

**CITY OF WHARTON  
ORDINANCE NO. 2017-04**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 42, OCCUPATIONAL LICENSES, TAXES AND REGULATIONS, ARTICLE IV, DIVISION 1-GENERALLY, DIVISION 2-REGISTRATION AND DIVISION 3-STREET PEDDLERS AND TRANSIENT VENDORS, SECTIONS 42-151 TO 42-205; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE; PROVIDING FOR SEPARABILITY AND SETTING AN EFFECTIVE DATE.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas:

**WHEREAS**, it is the desire of the City of Wharton Code of Ordinances to read as follows:

**Sec. 42-151. - Declaration of authority and purpose.**

This entire article is and shall be deemed an exercise of the police power of the state and of the city, for the public safety, comfort, convenience and protection of the city and citizens of the city, and all of the provisions of this article shall be construed for the accomplishment of that purpose.

(Code 1978, § 11-50)

**Sec. 42-152. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Commercial* means engaged in commerce. Designed for profit and supported by advertisement.

*Goods or merchandise* means any personal property of any nature whatsoever, except printed material.

*Home solicitation transaction* means a transaction or the purchase of goods or services, payable in installments or cash, in which the home solicitor engages in a personal solicitation of a sale to a person at a residence. A home 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.

*Home solicitor* means a person who goes from house to house or from place to place soliciting, selling or taking orders for or offering to sell or take orders for any goods, merchandise or services.

*Itinerant merchant or vendor* means a person, as well as their agents and employees, who sets up and operates a temporary business within the premises of another business or any other building, enclosure, vacant lot, vehicle or location in the city, soliciting, exhibiting, selling or taking orders for or offering to sell or take orders for any goods or services. The term shall not include or be construed to include anyone engaged in interstate commerce or anyone upon whom the provisions of this chapter would impose a direct and unlawful burden on interstate commerce. This term shall also not include those persons operating vehicles otherwise permitted by this Code, including taxicabs or tow truck services.

*Residence* means any separate living unit occupied for residential purposes by one (1) or more persons, contained within any type of building or structure.

*Solicitor, peddler, itinerant merchant or itinerant vendor* means any person engaged in any activity mentioned in section 42-176. *Soliciting, solicit or solicitation* means selling or attempting to sell goods or services or to take or attempt to take orders for services or goods to be performed or furnished in the future.

*Temporary* shall mean any such business transacted or conducted in the city for which definite arrangements have not been made for the hire, rental or lease of premises for at least one (1) month in or upon which such business is to be operated or conducted.

**Cross reference**— Definitions and rules of construction generally, § 1-2.

**Sec. 42-153. - Going uninvited on property.**

It shall be unlawful for any person to go in and upon the premises of any private residence, business or other property in the city, unless requested or invited to do so by the owner or occupant of the private residence, business or other property, for the purpose of soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines.

(Code 1978, § 11-57)

**Sec. 42-154. - Hours of operation.**

(a) It shall be unlawful for a person to go upon any residential or commercial 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 of the residence for the purpose of engaging in or attempting to engage in a solicitation transaction:

- 1) Before 10:00 a.m. or after 6:00 p.m. of any day, Monday through Saturday; or
- 2) At any time on a Sunday, New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day or Christmas Day.

(b) Subsection (a) of this section shall not apply to a visit to the premises as a result of a request or an appointment made by the occupant.

**Secs. 42-155—42-175. - Reserved.**

## **DIVISION 2. - REGISTRATION**

**Sec. 42-176. - Required; card.**

It shall be unlawful for any person to go from house to house or from place to place or by telephone in the city soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines without having first registered at the Code Enforcement Department at the city hall. It shall also be unlawful to sell or solicit in the city, as stated in this section, without carrying a registration card issued by the Code Enforcement Department city secretary while engaged in such soliciting or selling. A canvasser, otherwise exempt from the provisions of this article, may request an identification badge from the City.

**Sec. 42-177. - Application.**

- (a) Any person desiring to go from house to house or from place to place in the city to sell or solicit orders for goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines shall make written application to the Code Enforcement Department for a registration card, which application shall show:
1. The name, address and phone number of the applicant;
  2. The driver's license and social security number of applicant for a background check;
  3. The name and address of the person, if any, that he represents;

4. The kinds of goods offered for sale and whether such applicant, upon any such sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery;
  5. The period of time and the projected hours of operation such applicant wishes to sell or solicit in the city;
  6. The license plate number, make, model and year of any and all vehicles to be used; and
  7. Proof of liability insurance (as required by state law) for any vehicle to be used by the applicant.
- (b) Any person applying for a registration card must submit to a background check of that person's criminal record by the City of Wharton.
- (c) Any person who has been convicted of a misdemeanor involving moral turpitude within the three-year period immediately preceding the date of that person's application for a registration card or a felony involving moral turpitude within the five-year period immediately preceding the date of that person's application for registration shall be ineligible to receive a registration card. In these circumstances, the Code Enforcement Department shall reject the application and shall not issue a registration card to that person.

