

ORDINANCE NO. 2002-11

AN ORDINANCE REQUIRING A BUSINESS LICENSE, REGULATING FLEA MARKETS AND OUTDOOR SALES, AND PROHIBITING PEDDLING AND SOLICITING, AND DECLARING AN EMERGENCY

Whereas, the City Council of the City of Elm Springs, Arkansas has determined that it is in the best interests of the City of Elm Springs and its citizens to establish a Business License Ordinance which also regulates flea markets and outdoor sales and prohibits peddling; and

Whereas, it is further in the best interests of public health and safety and the welfare of public servants, emergency personnel and equipment as well as the welfare, health and safety of business operators and employees for such matters to be regulated by the City.

NOW THEREFORE be it ordained by the City Council of the City of Elm Springs, Arkansas:

Section 1. Procurement of license required.

(a) Any person engaging in any trade, business, occupation, profession or vocation, except farming, livestock and poultry activities, within the corporate limits of the City of Elm Springs, Arkansas shall procure from the City for each of such trades, businesses or professions engaged in, a business license, which shall be issued for a period of one (1) year beginning on January 1 and expiring on December 31 of each year. Any such person who fails to procure a license by February 14 shall be guilty of a misdemeanor and shall be subject to the penalties and fines as outlined in Section 7, as amended from time to time.

(b) Fees for new licenses starting September 1 through November 30 for each year will be prorated on a monthly basis. In the event of a December filing for a new license, the fee will be forgiven and the permit issued for this single month at no charge. The business license shall be prominently displayed for public view inside the place of business. The application form for a business license is contained in Appendix A.

(c) The license issued pursuant to this section is conditioned on the licensee's complying with all ordinances and regulations of the City during the year of issue. If the licensee shall fail to comply with all City ordinances and regulations during the year, such license may be revoked by the City. If the licensee fails to comply within ten days after written notice of noncompliance is received by the licensee, the City shall notify the licensee that the license is revoked. If after the license is revoked the person continues to operate, such person shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties and fines as outlined in Section 7, as amended from time to time.

Section 2. Multi-Business and Multi-Locations.

(a) The schedules set out in Section 6 shall apply to all persons engaging in any business, vocation, occupation or profession within the City; and each such business, vocation, occupation or profession shall be separately and fully licensed pursuant to these schedules, regardless of the fact that two or more such businesses, vocations, occupations or professions may be owned and/or operated and/or engaged in by the same person, in the same building, at the same general location.

(b) If any person engaging in any business, vocation, occupation or profession operates such business, vocation, occupation or profession at more than one location within the city, each such location shall be licensed separately to reflect the business, occupation, profession or vocation, or any combination, conducted at that particular location.

Section 3. Flea Markets.

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

(a)(1) *Flea Market* means a private business enterprise which is open to the public all year around or seasonally, operated on private property managed by any person, and arranged to provide spaces or stalls for rental or lease to other persons desiring to display new and/or used merchandise for sale to the public.

The purpose of this section is to recognize a type of business enterprise popularly known as a flea market, and to provide for its licensing and regulation by the City. The operation of a flea market within the City is a privilege subject to compliance with the provisions of this section.

(b) Duties of operators of flea markets and other regulations. The operator of a flea market shall assure that the flea market conforms to this Ordinance and each flea market shall conform to all land use regulations and zoning regulations.

(c) Fees. It shall be unlawful for any person to operate a flea market until a business license has been obtained from the City. The fee levied for such business license shall be based on a graduated scale for the number of indoor and/or outdoor spaces and outbuildings available for rental:

1 to 20 Spaces	\$ 5.00 Each
21 Spaces and Over	\$ 7.50 Each

The license shall be issued on a calendar year basis for the location listed on the application and shall not be transferable by the licensee to another person nor to another location. Any business license so issued may be suspended or revoked by the City at any time if any operator of any flea market fails to comply with the provisions of this Ordinance and all applicable health and fire ordinances. A licensee whose business license is suspended or revoked shall not be entitled to a refund of any license tax paid by such licensee.

