

ORDINANCE NO. 18-20

AN ORDINANCE OF THE CITY OF BRECKENRIDGE, TEXAS AMENDING ORDINANCE NO. 13-08 AND ORDINANCE NO. 16-17; REVISING CHAPTER 13, ARTICLE IV (PEDDLERS, ITINERANT VENDORS, SOLICITORS, AND CANVASSERS) AND SECTION 14-1 (CERTAIN SOLICITATION ACTIVITIES) OF THE BRECKENRIDGE CODE OF ORDINANCES; ESTABLISHING REGULATIONS REGARDING SOLICITATION IN THE PUBLIC RIGHT-OF-WAY TO PREVENT TRAFFIC HAZARDS; ADOPTING MORE STRINGENT REGULATIONS REGARDING PANHANDLING IN PUBLIC PLACES TO PROTECT PUBLIC SAFETY; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY AND REPEALER CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Breckenridge, Texas (the "City Commission") finds that aggressive panhandling and solicitation is disruptive to residents and businesses and contributes to a sense of fear and intimidation and to the loss of access to and enjoyment of public places;

WHEREAS, the City Commission finds that the presence of individuals who solicit money from persons at or near banks, automated teller machines, convenience centers, or restaurants is troubling because of the enhanced fear of crime in places where a person might have to wait or might fail to take necessary safety precautions due to the automatic and sometimes hurried manner in which people ordinarily visit these places;

WHEREAS, the City Commission finds that the presence of canvassers, peddlers, solicitors, and panhandlers on the public right-of-way in busy intersections has the potential to create traffic hazards but banning these individuals from City streets in general may infringe upon important constitutional rights;

WHEREAS, pursuant Section 54.004 of the Texas Local Government Code, the City of Breckenridge (the "City") may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the City and its inhabitants; and

WHEREAS, the City Commission finds the regulations contained in this Ordinance promote the compelling government interests of protecting public safety and preventing traffic hazards but are narrowly tailored to avoid unnecessary infringement upon the constitutional rights of those subject to this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT:

- i. **Amendment**. The Breckenridge Code of Ordinances is hereby amended as follows.

Section 13-61 is hereby amended to read as follows:

Sec. 13-61. Definitions.

As used in this article the following words have the meaning indicated:

(a) *Canvasser* is a person who attempts to make personal contact with a person at his/her residence, business, or upon the public right-of-way without prior specific invitation from or appointment with the person, for the primary purpose of: (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a handbill or flyer advertising a noncommercial event or service.

(b) *Handbill or flyer* means and includes any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature.

(c) *Itinerant vendor* is a person, whether a resident of the city or not, who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the city, soliciting, selling, or taking orders for, or offering to sell or take orders for, any goods or services. A temporary business is one that continues for ninety (90) days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding.

(d) *Parkway* means the area between the edge of the designated street and the adjacent owner's property line.

(e) *Peddler* is a person, whether a resident of the city or not, traveling from house to house or from street to street, who attempts to make contact with a person at his/her residence, business, or upon the public right-of-way without prior specific invitation from or appointment with the person for the primary purpose of attempting to sell a good or service. The word "peddler" shall include the term "solicitor". The word "peddler" shall not include individuals traveling to businesses, houses, or places at the invitation of the resident or owner.

(f) *Solicitor* is a person, whether a resident of the city or not, who attempts to make contact with a person at his/her residence, business, or upon the public right-of-way without prior specific invitation from or appointment with the person for the primary purpose of distributing a handbill or flyer advertising a commercial event or service or soliciting donations or funds for a commercial, for-profit event or business.

(g) *Street* means the portion of the street that is paved, designated, or used for vehicular traffic, and all areas dedicated to public use for public street purposes, including parkways, alleys, and sidewalks.

(h) *Traffic island* means a barrier within a street to exclude vehicles, designated for the purpose of separating or direction streams of vehicular traffic.

Section 13-74 is hereby amended to read as follows:

Sec. 13-74. General Prohibitions.

No peddler, itinerant vendor, solicitor, or canvasser shall:

(a) Enter upon any private property where the property has clearly posted in the front yard a sign visible from the right-of-way (public or private) indicating a prohibition against peddling, soliciting, and/or canvassing. Such sign need not exceed one square foot in size and may contain words such as “no soliciting” or “no solicitors” in letters of at least two inches in height. (The phrase “no soliciting” or “no solicitors” shall also prohibit peddlers, itinerant vendors, and canvassers).

(b) Remain upon any private property where a notice in the form of a sign or sticker is placed upon any door or entranceway leading into the residence or dwelling at which guests would normally enter, which sign contains the words “no soliciting” or “no solicitors” and which is clearly visible to the peddler, solicitor, or canvasser.

(c) Enter upon any private property where the current occupant has posted the property on the City’s “no visit” list (except where the “no visit” list form indicates the occupant has given permission for this type of visit), regardless of whether a front yard sign is posted.

(d) Use or attempt to use any entrance other than the front or main entrance, except by express invitation of the resident or occupant of the property.

(e) Remove any yard sign, door, or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.

(f) Enter upon the property of another except between the hours of 8:00 a.m. and sunset, Monday through Sunday. “Sunset” means the time of day identified by the National Weather Service as the time for sunset for that day in the City. There shall be no peddling, soliciting, or canvassing on Sunday, New Year’s Day, Fourth of July, Memorial Day (observed), Labor Day (observed), Thanksgiving, or Christmas Day. Except that the above prohibitions shall not apply when the peddler, solicitor, or canvasser has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any posted property.

