SUBJECT: SECOND READING - ORDINANCE NO. 1662, REPEALING CHAPTER 8 OF THE PORTERVILLE MUNICIPAL CODE IN ITS ENTIRETY AND REPLACING IT WITH NEW PROVISIONS OF CHAPTER 8 CONCERNING PEDDLERS, SOLICITORS AND CANVASSERS (DOOR-TO-DOOR SALES)

SOURCE: Administrative Services Department/City Clerk Division

COMMENT: Ordinance No. 1662 repealing Chapter 8 of the Porterville Municipal Code in its entirety and replacing it with new provisions of Chapter 8 concerning Peddlers, Solicitors and Canvassers (Door-to-Door Sales) was given First Reading on February 15, 2005, and has been printed.

RECOMMENDATION: That Council give Second Reading to Ordinance No. 1662, waive further reading, and adopt said Ordinance.

ATTACHMENT: Ordinance No. 1662
ORDINANCE NO. 1662

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE REPEALING CHAPTER 8 OF THE PORTERVILLE MUNICIPAL CODE IN ITS ENTIRETY AND REPLACING IT WITH NEW PROVISIONS OF CHAPTER 8 CONCERNING PEDDLERS, SOLICITORS AND CANVASSERS (DOOR-TO-DOOR SALES).

Whereas, the City Council of the City of Porterville finds that the City has had past problems with door-to-door sales occurring late at night and that this presents a threat to the safety of those that are solicited as well as those than engage in peddling and soliciting activities as defined below;

Whereas, such sales are at times misrepresented as being made by or on the behalf of charitable nonprofit organizations, and that the proposed modifications would help prevent fraud;

Whereas, the public safety and convenience necessitates the exercise of police power through the enactment and enforcement of the provisions proposed; and

Whereas, these provisions are not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest, proselytize, or engage in other constitutionally protected activity.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PORTERVILLE, AS FOLLOWS, TO WIT:

SECTION 1. Chapter 8 is hereby repealed and replaced by the provisions of a new Chapter 8 (Peddlers, Solicitors, and Canvassers), Sections 8-1 through 18-18 as follows:

CHAPTER 8 PEDDLERS, SOLICITORS AND CANVASSERS
(DOOR-TO-DOOR SALES)

PERMIT REQUIREMENTS, RELATED PROVISIONS, AND REGULATION OF PEDDLERS, CANVASSERS AND SOLICITORS
(DOOR-TO-DOOR SALES)

8-1 Legislative Findings
8-2 Peddlers/Solicitors --Defined.
8-3 Permit required.
8-4 Application for permit.
8-5 Contents of application.
8-6 Other information
8-7 Application fees.
8-1 LEGISLATIVE FINDINGS.

The City Council of the City of Porterville finds that the City has had past problems with door-to-door sales that are conducted in a manner detrimental to its community members’ safety. This includes but is not limited to such sales occurring late at night, posing a threat to the safety of those that are solicited as well as those than engage in peddling and soliciting activities as defined below. Additionally such sales are at times misrepresented as being made by or on the behalf of charitable nonprofit organizations, and these provisions will help deter such fraudulent conduct by requiring additional accountability from those engaged in door-to-door sales. The public safety and convenience necessitates the exercise of police power through the enactment and enforcement of the provisions proposed. However, these provisions are not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest, proselytize, or engage in other constitutionally protected activity.

8-2 PEDDLERS, SOLICITORS AND CANVASSERS DEFINED.

“Peddler,” “Solicitor,” and/or “Canvasser” (hereinafter referred to collectively in this Chapter as “Peddlers”) includes “Peddlers” as defined pursuant to Section 15-1(r) and “Solicitors or Canvassers” as defined pursuant to Section 15-1(y), and means any person who goes from house to house, or from place to place in the city selling or taking orders for, or offering to sell or take orders for goods, wares and merchandise for present or future delivery, or for services to be performed immediately or in the future, whether or not such person has, carries or exposes a sample of such goods, wares and merchandise, or not and whether or not he is collecting advance payments on such sales or not.

8-3 PERMIT REQUIRED.

It is unlawful for any person to act as a Peddler within the city without having first obtained a permit issued pursuant to this chapter. This permit is required in addition
to any licenses required under Chapter 15 of the Municipal Code. The employees, agents, solicitors or representatives or any firm, irrespective of the form of organization, may be covered under a single business license under Chapter 15 of this Code (if allowed under that Chapter); however each individual shall be required to obtain a permit pursuant to Section 8-4 unless exempt pursuant to Section 8-12 or under any other provision of law.

8-4 APPLICATION FOR PERMIT.

Applicants for a permit under this chapter shall file with the finance officer an application in writing on a form to be prescribed by the finance officer.