Section 4. Outdoor Sales

This Section is for the purpose of regulating outdoor rummage sales, outdoor auctions, yard sales, porch sales, sidewalk sales and garage sales within the City, requiring permits to be obtained for such sales and establishing fees to be paid for such permits. Permits shall be posted prominently at the site of the sale for the duration of the sale. Application for a permit is made by submission of the completed Application for Outdoor Sales Permit shown in Appendix B.

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

(a) (1) *Outdoor rummage sales, sidewalk sales, yard sales, porch sales, outdoor auctions and garage sales* mean and include all sales which the general public may attend, which are held on privately owned property either wholly or partly outdoors, regardless whether such property is ordinarily used for residential, commercial and/or social uses, which are of a duration of not more than three consecutive calendar days, and at which items of new and/or used merchandise, clothing, crafts, live plants, household furnishings and appliances, tools, and other items commonly sold at such sales are offered to the public for purchase, by auction or otherwise.

(b) Exceptions. Specifically excepted from this Section are:

(1) sales by merchants or organizations of items which such merchants or organizations ordinarily offer for sale in the course of operating their established business enterprises on a regular day-to-day basis and at an established commercial location.

(2) judicial sales and sales held pursuant to judicial orders and/or writs of execution issued by courts of competent jurisdiction and conducted by officers of such courts

(3) Estate sales and estate auctions held on estate property, church and charitable fund raising activities.

(c) Permit Required. No person or organization shall hold or maintain any garage sale, porch sale, sidewalk sale, outdoor rummage sale or yard sale without first having applied for and having obtained a written permit for the same from the City.

(c) (1) The permit must be issued by the City prior to the first date of sale authorized by the permit. The permit shall be on the standard form. The permit, based upon information furnished by the applicant, shall contain the name of the applicant or applicants, the address at which the sale is to be held, phone numbers, use of property, and the dates of the sale, and the rain dates of the sale.

(c)(2)Copies of all permits issued shall be retained by the City Clerk.

(c)(3) No person or organization shall hold such sale regulated under this section more than four (4) times in any calendar year.

(c)(4) All signs and merchandise for the sales defined in Section 4 (a)(1) shall not be displayed more that twenty-four (24) hours before the scheduled beginning of the sale, nor shall they remain visible on public display more than twenty-four (24) hours after the end of the sale. All debris and trash shall be properly disposed of within twenty-four (24) hours after the end of the sale.

(c)(5) Permits under this Section shall be for a period of time not to exceed three (3) consecutive calendar days, except that should it rain on any of such dates the applicant may elect to conduct such sale on alternate rain days which shall be specifically set forth in the permit, together with the name of the applicant, the address of the sale, and the signature of the city clerk or code enforcement officer. The permit shall be posted in a conspicuous place at the place of the sale on each sale day.

(c)(6) There is no fee for the first such sale in the calendar year. A fee of five dollars (\$5.00) shall be due for each subsequent permit issued in the calendar year under this section.

Section 5. Peddlers and Solicitors

(a) Definitions. The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) (1) *Peddler* means each person, whether as an individual or as a representative or employee of a partnership, firm, company or corporation, engaging in the activity of peddling.

(a) (2) *Peddling*, unless otherwise defined or permitted by this Code, means:

- (1) The act of engaging in any trade, business, profession, vocation or occupation from a motor vehicle, tent, open-air stand, area or table, trailer or other transient or portable structure, vehicle or device, or the streets and public property, other than contiguous to the permanent place of business of the owner or renter;
- (2) The offering for sale or selling of any merchandise, goods, articles, things or items of value; and
- (3) The offering or providing of any services whatsoever for fees or remuneration.

(b) Prohibition. Peddling is prohibited within the City and is declared to be a misdemeanor punishable as provided in Section 7.

(c) Exceptions. The following activities shall be excepted from the application of this Section but shall otherwise comply with all laws and ordinances.

