

**CITY OF BALCH SPRINGS**

**ORDINANCE NO. 3145-17**

**AN ORDINANCE OF THE CITY OF BALCH SPRINGS, DIRECTING THE CITY MANAGER, OR HER OR HIS DESIGNEE, TO PERFORM BACKGROUND CHECKS FOR PERSONS APPLYING FOR ITINERANT MERCHANT PERMITS AND AMUSEMENT CENTER PERMITS; REQUIRING STATE AND NATIONAL CRIMINAL BACKGROUND CHECKS; PROVIDING PERMIT FEES; PROVIDING A RIGHT OF APPEAL; PROVIDING FOR INSTANCES OF FALSE REPRESENTATION; PROVIDING FINDINGS OF FACT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, OPEN MEETING, AND AN EFFECTIVE DATE.**

**WHEREAS**, City of Balch Springs Code of Ordinance, Chapter 18, Article IV, prohibits any person from operating an amusement center without having first obtained a permit from the City; and

**WHEREAS**, the aforesaid provisions require the chief of police to process such applications; and

**WHEREAS**, City of Balch Springs Code of Ordinance, section 18-392, requires itinerant merchants and transient vendors of merchandise to obtain a permit from the City of Balch Springs Police Department (“the Department”) before soliciting any orders, offering for sale or selling any goods, wares or merchandise within the city; and

**WHEREAS**, the Texas Department of Public Safety (DPS) has informed the Department that conducting background checks for itinerant merchants and amusement centers does not meet federal guidelines imposed for access to FBI records; and

**WHEREAS**, the Police Department is prohibited under federal rules from conducting criminal background checks for itinerant merchants using the Department’s Originating Agency’s Identifier (ORI) Number, which provides the Department access to the Criminal Justice Index System/Department of Public Safety/Federal Bureau of Investigations network, because, under federal rules, conducting background checks for itinerant merchant permits is not considered a “law enforcement activity”; and

**WHEREAS**, the City has applied for and is expected to be granted a new ORI Number, which will be assigned solely to the City, separate and apart from the ORI Number assigned to the Department; and

**WHEREAS**, the City Council of the City of Balch Springs finds that, once the City receives a new ORI Number, the City Manager, or her designee, instead of the police chief, shall process applications for itinerant merchant permits and amusement center permits; and

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BALCH SPRINGS, TEXAS THAT:**

**SECTION 1.** The preceding recitals are found to be true and accurate legislative findings of the City Council of the City of Balch Springs and they are fully incorporated herein for all purposes.

**SECTION 2. A.** The following sections of Chapter 18, “Businesses,” Article IV, “Amusement Centers,” of the Code of Ordinances of the City of Balch Springs are hereby amended and shall hereafter read as follows:

**Sec. 18-101.** – Definitions [add the following]:

*City manager* means the City manager of the City of Balch Springs or her or his designee.

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**Sec. 18-103. - Permit application.**

(a) An applicant for an amusement device permit shall file with the city manager a written application on a form provided for such purpose, which shall be signed by the applicant. If an applicant maintains an amusement device at more than one location, a separate application shall be filed for each location. The following information is required in the application:

(1) Name, business and residence addresses, and business and residence telephone numbers of the applicant, including the trade name by which the applicant does business and the street address where the amusement device is located, and if incorporated, the corporation name registered with the secretary of state.

(2) Name, business and residence addresses, and business and residence telephone numbers of the operator of the location where the amusement device is located, and proof that the operator is at least 18 years of age.

(3) Whether the applicant, operator, or, any corporate officer or partner of the applicant or operator has been convicted of a felony, or, within the preceding ten years has been convicted of an offense involving drugs, gambling, prostitution, obscenity or unlawfully carrying a weapon.

(4) The previous occupation of the applicant, operator and/or all corporate officers or partners of the applicant or operator within the preceding ten years.

(5) Whether a previous permit of the applicant, operator, or the corporate officers or partners of the applicant or operator has been revoked within two years of filing of the application.

(6) Number of amusement devices.

(7) A statement that the information contained in the application is true.

(b) The city manager may require additional information of an applicant to clarify items on the application and shall take a complete set of fingerprints of the applicant to be retained as part of the application. By submitting an application, all applicants agree to allow the city to utilize information contained in the application, and the associated fingerprints, to conduct state and national criminal background checks through the Texas Department of Public Safety and the Federal Bureau of Investigation.

(c) An applicant shall also maintain an amusement center in full compliance with the zoning provisions set forth in chapter 90, Zoning of the City's Code of Ordinances, including obtaining an SUP where required.

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**Sec. 18-105. - Permit display, replacement and transferability.**

(a) Each permit issued pursuant to this article shall be posted and kept by the front door in the business or amusement center and shall state the number of amusement devices for which the permit was issued.

(b) A replacement permit may be issued for a permit which is lost, destroyed, or mutilated upon application for such replacement permit on a form provided by the city manager. A replacement permit shall have the word "REPLACEMENT" stamped across the face of such permit and shall bear the same number as the permit it replaces. The fee for such replacement permit shall be \$10.00.

(c) An amusement device permit shall not be assignable or transferable.

(d) A permittee under this article shall notify the city manager within 20 days of a change or partial change in the ownership or management of the permitted amusement device; the address or trade name; or the operator of the amusement device. All changes shall be considered as part of the initial permit application and subject to review by the city manager.

