

Ordinance No. 2008.03
Village of Salado
County of Bell
State of Texas
January 3, 2008

SOLICITATION ORDINANCE

AN ORDINANCE OF THE VILLAGE OF SALADO DECLARING CERTAIN UNLICENSED SOLICITATIONS BY ITINERANT VENDORS TO BE A NUISANCE AND ENACTING SOLICITATION REGULATIONS, PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; A POPULAR NAME; PURPOSE; DEFINITIONS; GENERAL PROHIBITIONS; LICINSING REQUIREMENTS; A SEVERABILITY CLAUSE; EFFECTIVE DATE; ENFORCEMENT INCLUDING CRIMINAL FINES NOT TO EXCEED \$500 AND CIVIL PENALTIES NOT TO EXCEED \$100 PER OFFENSE AND INJUNCTIVE RELIEF; AND PROPER NOTICE AND OPEN MEETING

WHEREAS, the Board of Aldermen of the Village of Salado is committed to protecting Village citizens from the harassment, annoyance, shabby merchandise and questionable services commonly associated with certain itinerant vendors and vagrant merchants; and

WHEREAS, the Board of Aldermen seeks to keep the public rights-of-way free of clutter and the visual distractions that often accompany certain merchants soliciting customers along streets and roadways; and

WHEREAS, the Board of Aldermen finds that certain itinerant vendors constitute a public nuisance worthy of government regulation; and

WHEREAS, the Board of Aldermen has the general statutory authority, pursuant to Texas Local Government Code Chapter 54, to adopt an ordinance, rule or police regulation that is for the good government, peace, and order of the Village; and

WHEREAS, the Board of Aldermen has the specific statutory authority, pursuant to Texas Local Government Code Chapter 217, to prevent and punish a person engaging in a breach of the peace and to suppress and prevent any noise or disturbance in any public or private place in the Village; and

WHEREAS, the Village of Salado has the authority to license, tax, suppress, prevent, or otherwise regulate hawkers, and peddlers pursuant to its general police powers and Section 215.031 of the Texas Local Government Code; and

NOW THEREFORE, be it ordained by the Board of Aldermen of the Village of Salado, Texas:

1. INTRODUCTION

A. POPULAR NAME

This Ordinance shall commonly be referred to as the "Solicitation Ordinance."

B. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the Board of Aldermen of the Village of Salado and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

C. PURPOSE

It is the intent and purpose of this Ordinance to protect residents and other citizens of Salado from unscrupulous transient merchants.

D. SCOPE

This Ordinance provides regulatory standards throughout the Village's incorporated municipal boundaries (i.e., city limits).

E. DEFINITIONS

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this Ordinance but are defined in other ordinances of the Village of Salado shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

1. **Itinerant vendor:** means a retailer who does not operate any "place of business" as defined by the Texas Administrative Code. The term expressly includes the following:
 - a. *Commercial traveler* – a person who is employed by or who represents a manufacturer, wholesaler, or importer who sells or exhibits goods to parties who engage in the business of purchasing such goods for the purpose of resale to the general public.
 - b. *Itinerant merchant* – a person who moves stocks of goods or samples of goods into the Village for the purpose of selling or offering for sale or taking orders for the sale of such goods with the intention of removing such samples or the unsold portion of goods away from the Village before the expiration of one month and who has no fixed place of business within the Village or county for which definite arrangements have been made for the use, occupancy, hire, rental or lease of such place for a term of at least one month.

- c. *Peddler* – a person who carries goods upon a truck or other vehicle on the streets of the Village for the purpose of exhibiting, selling, or offering for sale such goods from such truck or other vehicle or who within the Village goes from door to door of residences, public facilities, or businesses to display, sell, offer for sale, or take orders for the sale of goods or to exhibit brochures, sales literature or price lists for the purpose of taking orders for the sale of goods or who within the Village exhibits, sells, offers for sale or takes orders for the sale of goods from a vacant lot, parking lot, tent, boat, storage bin, stall or unenclosed structure.
- d. *Transient Vendor* – a person who within the Village engages in the temporary business of exhibiting, delivering, selling or offering for sale any goods or exhibiting brochures, sales literature, or price lists for the purpose of taking orders for the sale of goods and who has no fixed place of business within the Village or county that is used, occupied, hired, rented, or leased for a period of at least one month for the purpose of operating or conducting such business thereon.

For purposes of this Ordinance, the term “itinerant vendor” does not include the following: persons who make such sales sporadically for the purposes of raising funds for an incorporated charitable, fraternal, educational or religious institutions; street musicians who play free of charge but accept donations; garage sales; produce stands where vendors sell fruits and/or vegetables grown in Bell County.