- (1) the fund-raising activities of any civic, charitable, benevolent, educational, political, religious, social, fraternal, literary or cultural organization provided that such organization, club, association or corporation is nonprofit in nature and is recognized as such under applicable State and/or Federal laws
- (2) the sale of home-grown fruits, vegetables or other farm products within the City, as described in A.C.A. § 14-140-101
- (3) home solicitation sales as the term is defined in A.C.A § 4-89-102
- (4) Sales defined in A.C.A. § 17-49-101 *et seq.* are permitted
- (5) Any person who may otherwise be exempted from the payment of an occupation tax or procurement of a business license by operation of State or Federal law shall nonetheless, prior to engaging in the exempted activity, register with the City in the manner prescribed herein.

(d) Registration Required for Exceptions No person engaging in an activity excepted under this Section shall be required to obtain a business license if the person or

organization registers with the City prior to commencing the exempted activities and states the following in writing.

- (1) name, address and telephone number, or that of an authorized representative
- (2) the nature and duration of the planned activity
- (3) the names of each individual who will be engaged in the exempted activity, the nature of the exemption
- (4) the Agency which has issued the license and the date of issuance. The writing shall be signed and sworn by the applicant or its Authorized Agent.

Section 6. Business License Fee Schedule

(a) Designation of license fees.

The following schedule gives the annual license fee for each business or occupation listed:

Home occupations.....	\$10.00
All other businesses and occupations.....	\$15.00

(b) Application for license is made by submission of the completed Application For Business License shown in Appendix A.

(c) No business license or permit shall be issued to any applicant for such business license under the provisions of this section unless such applicant shall demonstrate to the City his, her or its compliance with all ordinances and statutes applicable to such applicant's business, trade, occupation, vocation or profession, including but not limited to those establishing codes of building, plumbing, electrical, work, sanitation and health, and those regulating business and advertising signs.

Section 7. Penalties, Fines and Enforcement

(a) Failure to comply with the provisions of this Ordinance or any Section contained herein shall constitute a misdemeanor and upon conviction the owner and/or operator shall be subject to the penalties and fines as outlined in this Section, as amended from time to time.

(b) Violators of the provisions of Sections 1 through 4 shall be guilty of a misdemeanor and upon conviction shall be fined in the sum of \$100.00. Each calendar week such offense continues shall constitute a separate offense.

(c) Violators of the provisions of Section 5 shall be guilty of a misdemeanor and upon conviction shall be fined in the sum or \$100.00. Each calendar day any act of peddling is committed shall constitute a separate offense.

(d) This Ordinance shall be enforced by the City Enforcement Officer and/or the City Police, or Fire Department who shall be entitled to inspect any premises for compliance.

(e) Applications and fees may be taken by the City Clerk or designated representative.

Section 7. Repeal of Ordinances in Conflict; Severability


(a) This Ordinance shall repeal and replace any ordinance of the City of Elm Springs in conflict herewith.

(b) If any provision of this Ordinance is found by legal process to be invalid, it shall be stricken but the remainder of the Ordinance shall continue in full force and effect.

Section 8. Emergency Clause

The City Council finds there is a threat to public safety presented by the lack of information as to the businesses existing in the City of Elm Springs, and further public safety issues are presented by unregulated flea markets and outdoor sales, and intrusion into the privacy of its citizens results from peddling and soliciting. Accordingly, an emergency is hereby declared to exist and this Ordinance shall be in full effect upon its passage and as provided by law.

Passed and approved this 3rd day of June, 2002.



Ed Thiesse, Mayor



Glenda Pettus, City Clerk

ORDINANCE NO. 2008-06

AN ORDINANCE AMENDING ORDINANCE NO. 2002-11
REGARDING DOOR TO DOOR SALES IN
THE CITY OF ELM SPRINGS, ARKANSAS, AND FOR OTHER PURPOSES

WHEREAS, the City Council for the City of Elm Springs, Arkansas has been advised by its public safety officials that there is an acute need to amend the Elm Springs ordinance which regulates door to door sales and protect the safety of the citizens of the city.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELM SPRINGS ARKANSAS, ARKANSAS:

Section 1. Permit required. It shall be unlawful for any person to engage in business as a peddler within the City without first obtaining a permit to do so by the Elm Springs Police Department. A permit fee of ten dollars (\$10.00) shall be charged to all permit applicants, except for those described in section 8, below.