**Sec. 42-178. - Bond.**

The application for registration as a peddler, solicitor or itinerant merchant shall be accompanied by a bond in the penal sum of no less than \$5,000 , signed by the applicant as principal and signed, as surety, by some surety company authorized to do business in the state, conditioned for the final delivery of goods, wares, merchandise, services, photographs, magazines and newspapers in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify all purchasers or customers for all defects in material or workmanship that may exist in the article sold by the principal of the bond, at the time of delivery, and that may be discovered by such purchaser or customer within thirty (30) days after delivery. The bond shall be for the use and benefit of all persons who may make any purchase or give any order to the principal on the bond or to an agent or employee of the principal. If the applicant is engaging in any such activity through one or more agents or employees, such persons shall be required to enter into only one bond, in the sum required in this section, which bond shall be made to cover the activities of all such agents or employees.

**Sec. 42-179. - Fees; term.**

The application for registration as a solicitor, peddler, itinerant merchant or itinerant vendor shall be accompanied by a non-refundable fee of fifty-five dollars (\$55.00), which registration will be valid for one year from the date of issuance. However, when any person engages in any such

activity through more than one agent or employee, such person shall, in addition to such fee, pay a registration fee of \$20.00 for each additional agent or employee so engaged. The registration card shall be issued to the individual agent or employee and shall not be used by any other agent or employee. The fees provided for in this section shall be used for the purpose of defraying expenses incident to the registering of such vendors and merchants and the administration of this article.

**Sec. 42-180. - Exemptions.**

The registration required in this division shall not apply to:

1. Sales made to dealers by commercial travelers or sales agents in the usual course of business or to sales made under authority and by order of law; or
2. Sales or exhibits at fairs, conventions or events sponsored by one or more City civic organizations, school, church or the Chamber of Commerce; or
3. Charitable solicitations; or
4. Insurance or Alarm companies carrying a current Texas State License; or
5. Persons who permanently reside in or within ten miles of the city will be exempt from background checks and fees, however will be required to register with the Code Enforcement Department and carry a registration photo identification card.

**Secs. 42-181—42-200. - Reserved.**

**DIVISION 3. - STREET PEDDLERS AND TRANSIENT VENDORS**

**Sec. 42-201. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Charitable purpose* shall mean philanthropic, religious or other nonprofit objective, including the benefit of poor, needy, sick, refugee or handicapped persons; the benefit of any church or religious society, sect, group or order; the benefit of a patriotic or veterans' association or organization; the benefit of any fraternal, social or civil organization, or the benefit of any education institution. "Charitable purpose" shall not be construed to include the direct benefit of any political group or political organization which is subject to financial disclosure under state or federal law.

*Consumer* shall mean an individual who acquires real or personal property, services, money or credit for personal, family or household purposes.

*Merchant* shall mean a party to a consumer transaction other than a consumer.

*Non-profit organization* shall mean any organization that does not seek to make a profit and that is not a public body. This definition includes, but is not limited to, entities such as the Multiple Sclerosis Association of America, The American Heart Association, The Muscular Dystrophy Association, The American Cancer Society, City of Wharton public safety departments, The Boy Scouts of America, The Girl Scouts of the United States of America, etc.

*Person* shall mean any individual, firm, company agency, partnership, corporation, association, trust, society, religious sect, organization, league or other legal entity and includes any trustee, receiver, assignee, agent or similar representative.

*Religious organization* shall mean any organization that is dedicated to the support of a church, religious society, or any other religious sect, group or order.

*Solicitors* shall mean any person or its agent, member or representative engages in action dictated in Sec. 42-176.

*Street peddler* shall mean a person who sells tangible commodities on the public streets, sidewalks, public right-of-ways or other places from more than one established location and who makes delivery at the time of the sale.

*Transient vendor* shall mean a person who sells commodities from private premises, such as a parking lot or vacant lot, using a cart, a motor vehicle, a trailer, a tent or other temporary shelter.