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**Sec. 18-107. - Refusal to issue or renew permit.**

The city manager shall refuse to approve issuance or renewal of an amusement device permit within the city upon the finding of one or more of the following:

- (1) The making of a false statement as to a material matter in an application for a permit.
- (2) Conviction of the applicant, permittee, operator, or any corporate officer or partner of the applicant, permittee or operator of a felony or within the preceding ten years of an offense involving drugs, gambling, prostitution, obscenity or unlawfully carrying a weapon.
- (3) Revocation of a permit, pursuant to this article, of the applicant, permittee, operator or any corporate officer or partner of the applicant, permittee or operator within two years preceding the filing of the permit application.
- (4) Failure of the applicant/permittee/operator to pay any taxes, fees, fines, or penalties assessed by the city.
- (5) Failure of the applicant/permittee/operator to pay the annual amusement device permit fee required under subsection 18-104(a).
- (6) Failure to comply with all applicable federal, state or local statutes, laws or rules, including but not limited to V.T.C.A., Occupations Code ch. 2153; and V.T.C.A., Penal Code ch. 47.

**Sec. 18-108. - Annual permit and renewal.**

The amusement device permit issued for each amusement device shall be for a period of one year and the applicant/permittee/operator shall file with the city manager a renewal of an amusement device permit within 30 days of the date of expiration of the permit then in effect.

**Sec. 18-109. - Permit revocation; notice.**

(a) The city manager shall revoke an amusement device permit for one or more of the following reasons:

- (1) A false statement as to a material matter made in an application for a permit, permit renewal or a hearing concerning the permit.

(2) Conviction of the applicant/permittee/operator, or any corporate officer or partner of the applicant/permittee/operator of a felony or an offense involving drugs, gambling, prostitution, obscenity or unlawfully carrying a weapon.

(3) Employment by the applicant/permittee of an operator who is under 18 years of age.

(4) Failure of the applicant's/permittee's premises to comply with all applicable building and fire codes of the city.

(5) Operation of more amusement devices than is allowed in such permit.

(6) Violation by the applicant/permittee/operator of this chapter 18, article IV.

(b) The city manager shall send written notice of revocation of an amusement device permit to the permittee by certified mail, return receipt requested, setting forth the reasons for such revocation.

#### **Sec. 18-110. - Appeals.**

If the city manager refuses to approve the issuance of an amusement device permit or the renewal of a permit of an applicant, or revokes a permit issued to a permittee under this article, such action shall be final unless the applicant, operator, or permittee, within ten days after the receipt of written notice of such action, shall file with the city secretary a written appeal, setting forth specific grounds for the appeal. The city council shall, within 30 days of the city secretary's receipt of the written appeal, set a hearing to consider the action. The city council shall have authority to sustain, reverse, or modify the action appealed. The decision of the city council shall be final.

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**SECTION 2. B.** The following sections of Chapter 18, "Businesses," Article VII, "Itinerant Merchants," of the Code of Ordinances of the City of Balch Springs are hereby amended and shall hereafter read as follows:

#### **Sec. 18-391. - Soliciting on private property.**

(a) For purposes of this code, "itinerant merchant" means any person who engages in, does, or transacts any temporary or transient business, for the purpose of carrying on such business, occupies any location for a period of less than one year.

(b) It shall be unlawful for any solicitors of orders for merchandise, peddlers,

itinerant merchants or transient vendors of merchandise to go in and upon the premises of a private residence within the city, unless requested to do so by the owner or occupant of such private residence, for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of or peddling goods, wares and merchandise.

**Sec. 18-392. – Permit required.**

(a) Each solicitor of orders for the sale of merchandise, peddler, itinerant merchant or transient vendor of merchandise shall submit an application in order to obtain a permit from the city manager, before soliciting any orders, offering for sale or selling any goods, wares or merchandise within the city.

(b) The city manager shall investigate all persons offering to make such sales and take such orders to determine their authority for making such sales and taking such orders. Prior to issuing a permit, the city manager shall:

(1) utilizing information provided within the application and other information deemed necessary, determine that such persons actually represent the parties they claim to represent and that they are an actual bona fide representative of a reliable concern; and

(2) obtain a complete set of fingerprints of the applicant to be submitted to the Texas Department of Public Safety and the Federal Bureau of Investigation, for state and national criminal background checks.

(c) If the city manager is unable to make such findings, she or he shall refuse to issue a permit under this section.

(d) The city manager may designate an agent to perform all duties required under this Article.

**Sec. 18-393. - Permit fee.**

The fee for the investigation of solicitors as set forth in section 18-392 shall be as set forth in the fee schedule on file in the city secretary's office, per year, which shall not be prorated and which shall be paid at the time application is made for an itinerant merchant permit. No part of the fee shall be returned to the applicant even if the permit is denied. Charitable organizations and/or their representatives shall be required to obtain permits as provided in this article, but the permit fee may be waived at the discretion of the city manager.

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**Sec. 18-395. - Right of appeal.**

If the city manager refuses to issue an itinerant merchant permit, the applicant shall have the right to appeal such decision to the city council at its next regular meeting.

**Sec. 18-396. - False representation.**

If, after an itinerant merchant permit has been issued, the city manager, or other city official, finds that the permit was obtained by false representation in the application, the city manager shall revoke such permit.

**SECTION 3.** All provisions of the ordinances of the City of Balch Springs in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of such conflict, and all other provisions of the ordinances of the City of Balch Springs not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4.** Should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

**SECTION 5.** This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

**SECTION 6.** It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**DULY PASSED AND ADOPTED** by the City Council of the City of Balch Springs, Texas, on the 13th day of February, 2017.

APPROVED:

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Carrie J. Marshal, Mayor

ATTEST:

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Cindy Gross, City Secretary