- 2. **Garage Sale:** includes the sale of anything of value on any premises not considered a retail business establishment and licensed to do business in the Village of Salado, and/or the State of Texas. For purposes of this Ordinance, the term includes and is synonymous with estate sales, patio sales, rummage sales, and yard sales.
- 3. **Goods:** means tangible chattels of every kind and character.
- 4. **Person:** means an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.
- 5. **Place of business:** means an established outlet, office, or location operated by a retailer, the retailer's agent, or the retailer's employee for the purpose of receiving orders for taxable items. The term "place of business" includes any location at which three or more orders are received by the retailer in a calendar year. A location such as a warehouse, storage yard, or manufacturing plant is not a "place of business," unless at least three orders for taxable items are received by the retailer at the location during a calendar year.
- 6. **Retailer:** means a person who sells tangible goods by small quantities, in broken lots or parcels (e.g., not in bulk) directly to the consumer, in contrast to a sale for further sale or processing.

7. **Village:** means the Village of Salado, an incorporated municipality located in Bell County, Texas. The term may also refer to employees, agents or other designee of the Board of Aldermen of the Village of Salado.

2. GENERAL PROHIBITIONS

A. Rights of Way

No person shall display, sell, or solicit orders for any goods within six (6) feet of any public street or roadway, state, federal or local.

This section does not apply to vending machines or newspaper stands that are secured to ensure the safety of pedestrians and do not obscure the line of sight or otherwise hinder operators of motor vehicles.

B. Hours of Operation

No person may make solicitations to private residences, public facilities, and businesses except between the hours of 9:00 a.m. and 7:00 p.m., unless otherwise posted by the private property owner or by someone with apparent authority to act for the owner. This section does not apply where the person is on the property by express prior invitation of the person residing on the premises.

C. Property Owners

No property owner shall knowingly allow the owner's property to be used or occupied by an itinerant vendor who conducts thereon a business operation or who exhibits or offers for sale goods without first obtaining a license as required by the provisions of this ordinance.

3. LICENSES

A. License Required

No itinerant vendor shall operate within the Village without first applying for and receiving a license from the Village. Licenses are nontransferable and may not be assigned or conveyed to other persons. This section shall not apply to any of the following:

1. Sales or exhibits at fairs, festivals, rodeos, conventions, or events sponsored by the Village or one (1) or more Village civic organization, school, church or the chamber of commerce.
2. Charitable solicitations by incorporated charitable, fraternal, educational or religious institutions.

B. Interstate Commerce

This division does apply to transient vendors, itinerant merchants and peddlers involved in interstate commerce, as the Board finds the license procedure and fee does not unduly burden interstate commerce.

C. Application

An application for a license required by this ordinance shall be made in person by the persons requesting such license upon forms available in the office of the Village Secretary.

Applications must be submitted at least 72 hours prior to date of vending. Applications must be submitted to the Village Secretary or Code Officer. A separate license and application shall be required for each person who engages in the activities of an itinerant vendor, including each employee, agent, or consignee who engages in such activity. Such application form shall provide a space for the following information which must be furnished by the applicant:

1. The name, current and former residence and business address, current residence and business telephone number, and occupation of applicant. If applicable, the local address and telephone number where the applicant may be reached.
2. the social security number and birth date of the applicant, valid driver's license number, expiration date and state issuing it.
3. a physical description of the applicant which includes race, gender, height, weight, hair and eye color.
4. two recent photographic likenesses of the applicant's face, which photographs shall not be less than one inch square or larger than two inches square in size. One photograph shall be kept with the application and one photograph shall be attached to the license.
5. a valid state driver's license. Only non-drivers may submit other positive identification issued to the applicant by a governmental agency and the state issuing it.
6. a description of the goods to be sold, including brand name, if any. If the goods are to be shipped, the name, address and telephone number of the manufacturing location and/or shipping location.
7. the address of the location from which such goods shall be displayed to the public or offered for sale or a statement that the applicant will travel from door-to-door for the purpose of exhibiting or offering goods for sale.
8. the name, address and telephone number of the owner of the property at such location.
9. if the goods to be sold are transported in or displayed from a vehicle, the vehicle owner's name, address and telephone number and the vehicle's make, model color, description, identification number and license number.
10. statement that the applicant has not been convicted within the last five years of a felony offense.
11. such other information as may be required to complete an investigation as to the fitness of the applicant to conduct such business operation.

D. Consent from Property Owner

If the applicant proposes to display goods to the public or to offer such goods for sale from a designated location, the application shall be accompanied by a written permit signed by the owner or the duly authorized agent of the owner of the property at the location from which the applicant proposes to display or to offer for sale any goods. Such permit shall state that said owner consents that the applicant may use and occupy such property for the purpose of selling or offering for sale such goods.

E. Tax Collection

If state law and/or Village regulations require that sales tax must be paid upon the purchase of such goods as the applicant proposes to offer for sale, the application for license shall be accompanied by a valid sales tax permit issued by the office of the comptroller of public accounts of the state.