8-5 CONTENTS OF APPLICATION.

The application shall contain the following information:

A. The permanent home address and full local address of the Peddler or Solicitor;

B. The name and address of the person, firm or corporation by whom the Peddler/Solicitor is employed;

C. The length of service of each Peddler/Solicitor with such employer;

D. The place of residence and nature of the employment of the Peddler/Solicitor with such employer during the last preceding year;

E. The nature or character of the goods, wares, merchandise or services to be offered by the Peddler/Solicitor;

F. A personal description of the Peddler/Solicitor; including height, weight, eye color and hair color.

G. The length of time for which the right to do business is desired.

H. 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 such application is filed, and the proposed method of delivery.

I. Photographs pursuant to Section 8-7.

J. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the date of such crime or violation, the nature of the offense, and the punishment or penalty assessed therefor.
K. The time of day and/or evening during which the solicitation/sales activities will be taking place.

L. Any applicable State or Federal permitting licensing information, when such a permit or license is required for the type of business or activity.

8-6 OTHER INFORMATION.

Such information shall be accompanied by such credentials and other evidence of good moral character and identity of each Peddler/Solicitor as may be reasonably required by the finance officer.

8-7 APPLICATION FEES.

A. The application fee, replacement application, and identification card fees shall be set by resolution.

B. Fees and investigations as used in this section refer solely to individuals and not to firms.

8-8 PHOTOGRAPHS REQUIRED.

Each application for a permit as required by this chapter must be accompanied by two prints of a recent photograph of the Peddler/Solicitor, which photographs shall not exceed two inches square in size and shall be full front views of the face and head only of such Peddler/Solicitor.

8-9 FINGERPRINTS REQUIRED.

At the time of making the application for a permit, each Peddler/Solicitor shall present him/herself at the office of the chief of police of the city for the purpose of being fingerprinted and supplying routine information required on the fingerprinting forms provided without expense by the city, including the physical characteristics of each person, identifying marks or scars, age, name, address and signature. Such fingerprint records are to be taken in triplicate and each individual so presenting him/herself is advised that the city reserves the right to retain one of such fingerprint records in its files for permanent safekeeping, and to send one such fingerprint record to the Federal Bureau of Investigation of the Department of Justice at Washington, D.C., and to the Criminal Investigation Department of the California Department of Justice at Sacramento, California, for the purpose of filing. No fingerprint records will be returned in the event the permit applied for is not issued or is subsequently suspended or revoked.
8-10 INVESTIGATION--CHARACTER AND BUSINESS RESPONSIBILITY.

The original copy of the application shall promptly be referred to the chief of police, who shall promptly make an investigation of the applicant’s character and business responsibility. If the applicant’s character or business responsibility is found to be unsatisfactory, the chief of police shall endorse on such application the police chief’s disapproval and the reason therefor and return the application to the finance officer. The finance officer shall notify the applicant that the application is disapproved and that no permit will be issued. If the chief of police finds that the applicant’s character and business responsibility are satisfactory, the police chief shall approve the application and return it to the finance officer, who shall promptly issue the permit and identification card. The City may refuse to issue a permit to an applicant that has previously violated any provision of this Chapter or Chapter 15 of the Municipal Code.

8-11 PERMIT AND IDENTIFICATION CARD TO BE CARRIED ON PERSON.

Each Peddler/Solicitor issued a permit and identification card must be in possession of the permit and identification card at all times when engaged in the business so permitted within the city. The Peddler/Solicitor must produce and show the permit and identification card on the demand of any person solicited or of any police officer or official of the city. No person issued a permit or an identification card shall alter, remove or obliterate any entry made upon such permit or card, or deface such permit or card in any way. Each permit and card shall be personal and not assignable or transferable, nor shall any permit or card be used by any person other than the permit or the person for whom the identification card is issued. The Peddler/Solicitor must wear the permit so that it is visible at all times.

8-12 EXEMPTION -- TEMPORARY NONPROFIT FUNDRAISING.

The prescribed permit requirements shall not apply to nonprofit organizations which conduct occasional house-to-house retail sales of packaged wares when the individuals are soliciting on behalf of such organizations, so long as prior to engaging in the activity, the organization submits an application to the Finance Department, indicating the dates, time period and length of the temporary fundraising activity, and evidence of the organization’s not-for-profit or charitable status. The organizations and individuals shall be subject to all other conditions of this Chapter, including but not limited to the applicable conditions set forth in Section 8-13.

8-13 CONDITIONS AND REGULATIONS.

The following conditions and regulations shall also apply in addition to those set forth in other parts of this chapter or elsewhere in this code.

