

CHAPTER 111: PEDDLERS AND SOLICITORS

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Statutory reference:

Authority of municipality to license, tax, suppress, prevent, or otherwise regulate peddlers, hawkers and solicitors, see Tex. Loc. Gov't. Code, § 215.031

§ 111.01 DEFINITIONS.

When used in this subchapter, the following words shall have the meanings respectively ascribed to them by this section.

GOODS or MERCHANDISE. Any property of value, or commodities of commerce that can be bought or sold, or wares of any nature.

INTERSTATE COMMERCE. Soliciting, selling or taking orders for any goods, wares, merchandise, photographs, newspapers or magazines which, at the time the order is taken are in another state or will be produced in another state and shipped or introduced into this town in the fulfillment of such orders.

ITINERANT MERCHANT. A person who sets up and operates a temporary business within the premises of another business or any other building or location in the town, soliciting, selling or taking orders for, or offering to sell or take orders for any goods or services.

PERSON. The singular and plural and shall also mean and include any person, firm, corporation, association, partnership or copartnership.

POLICE CHIEF. The Chief of Police of the Town of Ponder or his or her designee.

RESIDENCE. Any separate living unit occupied for residential purposes by 1 or more persons, contained within any type of building or structure.

SOLICITATION ACTIVITIES. The practices of solicitors as listed below.

SOLICITATION TRANSACTION. A transaction for the purchase of goods or services, payable in installments or cash, in which the solicitor engages in a personal solicitation of a sale to a person at a residence. A **SOLICITATION TRANSACTION** shall not include a sale made pursuant to a preexisting retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.

SOLICITOR. Any person, whether a resident of the Town of Ponder or not, including an employee or agent of another, traveling either by foot, automobile, truck, or some other type of conveyance, who engages in the practice of going door-to-door, house-to-house, or along any streets within the town:

(1) Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares, or other items of value for further delivery, or services to be performed in the future, for commercial purposes; or

(2) Requesting contribution of funds, property, or anything of value, or the pledge of any type of future donation, or selling or offering for sale any type of property, including but not limited to goods, tickets, books and pamphlets, for political, charitable, religious or other noncommercial purposes.

TOWN. The Town of Ponder, Texas.
(2000 Code, § 4.601)

§ 111.02 LICENSE APPLICATION.

(A) Any person who wishes to engage in home solicitation or any itinerant merchant who wishes to solicit within the town shall file a written application with the Town Secretary or designee. This application shall show:

(1) Proof of the identity and home address of the applicant and the name and address of the employer, firm, association, organization, corporation, partnership or copartnership which the applicant represents;

(2) A brief description of the nature, character and quality of the goods to be sold;

(3) If a motor vehicle is to be used, a description of the vehicle together with the motor vehicle registration number and the license plate number;

(4) A description of the proposed locations of the solicitation;

(5) The period of time the applicant so wishes to solicit, sell or take orders in the town;

(6) The names of other communities in which the applicant has worked as a solicitor in the past 12 months; and if he or she was employed by a different company in those communities, and the name of those companies;

(7) Whether the applicant has been convicted within the last 5 years for burglary, theft, fraud, robbery or rape;

(8) Proof of sales tax permit issued by the state or proof that the goods sold are not subject to the sales tax; and

(9) An itinerant merchant who makes application to offer his or her goods for sale upon private property shall provide written proof that he or she has permission to use the property from the owner or the owner's agent.

(B) A license requested under this chapter shall be issued for the length of time requested, not to exceed 3 months.

(C) Upon expiration of a permit, the solicitor or itinerant merchant may apply for a new permit.
(2000 Code, § 4.602)

§ 111.03 LICENSE.

(A) It shall be unlawful for any person to engage in the business of solicitor or itinerant merchant as defined in this subchapter within the corporate limits of the town without first obtaining a license therefor as provided herein. It shall also be unlawful to sell or solicit as herein defined without carrying the license while engaged in that activity.

(B) The license shall be used only by the person to whom it was issued and may not be transferred to any other person.

(C) It shall be unlawful for any person soliciting to fail or refuse to display the license upon the request of any person demanding the same.
(2000 Code, § 4.603) Penalty, see § 111.99

§ 111.04 REGULATIONS.

The following regulations apply to solicitors engaged in solicitation activities in the town:

(A) Every person who shall comply with this chapter and shall sell, or offer for sale, any of the articles as herein specified, shall at all times keep the same in a clean and sanitary condition, and shall also keep in their wagons, vehicles or other conveyances in a clean and sanitary condition, and they shall not sell, or offer for sale, any unwholesome articles, nor shall they give or make any false weights or measures of any of the various articles as specified and covered by this chapter.

(B) It shall be unlawful for any person selling or soliciting orders for goods, wares, merchandise, services, magazines, or newspapers or subscriptions to magazines or newspapers, except as herein provided, to go in or upon the premises of a private residence in the town unless requested or invited to do so by the owner or occupant of the same residence for the purpose of selling or disposing of or peddling same, and shall leave the premises upon request.

(C) No person shall engage in business as a solicitor in defiance of any notice exhibited by a residence or business indicating that solicitors are not welcome or not invited:

(1) A person, desiring that no merchant or other person engage in home solicitation at his or her residence, shall exhibit in a conspicuous place upon or near the main entrance of the residence, a weatherproof card, not less than 2 inches by 4 inches in size, containing the words, NO SOLICITORS. The letters shall be not less than 2/3 of an inch in height.

