

**TOWN OF PONDER
ORDINANCE NO. 21-10**

AN ORDINANCE OF THE TOWN OF PONDER, AMENDING AND REPLACING THE TOWN OF PONDER CODE OF ORDINANCES, CHAPTER 111 PEDDLERS AND SOLICITORS; PROVIDING A PENALTY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Ponder recognizes a need for the regulation of solicitors within the Town Limits of Ponder; and

WHEREAS, the Texas Local Government Code, Section 342.003(a)(8) authorizes municipalities to license, tax and regulate peddlers and hawkers; and

WHEREAS, the Town Council for the Town of Ponder deems it necessary to adopt and periodically amend an ordinances regulating solicitors within the Town Limits of Ponder.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PONDER, TEXAS;

That **CHAPTER 111, PEDDLERS AND SOLICITORS** is amended and replaced, and shall read as follows:

CHAPTER 111: PEDDLERS AND SOLICITORS

Section

- 111.01 Purpose and Intent
- 111.02 Definitions
- 111.03 License application
- 111.04 License
- 111.05 Regulations
- 111.06 Suspension of license
- 111.07 Appeals
- 111.08 Renewals
- 111.09 Duty of the Police
- 111.10 Exemptions

- 111.99 Penalty

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 PURPOSE AND INTENT

The purpose of this chapter is to secure the general health, safety, and welfare for the residents

of the Town by:

- (1) Prohibiting door-to-door solicitation at residences during the times when such activity is most intrusive and disruptive to citizens' privacy;
- (2) Regulating the locations in which solicitation activity may occur to promote safety and minimize congestion;
- (3) Regulating the manner in which any solicitation activity may occur to promote good order protect citizens from aggressive and intimidating practices; and
- (4) Requiring solicitors to obtain permits from the Town to aid crime detection and deter deceptive practices and fraud.

§ 111.02 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.

***ITENERANT 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 corporation.

***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.

***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*.**

(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 Town;

(2) While personally contacting persons to ask, barter or communicate in any other 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:

- a. Selling or taking orders for goods, wares, merchandise or services; or
- b. Collecting money for any purpose.

The term does not include:

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

(2) Activity approved in conjunction with a Town sponsored event;

(3) Activity conducted in conjunction with a residential yard or garage sale;

(4) Activity of a business conducted at the permanent established location of that business;

(5) Activity conducted on property not owned or under control of the Town with consent of the owner or person in control of the property not conducted while traveling either by foot or vehicle, going door-to-door, house-to-house or building-to-building;

(6) Activity for which a special use permit has been issued pursuant to the Town's zoning ordinance;

(7) Activity conducted in connection with a mass gathering event under section 34 of the Town's zoning ordinance; or

(8) Activity conducted at a Town park pursuant to a concession agreement with the Town or in accordance with applicable park ordinances and policies.

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)

§ 111.03 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 on a form provided by the Town Secretary or designee. This application shall contain the following information:

(1) The name, driver's license or state issued identification, date of birth, telephone number, and home address of each applicant.

(2) If the applicant is:

- A. Employed by another, the name and physical street address (not a post office box) of the employer;
- B. Acting as an agent, the name, the physical street address (not a post office box), and telephone number of the principal being represented, with credentials in written form establishing the relationship and authority of the employees or agent to act for the employer or principal; or
- C. Acting as a volunteer, the name and physical street address (not a post office box) of the business or organization being represented must be provided;

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

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

(5) A photocopy of the valid state driver's license number or a state-approved identification card shall be made and attached to the application;

(6) Proof of possession of any license or permit which, under federal, state, or local laws or regulations, the applicant is required to have in order to conduct the proposed solicitation. Copies of all such licenses and permits shall be attached to the application;

(5) If the applicant has plead guilty, or nolo contendere to, or has been convicted of a felony or misdemeanor involving fraud, deceit, misrepresentation, a sex offense, trafficking a controlled substance, or any act of violence against persons or property within five years preceding the date of application, a description of each such conviction or plea and the date of the offense;

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

(7) 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;

(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)

§ 111.04 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

§ 111.05 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 8:00p.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.

(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.

(C) Ice Cream Truck Guidelines

(1) All owners of ice cream trucks vending products to children shall submit a copy of their driver's license to the Town and obtain the permit described in this article before operating such vehicle. If the ice cream truck operator shall be a different person than the owner, then the ice cream truck owner shall submit a copy of the operator's driver's license to the Town.

