

## ORDINANCE NUMBER 271

AN ORDINANCE OF THE CITY OF TIOGA, GRAYSON COUNTY TEXAS, REQUIRING A PEDDLER OR SOLICITOR TO OBTAIN A PERMIT, SETTING A FEE FOR THE PERMIT; ALLOWING THE REVOCATION OF PERMITS; SETTING HOURS WHEN PEDDLING IS PROHIBITED; PROVIDING FOR EXEMPTIONS; ESTABLISHING A PENALTY FOR VIOLATION OF THE CONDITIONS OF THIS ORDINANCE; AND DECLARING AN EMERGENCY .

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS:

### Section 1. Definitions.

For the purpose of this section, a **PEDDLER, ITINERANT VENDOR, ITINERANT MERCHANT**, or **SOLICITOR** shall mean any person, partnership, firm or corporations going from place to place in the municipality soliciting, exhibiting, selling, canvassing or taking orders for or offering to sell or take orders for any goods, wares, merchandise, foodstuffs, services, and subscriptions to magazines or publications. The same shall also include any person, partnership, firm or corporations soliciting, exhibiting, selling, canvassing, or taking orders for any goods, wares, merchandise, foodstuffs, services, and subscriptions to magazines or publications upon or from a truck or other vehicle whether on the streets or from any property whatsoever in the municipality, whether public or private. Anyone who solicits, orders and, as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade these provisions shall be deemed a **PEDDLER, ITINERANT MERCHANT**, or **SOLICITOR**.

### Section 2. Permit Required.

It shall be unlawful for any person, partnership, firm, or corporation to peddle, sell, solicit, exhibit, or take orders or offer to take orders for any goods, wares, merchandise, foodstuffs, services, and subscriptions to magazines or publications without first having obtained a permit to do so from the City Secretary.

### Section 3. Application for permit.

- A. Any person desiring to obtain a permit as required by this ordinance shall make written application to the City Secretary. The application shall show at least the following:
1. The name of the applicant and his or her address;
  2. The name and address of the person or firm the applicant represents;
  3. A physical description and the social security and driver's license number of the applicant;
  4. The product or service offered or to be offered for sale;
  5. The date the permit was issued; and

6. The period of time the applicant wishes to take orders in the municipality.
  7. Whether the applicant will demand, accept or receive payment or deposit in advance of final delivery of any product or service ordered.
- B. In addition, there shall also be attached to each application for a permit, the following:
1. A recent photographic likeness of the applicant's face as well as any persons working with the applicant; and
  2. Satisfactory proof that the applicant represents the company or individual he or she purports to represent.
- C. In addition, the applicant may be required to submit to fingerprinting. Such fingerprinting shall be kept as a permanent record with the application.
- D. No permit shall be issued until such written application has been filed with the Municipal Secretary for a period of 48 hours.

#### **Section 4. Bond Required**

- A. If the application shows the applicant is to take orders for future delivery, he or she shall give bond signed as surety by some surety company authorized to do business in this state, conditioned for the final delivery of goods or services in accordance with the terms of such order obtained and also conditioned to indemnify any and all purchasers or customers for any and all defects in material workmanship that may exist in the articles sold by the principal in such bond, at the time of delivery, that may be discovered by such purchaser or customer within 30 days after delivery. Such bond shall be in the sum of not less than \$2,000 and shall remain in full force and effect for the entire duration of the license permit.
- B. Any bona fide charitable, religious, educational, or philanthropic organization or any person engage in interstate commerce shall not be required to give a surety bond even though orders may be taken for future delivery.

#### **Section 5. Investigation of Applicant**

- A. It shall be the duty of the Police Department to investigate each person that has made application for a permit.

#### **Section 6. Issuance and duration of permit.**

Upon completion of the investigation, the City Secretary shall issue or refuse to issue a permit. All permits issued shall be valid for a period of thirty (30) days, unless sooner revoked.

#### **Section 7. Permit Fees.**

- A. Each applicant for a permit under this ordinance shall be charged a permit fee of \$25.00. If there are multiple applicants from the same company, the first

applicant shall be charged a permit fee of \$25.00. Each additional applicant (up to five) shall be charged a permit fee of \$5.00. Such fees shall be paid by the person desiring such permit and are payable at the time of application. The fee shall not be prorated nor refunded regardless of whether a permit is issued. No fee shall be charged to person offering for sale agricultural products, meats, poultry, or other articles of food grown or produce by such persons. A permit shall be issued to such persons by the City Secretary upon satisfactory proof that they have produced or grown the products to be peddled and such license shall so state.