Section 2. Prohibition when signs are posted. It shall be unlawful for any person, while conducting the business of a peddler or solicitor, to enter upon any residential premises in the City where the owner, occupant or person legally in charge of the premises has posted, at the entry of the premises, or at the entry of the principle building on the premises, a sign bearing the words "no peddlers," "no solicitors," "no trespassing," or words of similar import.

Section 3. Hours and times restricted. Every person conducting the activities of peddler or solicitor shall enter upon any private residence, knock on doors, or otherwise disturb persons in their residence only between the hours of 8:00 a.m. and 7:00 p.m., or sunset, whichever comes first. Furthermore, no person while conducting the activities of peddler or solicitor shall enter upon any private residence, knock on doors, or otherwise disturb persons in their residence on any Sunday or Federal holiday.

Section 4. Application process. Applicants for a permit under this Ordinance shall file with the Elm Springs Police Department a sworn application in writing, on a form to be furnished by the Elm Springs Police Department, which shall give the following information:

- (a) The name of the applicant as shown on his/her State issued identification card;
- (b) The permanent home address and full local address of the applicant;
- (c) A brief description of the nature of the business and the goods to be sold;

(d) If employed, the name and address of the employer, together with credentials establishing the exact relationship;

(e) The length of time for which the right to do business is desired;

(f) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time the application is filed and the proposed method of delivery;

(g) A statement as to whether or not the applicant has been convicted of any crime, whether it be a felony, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore;

(h) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.

Section 5. Display. Every peddler having a permit issued under the provisions of this Ordinance and doing business within the City shall display his permit upon the request of any person, and failure to do so shall be deemed a violation of this Ordinance.

Section 6. Duration. Every permit under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit be issued for a period of time in excess of 12 months.

Section 7. Revocation. Any permit issued under the provisions of this Ordinance may be revoked by the Elm Springs Police Department for the violation by the permittee of any applicable provision of this Ordinance, state law or city ordinance, rule or regulation.

Section 8. Exceptions. Recognized religious organizations and peddlers selling newspapers in exercise of their freedom of the press rights or any other persons whose activities of organizations classified as tax exempt under the provisions of section 501 of the 1954 Internal Revenue Service Code, and amendments and regulations pertaining thereto, are hereby excluded from any and all provisions of this Ordinance.

Section 9. Penalty for Violation. Any person found to have violated this ordinance shall be guilty of a misdemeanor which shall be punishable by a fine of not more than \$200.00.

Section 10. Any ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict.

Section 11. In the event any one or more of the provisions contained in this Ordinance shall for any reason be held by a Court of Law to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not

effect the remaining provisions of this Ordinance, and this Ordinance shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

PASSED AND APPROVED this 21 day of April, 2008

APPROVED:

Jane Waters
Jane Waters, Mayor

ATTEST:

Glenda Pettus
Glenda Pettus, City Clerk/Recorder

PROOF OF POSTING OF ORDINANCE

STATE OF ARKANSAS

COUNTY OF Washington

We Jane Waters and Glenda Pettus, do solemnly swear that as Mayor and City Clerk, respectively, of and for the City of Elm Springs, Washington County, Arkansas that a certified copy of Ordinance No. 2008-061 (the "Amend 2002-11 Door to Door Ordinance") was, on the 24 day of April, 2008, duly posted in five (5) separate and distinct places inside the corporate limits of the City in accordance with Ordinance No. 01-10 and that the Ordinance remained posted for thirty (30) days.

DATED this 24 day of April, 2008.

Jane Waters
Mayor

Glenda Pettus
City Clerk

(SEAL)

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 24 Day of April, 2008.

Linda L. McVittie
Notary Public

My Commission Expires:

8-24-08

