

- (1) 1 to 3 solicitors \$500.00;
- (2) 4 to 6 solicitors \$750.00;
- (3) 7 or more solicitors \$1,000.00.

Sec. 18-195. Application Review and Registration Acceptance.

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

(b) The administrator shall authorize the registration within thirty (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 18.192(i);
- (3) within ten years preceding the date of application, a civil judgment or administrative decision described in section 18.192(j) 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 type of solicitation activity requires a bond, and the applicant or the applicant's employer, principal or organization has not complied with the bond requirements; or
- (6) the application does not contain the information or documents required by section 18-192.

(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 thirty (30) days of the receipt of the application.

Sec. 18-196. 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.

(d) 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.

(e) 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.

(f) 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 (2 ½) inches high. A person commits an offense if the person violates this subsection.

Sec. 18-197. Revocation or Suspension of Registration.

A registration certificate issued pursuant to this article 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 18-192(i);
- (d) a judgment involving a matter described in section 18-192(j);
- (e) the type of solicitation activity requires a bond, and the bond requirements have not been complied with or the bond has expired or is no longer valid; or
- (f) a violation of any of the regulations set forth in this article.

Sec. 18-198. 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 ~~police chief~~ city manager by filing notice of appeal with the police chief 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 10 days of the receipt of the notice of appeal, the ~~police chief~~ city manager 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) The decision of the ~~police chief~~ city manager on the appeal is final. No other administrative procedures are provided by the city.

Secs. 18-199—18-210. - Reserved.”

SECTION 2. PERMIT FEES

Appendix A, “Fees Schedule,” of the Code of Ordinances of the City of Richland Hills, Texas, is hereby amended to read as follows:

“...

Chapter 18. Businesses.

18-191 Annual permit fee for person, firm, corporation or organization

and a single agent, employee or volunteer. ~~=\$35\$~~ .00;

Annual permit for each additional agent, employee or volunteer. ~~\$10\$~~ .00;

Annual permit fee for person, corporation, firm or organization that sponsors or employs one or more minors as solicitors." ~~\$50\$~~ .00.

SECTION 3. CUMULATIVE

This Ordinance shall be cumulative of all provisions of the City Code and other ordinances of the City of Richland Hills, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 4. SEVERABLE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if a phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of the unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 5. SAVINGS

All rights and remedies of the City of Richland Hills are expressly saved as to any and all violations of the provisions of the City Code or any other ordinances regulating solicitors, canvassers or handbill distribution that 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

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 7. PUBLICATION

The City Secretary of the City of Richland Hills is hereby directed to publish caption, penalty clause, and effective date clause in the official newspaper at least once within ten (10) days after the passage of this ordinance.

SECTION 8. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS _____ DAY OF _____, 2013.

THE HONORABLE BILL AGAN, MAYOR

ATTEST:

LINDA CANTU, CITY SECRETARY

EFFECTIVE DATE: _____

APPROVED AS TO FORM AND LEGALITY:

BETSY ELAM, CITY ATTORNEY