F. Other Authorities

Each applicant who proposes to sell or offer for sale goods consisting in whole or in part for human consumption shall secure on the application form for license hereunder the signature of the public health officer of the county and/or Village indicating that such goods meet minimum food standards of the state.

All applicants who propose to sell or offer for sale goods consisting in whole or in part for human consumption shall acquire and provide to the city a food handlers permit from a county health department.

G. Grounds to revoke or deny

The Village Secretary or the Board of Aldermen's designated representative may deny or revoke a license for an itinerant vendor for any of the following reasons:

1. the applicant does not present a valid state driver's license or, if allowed, other positive identification by a governmental agency;
2. the applicant does not complete the application form and procedure;
3. the applicant or the proposed activity of the applicant does not comply with applicable Village ordinances and codes, including building codes and the county or state health codes;
4. the applicant makes false or fraudulent statements on the application form;
5. the applicant or licensee is found after investigation to be misrepresenting or making false statements in regard to his authority to sell such goods;
6. within the last five years the applicant has been convicted of a felony;
7. within the last five years the applicant or licensee has been convicted in a court of proper jurisdiction of violating this ordinance at any time;
8. upon recommendation from the Chief of Police or Code Officer that the license be revoked because the conduct of the licensee or the manner in which the licensee is conducting his business operation endangers the health or safety of a citizen of the Village or a visitor within the Village.

H. Appeal

If the applicant for a license under this ordinance or the holder of such a license is dissatisfied with any holding or finding of the Village Secretary or the Code Officer he shall have the right to appeal to the Board of Aldermen by filing a written notice of such appeal with the Village Secretary within ten (10) days from the decision by the Village Secretary or Code Officer. Upon the filing of such notice of appeal, the application for the license and all papers possessed by the Village Secretary in connection with such application and such license may be delivered to the Board of Aldermen. The appeal shall be heard by the Board

at the next regular meeting after the filing of the notice of appeal that allows compliance with the Texas Open Meetings Act.

I. Fees and Terms

Any person who is required to obtain a license by the provisions of this ordinance may apply for a one-day, thirty-day, or a six-month license.

- (1) When a one-day license is issued to any such person, the applicant shall pay, at the time the application is submitted, to the Village Secretary a license fee of fifty (\$50.00) dollars.
- (2) When a thirty-day license is issued to any such person, the applicant shall pay, at the time the application is submitted, to the Village Secretary a license fee of seventy-five (\$75.00) dollars.
- (3) When a six-month license is issued to any such person, such person shall pay, at the time the application is submitted, to the Village Secretary a license fee of one hundred (\$100.00) dollars. No license issued under the provisions of this ordinance shall be issued for a longer period than six months.
- (4) Not later than three (3) days after a completed application is filed, the applicant shall be notified in writing of the decision of the issuance or denial of the license unless the day filed is a Thursday or Friday. Then the applicant shall be notified not later than six (6) business days after a completed application is filed.

J. Display of License

Any person issued a license pursuant to the provisions of this ordinance must exhibit in plain view to all present the license and the photo identification.

K. Records

The Village Secretary shall keep a record of each license issued for a minimum of twelve months after issue date.

L. Warranties and Claims

Any person required to obtain a license under the provisions of the ordinance must display at all times during which such person is doing business, a sign lettered in two-inch letters and visible to all present specifying the type and duration of any warranties made on such goods and the address where any purchaser may make a claim for breach thereof.

M. Trespass

No person, including the holder of any license issued under this ordinance, shall to enter upon the land or premises of another after receiving notice from the owner and/or resident that such entry is forbidden. A sign on the premises stating approximately “No Solicitors Commercial or Charitable” or “No Solicitors Except for Non-Profit Organizations”, shall constitute notice. A conviction for the violation of this section shall result in the automatic revocation of such convicted person’s peddler’s and solicitor’s license.

4. ENFORCEMENT

A. Nuisance

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00) per offense. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

1. injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
2. a civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
3. other available relief.

5. RELATION TO OTHER ORDINANCES

This ordinance is enacted in addition to other regulations adopted by the Village. When possible, ordinances addressing the same topic shall be read together in harmony. When Village regulations conflict, the most stringent shall govern unless a variance is granted.

6. REPEALER

This ordinance, upon its enactment and effective date, shall repeal all conflicting provisions that may be contained in other Village ordinances or regulations. This ordinance, upon its enactment, replaces Ordinance No. 2003.10 and its amendments in their entirety.

7. SEVERABILITY

It is hereby declared to be the intention of the Board of Aldermen that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this ordinance shall be enforced as written.

8. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED on this the 3rd day of January, 2008, by a vote of _____ ayes, _____ nays, and _____ abstentions of the Board of Aldermen.

THE VILLAGE OF SALADO

Rick Ashe, Mayor

ATTEST:

Dianna Zulauf, Village Secretary