A. Shouting--calling wares. No person acting under authority of any permit issued under this chapter shall shout or call the person’s wares in a loud, boisterous or unseemly manner, or to the disturbance of residents in the city.
B. Identification by comparing signature with that on permit. Every Peddler/Solicitor, upon the request of any police officer or official of the city, shall sign the Peddler/Solicitor’s name for comparison with the signature upon the permit or card or the signature upon the permit application.

C. Order to be written in duplicate. Any person acting under authority of any permit issued under this chapter who solicits orders for future delivery shall write each order at least in duplicate, plainly stating the quantity of each article or commodity ordered, the price to be paid therefor, the total amount ordered and the amount to be paid on or after delivery. One copy of such order shall be given to the customer.

D. Every Peddler/Solicitor shall, upon request of any person solicited, provide his/her name, business address and telephone number and the name, business address and telephone number of the person, organization, or entity on whose behalf solicitation is being made.

E. The time of day and/or evening during which the activities will occur shall be set at the time of application for the permit, and under no circumstances will such activities occur before 7:00 a.m. or after 9:00 p.m.

8-14 ENFORCEMENT.

A. A permit issued under this chapter may be suspended or revoked by the chief of police for any of the following causes:

1. Fraud, misrepresentation or false statement contained in the application for permit;

2. Fraud, misrepresentation or false statement made in the course of carrying on the business as Peddler/Solicitor;

3. Any violation of this chapter.

4. Conviction of any crime or misdemeanor involving moral turpitude;

5. Conducting the business of soliciting or of canvassing in an lawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

This section shall be self-executing and the suspension or revocation shall be effective immediately. The city clerk shall give notice of the suspension or revocation of the permit and sufficient notice shall be given if mailed or delivered to the permittee at the permittee’s last known local address.
B. The City may refuse to issue a permit to an applicant that has previously violated any provision of this Chapter or Chapter 15 of the Municipal Code.

C. Any person subject to the permit requirements of this Chapter who conducts the activities described in this Chapter without first having obtained the prescribed permit required under this Chapter, in a case where the City decides to issues such a permit, may be required to pay a fee for such permit equal to up to double the amount of the fee for said permit.

D. Activities conducted in violation of any of the provisions of this Chapter shall constitute and be punishable as an infraction.

E. Activities conducted in violation of any of the provisions of this Chapter shall constitute a nuisance and shall be subject to civil enforcement, including but not limited to injunctive relief.

F. Violators of this and any other Chapter of this Code shall also be subject to any other applicable enforcement provisions set forth in this Code.

G. All applicable remedies set forth in this Code are deemed to be cumulative.

8-15 PERMIT -- APPEALS TO CITY COUNCIL.

In the event that any applicant or permittee desires to appeal from any order, revocation or other ruling of the finance officer, the chief of police or any other official of the city, made under the provisions of this chapter, such applicant or any other person aggrieved shall file written notice of such appeal with the city clerk and such matters shall be heard at the next regular meeting of the city council, at which time the city council shall hear and receive evidence, written and oral upon all matters involved. The decision of the city council shall be final upon all parties concerned.

8-16 PEDDLING/SOLICITING UNLAWFUL WHERE SIGN POSTED.

It is unlawful for any person described in Section 5.01.010 of this chapter to perform or attempt to perform the acts described in such section by ringing the doorbell or knocking at the door or otherwise calling attention to the person’s presence of or at any residence whereon a sign bearing the words “No Peddlers”, “No Solicitors” or words of similar import is painted or affixed so as to be exposed to public view, and no person, described in Section 8-2 shall perform or attempt to perform any of the acts described in such section in any building, structure or place of business wherein a sign prohibiting the activities, is painted or affixed so as to be exposed to public view.

8-17 DISTRIBUTION OF HANDBILLS--EXCLUDED.

Nothing in this chapter shall prohibit persons from distributing handbills door-to-door within the city without a permit, nor shall the chapter prohibit individuals from engaging
in anonymous religious or political speech. However, such activities shall be prohibited if a sign has been posted by the property or business owner or manager that clearly prohibits such activities, and such activities can be legally prohibited at the site under those circumstances.

8-18 SEVERABILITY.

It is declared to be the intention of the City Council that the subsections, paragraphs, sentences, clauses, and phrases of this Chapter are distinct and severable and, in the event that any subsections, paragraphs, clauses and/or phrases are declared to be unconstitutional, invalid, or unenforceable by any court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining subsections, paragraphs, clauses, or phrases of this Chapter.

SECTION 2. This ordinance shall be in full force and effect thirty (30) days after its passage, adoption and approval.

ADOPTED, SIGNED AND APPROVED this _______ day of ____________, 2005.

________________________
President of the Council and Ex-Officio
Mayor of the City of Porterville

ATTEST:

________________________
Chief Deputy City Clerk and Clerk
of the Council of the City of Porterville