(2) Every solicitor upon going onto any premises upon which a residence is located shall first examine the residence to determine if any notice prohibiting solicitation is exhibited. The solicitor shall immediately depart from the premises without disturbing the occupant, unless the visit is the result of a request made by the occupant.

(4) No solicitor, nor any person in his or her behalf, shall shout, make any cry out, blow a horn, ring a bell or use any sound device, including any sound amplifying system or loud speaker radio upon any of the streets, alleys, parks or other public places of the town or upon any private premises in the town where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which the licensee proposes to sell.

(5) No solicitor shall have any exclusive right to any location in the public streets or rights-of-way, or alleys, nor shall he or she be permitted to operate in any congested area where his or her operations might impede or inconvenience the public. For the purposes of this chapter, the judgment of a police officer, exercised in good faith, shall be prima facie evidence as to whether the area is congested or the public is inconvenienced.

(6) A person shall not go upon any residential premises and ring the doorbell, or rap or knock upon the door, or create any sound in a manner calculated to attract the attention of the occupant or the residence for the purpose of engaging in or attempting to engage in a home solicitation transaction:

(a) Before 9:00 a.m. or after 8:00 p.m. of any day Monday through Saturday; or

(b) At any time on a Sunday, New Year's Day, July Fourth, Labor Day, Thanksgiving Day or Christmas Day.

(7) Division (6) shall not apply to a visit to the premises as a result of a request or an appointment made by the occupant.

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(8) It shall be unlawful for any person to solicit on property owned by the town unless the person has entered into an agreement with the Town Council.

(2000 Code, § 4.604) Penalty, see § 111.99

§ 111.05 SUSPENSION OF LICENSE.

(A) Any license issued under this subchapter may be suspended for any of the following reasons:

(1) Fraud or misrepresentation in the application for a license;

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

(3) Conducting solicitation activities contrary to the conditions of this license; or

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

(B) Upon suspension of a license, the town shall deliver notice to the license holder stating the action taken and the reasons supporting each action. The written notice shall be delivered to the license holder's place of business or mailed to the license holder's last known address.

(2000 Code, § 4.605)

§ 111.06 APPEALS.

Persons who are denied licenses or whose licenses have been suspended, may appeal by filing a written notice of appeal with the Ponder Town Secretary. The appeal must be filed within 10 days after receipt of the notice of denial or suspension. The Town Council shall hear and determine the appeal at the next scheduled regular meeting of the Council, and the decision of the Council shall be final.

(2000 Code, § 4.606) (Ord. 177, passed 3-4-1996)

§ 111.07 RENEWALS.

Licenses may be renewed, provided an application for renewal and license fees as required under the current fee schedule are received by the town no later than the expiration date of the current license. Applications received after that date shall be processed as new applications. The town shall review each application for renewal to determine that the applicant is in full compliance with the provisions of this chapter. If the town finds that the application meets such requirements, the town shall issue a new license.

(2000 Code, § 4.607) (Ord. 177, passed 3-4-1996; Ord. 00-10, passed 4-6-2000)

§ 111.08 DUTY OF THE POLICE.

(A) It shall be the duty of any police officer of the town to require any person seen soliciting, and who is not known by that officer to be duly licensed, to produce his or her license and to enforce the provisions of this chapter against any person found to be violating same.

(B) It shall be the duty of the Chief of Police to issue each applicant a permit to engage in the solicitation activities set forth in the applicant's application within 5 working days of the receipt of a completed application and prescribed fee unless it has been determined that the application is incomplete, contains false information or the person has been convicted within the last 5 years of theft, fraud, burglary, robbery or rape. If the application contains false information or the person has been convicted, the Chief shall not issue the permit.

(C) Any person aggrieved by the action of the Chief of Police in the denial of an application for a permit shall have the right of appeal.

(2000 Code, § 4.608)

§ 111.09 EXEMPTIONS.

(A) *Exemptions from license.* The provisions of this subchapter shall not apply to:

(1) Sales made to dealers by commercial travelers or sales agents in the usual course of business, calling upon or dealing with manufacturers, wholesalers, distributors or retailers at their place of business;

(2) Licensed real estate brokers or agents;

(3) Solicitors on the property or residence by express invitation of the occupant;

(4) Minors under the age of 17, unless they are acting as agents of adults covered by this chapter; or

(5) Members of the Ponder Volunteer Fire Department.

(B) *Exemptions from license fee.* The following persons and/or organizations are exempt from the payment of a licensing fee, but are required to obtain a license and comply with all ordinance regulations:

(1) Persons engaged in charitable, educational or religious purposes, and the person exhibits, at the time of solicitation, documentation in writing which identifies him or her as a representative of the charitable, educational or religious organization for whom he or she is soliciting; or

(2) Persons engaged in interstate commerce, provided the person has proper documents of identification.
(2000 Code, § 4.609)

conviction in the Municipal Court, in accordance with the general penalty provision found in § 10.99 of this code, and each and every day that the premises shall remain in a condition in violation of the terms of this subchapter shall constitute a separate and distinct offense. Upon the trial of any person brought before the Court, the Court is authorized to fix a time within which the person may be allowed to abate the violation, if in judgment of the Court, the action is deemed advisable.

(2000 Code, § 4.610) (Ord. 177, passed 3-4-1996)

§ 111.99 PENALTY.

Any person, or any owner or occupant, or agent of any owner or occupant, violating any of the terms of this chapter shall be subject to a fine, upon