(g) Solicit for a purpose other than that set out in the application for which the license was issued.

(h) Remain on property after the property owner, or the property owner's designee, representative, or agent has instructed the peddler, itinerant vendor, solicitor, or canvasser to leave.

(i) Peddle, solicit, or canvass in the public right-of-way that is within one thousand (1,000) feet of any public or private elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when such school is in session. The measurement of the distance shall be made from the nearest property line of the public or private elementary or secondary school.

Section 13-75, Exemptions, is hereby renumbered as Section 13-76.

A new Section 13-75 is hereby added to read as follows:

Sec. 13-75. Streets.

(a) No canvasser, itinerant vendor, peddler, or solicitor shall be permitted to operate in any congested areas of the City's streets where their operations might impede or inconvenience the public. For the purpose of this Article, the judgment of a police officer exercised in good faith shall be deemed conclusive as to whether the area is congested or the public impeded.

(b) No canvasser, itinerant vendor, peddler, or solicitor may locate in the street (which includes the areas adjacent to or nearby the traveled portion of the street):

(1) At any intersection which is controlled by a traffic control signal light;

(2) Along U.S. Highway 180 (Walker Street) from the eastern City limits to the western City limits; or

(3) Along U.S. Highway 183 (Breckenridge Avenue) from the northern City limits to the southern City limits.

(c) No canvasser, itinerant vendor, peddler, or solicitor may locate in the median or traffic island of any street or roadway.

(d) Exceptions:

(1) Itinerant vendors may locate within a designated public street, alley, or public facility in connection with a special event approved by the City Commission.

(2) Farmers may sell farm produce that was raised or grown by them within a public street or public facility and at a time designated by the City Commission.

(3) Ice cream vehicles and/or snow cone trucks may use the public streets or public facilities provided that they do not remain in one location for longer than fifteen (15) minutes.

(4) Solicitations may be allowed as permitted by Section 552.0071 of the Texas Transportation Code.

Section 14-1 is hereby amended to read as follows:

Sec. 14-1. Panhandling.

(a) In this section, the following words, terms, and phrases shall have the meanings ascribed to them below, except where the context clearly indicates a different meaning:

(1) *Aggressive manner* means

(A) Making any physical contact with or touching another person in the course of the solicitation without the person's consent;

(B) Touching, tapping, or hitting any part of a motor vehicle occupied by a person being solicited unless such touching is with the express permission of the occupant;

(C) Blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;

(D) Using obscene or abusive language or gestures towards the person being solicited;

(E) Approaching the person being solicited in a manner that is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

(F) Following the person being solicited in a manner that is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation; or

(G) Continuing to solicit a person after the person has made a negative response.

(2) *Automated teller machine (ATM)* means a device, linked to a bank's account records, which is able to carry out banking transactions.

(3) *Bank* includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.

(4) *Check cashing business* means an entity in the business of cashing checks, drafts, or money orders for consideration.

(5) *Panhandling* means the act of solicitation by seeking, through a communication with another person, whether by gesture, verbally, or in writing, or a combination thereof, funds or goods for food, personal favors, drink, lodging, vehicle fare, or any other purpose to directly benefit an individual or his family members.

(6) *Public place* means an outdoor area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alley, or the common area of a school, hospital, apartment house, office building, or shop.

(b) A person commits an offense if the person panhandles:

(1) In an aggressive manner in a public place;

(2) Within 50 feet of the following areas where the public is considered vulnerable including:

(A) An ATM;

(B) The entrance or exit of a bank or a check cashing business;

(C) The entrance or exit of a restaurant or the service area of an outdoor eating establishment;

(D) The entrance or exit of a grocery store or a convenience store;

(E) The entrance or exit of a business or residence with a posted "no soliciting" sign.

(3) Anywhere the panhandling would interfere with the safe and orderly movement of traffic according to the judgment of a police officer, exercised in good faith, or:

(A) In the median or traffic island of any street or roadway;

(B) At any intersection which is controlled by a traffic control signal light;

(C) Along U.S. Highway 180 (Walker Street) from the eastern City limits to the western City limits; or

(D) Along U.S. Highway 183 (Breckenridge Avenue) from the northern City limits to the southern City limits.

(4) Anywhere that is within one thousand (1,000) feet of any public or private elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when such school is in session. The measurement of the distance shall be made from the nearest property line of the public or private elementary or secondary school.

(c) Any person who shall violate this section shall, upon conviction, be punished as provided in the general penalty provision found in Section 1-6 of the Breckenridge Code of Ordinances.

(d) It shall be a defense to prosecution under Section 14-1(b)(2), above, if the panhandler is on private property with the express permission of the property owner or manager.


II. **Severability.** It is hereby declared to be the intention of the City Commission of the City of Breckenridge that any phrase, sentence, section, or paragraph of this ordinance shall be declared unconstitutional or otherwise invalid by final judgment of a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remainder of this ordinance since the same would have been enacted by the City Commission without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

III. **Repeal.** All ordinances or parts of ordinances in conflict with this Ordinance shall be and are hereby repealed to the extent of such conflict.

IV. **Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed 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, Texas Local Government Code.

V. **Effective Date.** This ordinance shall take effect upon its adoption by the City Commission and after publication as required by the Texas Local Government Code.

The above and foregoing ordinance was duly proposed, read in full and adopted on the 6th day of November 2018, at a regular meeting of the City Commission.



Bob Sims, Mayor

ATTEST:

Diane Latham

Diane Latham, Assistant City Secretary