(2) All ice cream truck owners shall provide proof of automobile insurance according to state law along with the application.

(3) All applicants shall be subject to a criminal history background check and shall consent to such check as a condition of application. A conviction for any offense involving actual or attempted homicide, kidnapping, assault or assaultive offenses, unlawful sexual conduct or assault, theft (including robbery or burglary), prostitution or obscenity shall be grounds for disqualification of an applicant.

- (4) The vehicle must be clean, inside and out, painted, and in good condition. The service window for customers must be on the curbside of the vehicle.
- (5) The vehicle must be equipped with left and right outside rear-view mirrors along with two wide angle mirrors, one located in the front and one located in the back of the vehicle.
- (6) The vehicle must be equipped with signs reading WATCH FOR CHILDREN and/or STOP FOR CHILDREN in 5" letters on both the front and the back of the vehicle. It is recommended that signs be present on all four sides of the vehicle.
- (7) Mobile vendor trucks shall park in the right-of-way, as far as practicable from traffic when stopping for the purpose of making sales and shall operate emergency flashers when stopped. In no event shall a mobile vendor truck stop for the purpose of making sales that prevent passage of other motor vehicles on the right-of-way or impede the flow of vehicular or pedestrian traffic.
- (8) The vehicle must have the business name permanently affixed on both sides in 3" or larger letters.
- (9) All vehicles must be equipped with operable four-way hazard lights and at least one permanently affixed flashing amber light on the top of the vehicle.
- (10) Floors and floor coverings must be constructed of a smooth and durable material, such as linoleum or metal, and must be easily cleanable. Carpeting of any type is strictly prohibited. The use of anti-slip floor covering will be allowed.
- (11) Walls and ceilings must be smooth, easily cleanable and non-absorbent. No carpet or exposed, raw wood is allowed.
- (12) All equipment must be mounted and properly secured to eliminate unsafe conditions.
- (13) Food storage units must be clean, in good repair, and properly designed to maintain the food product at 0° F or below. A visible thermometer must be provided.
- (14) Mobile vendors shall only vend on the passenger side of the ice cream truck.
- (15) All ice cream must be pre-wrapped, sealed, labeled and obtained from an approved source. Pre-packaged candy, chips and soft drinks must be sold in single portion units.
- (16) If soft drinks are cooled on wet ice, a retention tank must be provided for drainage purposes and must be disposed of at a designated service site.
- (17) A trash receptacle must be available to the customer from the outside of the vehicle.

- (18) All drivers must possess a current Texas Driver's License, Texas license plate and a Texas safety inspection sticker.
- (19) Vendors shall not sell, distribute, or offer for sale, any products or services within two Town blocks or 600 feet, whichever is greater, of the grounds of any public, private, parochial, elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when school is in session.
- (20) Vendors shall limit their hours to 10:00 a.m. to 30 minutes before sunset. Those units legally operating inside a park in accordance with Park Department approval may continue to operate during the hours set by the Parks and Recreation Department.
- (21) Mobile vending trucks may only operate a horn, sound amplification system, or other sound producing device or music system during authorized vending periods; but NOT when the truck is stationary or in a manner that creates a noise disturbance as defined in the Town's Code of Ordinances. Sound shall not be broadcast within 100 yards of schools during school hours while school is in session, or within 100 yards of hospitals, churches, courthouses, funeral homes, or cemeteries.
- (22) No mobile vendor shall sell alcoholic beverages, controlled substances, or any other item the possession or use of which is deemed illegal under any federal, state, or local law.
- (23) Drivers shall check around the vehicle before leaving the area to ensure that children are not remaining. When handing the purchased product to the children, drivers shall make certain traffic is clear, in case a child leaves the truck immediately and fails to observe the hazard of oncoming traffic.
- (24) Child customers shall not be allowed inside the vehicle. This provision shall not apply to children related to the driver within the third degree of consanguinity or affinity, while riding with the driver along the sales route.
- (25) The Town may revoke a permit if: (i) it is determined that it was issued in error, or (ii) if incorrect information is supplied, or (iii) when it is determined that an ordinance or regulation has been violated.

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

§ 111.06 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)

§ 111.07 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)

§ 111.08 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)

§ 111.09 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)

§ 111.10 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)

§ 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 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) (Ord 21-10, passed 07-12-2021)

PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PONDER,
TEXAS, THIS 26th day of July., 2021.

APPROVED:



Matthew Poole, Mayor

ATTEST:



Sheri Clearman, Town Secretary