- B. No fee shall be charged to any bona fide charitable, religious, educational, or philanthropic organization, or person engaged in interstate commerce. The term INTERSTATE COMMERCE means soliciting, selling, or taking orders, or offering to take orders, for any goods or services which, at the time the order is taken, are in or will be produced in any federal district or territory, any commonwealth, or any state other than this state, and shipped or introduced into this municipality in the fulfillment of such orders.

#### **Section 8. Permit must be carried.**

It shall be unlawful for any peddler, itinerant merchant, or solicitor to engage in any activity for which a permit is required by this ordinance, unless he carries such permit on his or her person while so engaged. Every peddler, itinerant merchant, or solicitor shall display his or her permit upon request of any person and failure to so display such permit shall be grounds for revocation and shall constitute a violation of this ordinance.

#### **Section 9. Revocation of permit.**

After such permit has been issued and the municipality finds that the permit was obtained by false representation in the application or that the permit holder has committed any act or practice that violates Tex. Business & Commerce Code § 17.46 et seq., otherwise known as the Texas Deceptive Trade Practice Act, or has committed any crime or misdemeanor involving moral turpitude or any violation of this ordinance or any other municipal ordinance or state or federal law, the municipality may revoke such permit by giving written notice to the holder and holding a hearing. Such notice shall be given by depositing same in the United States mail, certified or registered mail return receipt requested, addressed to the permittee at the address stated on the license application. Such hearing shall be held not less than ten days after the service of such notice.

#### **Section 10. Permit not transferable.**

No permit issued under this chapter shall be transferable or assignable nor give authority to more than one person to engage in business as a peddler, itinerant merchant or solicitor, but any person having obtained such permit may have the assistance of one or more persons in conducting such business.

#### **Section 11. Refusal to leave premises prohibited.**

It shall be unlawful for any peddler, itinerant vendor, or solicitor who enters upon premises owned, occupied, or leased by another person to willfully refuse to leave such premises after having been notified by the owner or possessor of such premises or his or her agent.

**Section 12. No peddling where posted.**

It shall be unlawful for any peddler, itinerant vendor, or solicitor to enter upon any private premises when the same is posted with a sign stating "No Peddlers Allowed: or "No Solicitation Allowed" or other words to such effect.

**Section 13. Hours when peddling prohibited.**

It shall be unlawful for any peddler, itinerant's vendor, or solicitor to engage in the business of peddling at any time between sunset and 30 minutes after sunrise, except when the peddler, itinerant vendor, or solicitor has specific invitation and appointment with the customer

**Section 14. Consumer's right to cancel order.**

- A. All peddlers, itinerant vendors, or solicitors shall provide to the consumer, in writing, the right to cancel a solicitation transaction made in person or by telephone until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase any goods or services. For the purpose of telephone solicitations, the date of transaction means the day the consumer receives the goods or services purchased in a solicitation transaction. If the consumer chooses to cancel the solicitation transaction, notification by mail shall be considered given at the time mailed, as evidence by the postmark; notification by telegram shall be considered given at the time filed for transmission; and notification by any other writing shall be considered given at the time delivered to the merchant's designated place of business.
- B. It shall be unlawful for any peddler, itinerant vendor, solicitor, or company represented to refuse to allow the customer to cancel the solicitation transaction.

**Section 15. Exemptions.**

The following persons, partnerships, firms, or corporations shall be exempt from the permit provisions of this ordinance:

- A. Ordinary commercial travelers who sell or exhibit for sale goods or services to local firms or businesses and not to residences;
- B. Daily deliveries of milk and bakery and other food products, liquor deliveries, or newspaper deliveries;

- C. Insurance salespersons, real estate salespersons, and other professionals licensed by the state, except that insurance salespersons shall personally solicit only at the specific request of the owner or occupant of the business or residence at which the solicitation is being made.
- D. Schools, Churches, Girl Scouts, Boy Scouts and other such organizations, when selling items to raise money for their organization.

**Section 16. Penalties.**

- (1) Any person, firm or individual who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$500.00. Each and every day's violation shall constitute a separate offense.

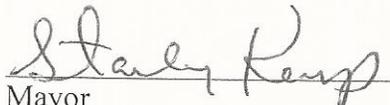
**Section 17. Severability.**

If any Section or part of any Section or paragraph of the Ordinance is declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other Section or Sections or part of a Section or paragraph of this Ordinance.

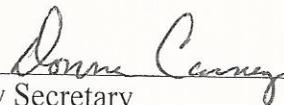
**Section 18. Declaration of Emergency.**

The City Council having determined that there is an immediate need for the public welfare, the maintaining of the law and order of Tioga, Texas, that an emergency exists and that this Ordinance shall be in full force and effect upon passage.

Passed and approved this the 9 day of June, 2008.

  
Mayor

Attest:

  
City Secretary