**Cross reference**— Definitions and rules of construction generally, § 1-2.

**Sec. 42-202. - Registration—Required; application; issuance of card.**

(a) It shall be unlawful for any street peddler, transient vendor or solicitor to make any sales or to conduct any business as a street peddler, transient vendor or solicitor in the city without having first registered at the office of the Code Enforcement Department at the city hall and without carrying a registration card, issued by the Code Enforcement Department, while engaged in such activities as a street peddler, transient vendor or solicitor. The application to the Code Enforcement Department for a registration card shall show:

1. The name, address and phone number of the applicant;
2. The driver's license and social security number of applicant for background check;

3. The name and address of the owner of the property upon which the applicant will be engaged in such activities;
  4. The name and address and the state general sales tax permit number of the person, if any, that he represents;
  5. The kind of goods offered for sale;
  6. Whether such applicant upon any such sale or order shall demand, accept or receive payment or deposit of money in advance of final delivery;
  7. The period of time and the projected hours of operation such applicant wishes to sell or solicit in the city as a street peddler, transient vendor or solicitor;
  8. The license plate number, make, model and year of any and all vehicles to be used;
  9. Proof of liability insurance (as required by state law) for any vehicle to be used by applicant;
  10. Name of individual, firm, company or organization represented, if any, and the permanent address and local address thereof;
- (b) Any person applying for a registration card must furnish the Code Enforcement Department evidence of written permission from the owner of the property for the applicant to conduct such activities on the property.
- (c) Any person applying for a registration card must submit to a background check of that person's criminal record by the City of Wharton.
- (d) Any person who has been convicted of a misdemeanor involving moral turpitude within the three-year period immediately preceding the date of that person's application for a registration card or a felony involving moral turpitude within the five-year period immediately preceding the date of that person's application for registration shall be ineligible to receive a registration card. In these circumstances, the Code Enforcement Department shall reject the application and shall not issue a registration card to that person.

**Sec. 42-203. - Same—Bond.**

The application for registration as a street peddler, transient vendor or solicitor shall be accompanied by a bond in the penal sum of no less than \$5,000.00, signed by the applicant as principal and by a surety company authorized to do business in the state, conditioned on the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned on indemnifying all purchasers or customers for any defects in material or workmanship that may exist in the article sold by the applicant, at the time of delivery, and that may be discovered by such purchaser or customer within thirty (30) days after delivery. The bond shall be for the use and benefit of all persons who may make any purchase from or place any order with the applicant on the bond or to an agent or employee of the applicant.

**Sec. 42-204. - Same—Fees; cards nontransferable.**

- (a) The application for registration as a street peddler, transient vendor or solicitor shall be accompanied by a non-refundable fee of fifty-five dollars (\$55.00), which registration shall be valid for one year from the date of its issuance. The registration fee for selling agricultural product, which shall not include meat, poultry, fish, shrimp or any similar product shall be twenty-five dollars (\$25.00), and shall be valid for sixty (60) days from its issuance.
- (b) All registration cards shall be nontransferable.
- (c) The fees provided for in this section shall be used for the purpose of defraying expenses incident to the registering of the applicants.

**Sec. 42-205. - Exceptions.**

Notwithstanding any term contained in this division to the contrary, this division shall not apply to the following:

- (1) Merchants having permanent businesses located within the city who may wish to display or sell merchandise from sidewalks, parking lots or other vacant property adjoining their own premises; or
- (2) Sales or exhibits at fairs, conventions or events sponsored by one or more City civic organizations, school, church or the Chamber of Commerce; or
- (3) Charitable solicitations; or
- (4) Any persons who are residents of the city will be exempt from background checks and fees; however will be required to register with the Code Enforcement Department and carry a registration photo identification card.
- (5) Insurance or Alarm companies carrying a current Texas State License; or
- (6) A canvasser, otherwise exempt from the provisions of this article, may request an identification badge from the City.

**Secs. 42-206—42-219. - Reserved.**



### Fine and Penalty for Violations

Sec. 18-145. Penalties. Any person violating any of the terms or provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 or more than the maximum provided in section 1-5 for each offense. If the terms or provisions of this article are violated by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and the person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

### Separability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

### Effective Date

This Ordinance shall become effective on the 24th day of February 2017.

### Passage and Approval

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on the 13th day of February 2017.

**CITY OF WHARTON, TEXAS**

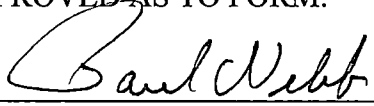
By:   
**TIM BARKER**  
Mayor

ATTEST:



**PAULA FAVORS**  
City Secretary

APPROVED AS TO FORM:



**PAUL WEBB**  
City Attorney

