

ORDINANCE NO. 20-L-23

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AMENDING CHAPTER 62 PEDDLERS AND SOLICITORS REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City staff of the City of Schertz (the "City") has recommended that the City Council approve the amended Chapter 62 "Peddlers and Solicitors" as our ordinance is dated and does not follow current law.

WHEREAS, the City staff has provided and updated Chapter 62, attached hereto as Exhibit A.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS:

Section 1. Chapter 62, "Peddlers and Solicitors" of the City's Code of Ordinances is hereby revised and amended as set out in Exhibit A attached hereto.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Amended and Restated Unified Development Code authorized herein are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the 28th day of July, 2020.

PASSED, APPROVED and ADOPTED ON SECOND READING, the 4th day of August 2020.



Ralph Gutierrez, Mayor City of Schertz, Texas

ATTEST:



Brenda Dennis, City Secretary, City of Schertz, Texas



EXHIBIT A

Chapter 62 - PEDDLERS AND SOLICITORS

ARTICLE I. - IN GENERAL

Sec. 62-1. - Definitions.

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

Aggressive manner:

Other than actions that would violate existing state law, actions or behaviors described as "Aggressive Manner" include, but are not be limited to:

- (1) 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.
- (2) 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.
- (3) Approaching or following the person being solicited in a manner that is:
 - a. Hostile or forceful and likely to cause a reasonable person to fear imminent bodily harm to a person or their property.
 - b. Reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- (4) Continuing to solicit a person after the person has made a negative response

Canvasser: Any person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, or in the public right-of-way for the primary purpose of:

- 1) Attempting to enlist support for or against a particular religion, philosophy, ideology, even if incidental to such purpose the canvasser accepts the donation for money for or against such cause; or
- 2) Distributing a handbill or flyer advertising a non-commercial event or service.
- 3) Attempting to enlist support for or against a particular political party, issue, or candidate.

Charitable Organization: An incorporated or non-incorporated tax exempt body which is created and operated for charitable purposes, employs all its resources to those charitable activities that are under its direct control, does not distribute any part of the income generated for the benefit of any trustee, trustor, member, or other private individual, and does not contribute to or associates with political organizations.

Handbill / Flyer: A printed advertisement or announcement that is intended for wide distribution.

Panhandle: To solicit by spoken, written or by other means of communication an immediate donation or transfer of money or another thing of value from another person, regardless of the panhandler's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

Peddle and any form of the word means all activities ordinarily performed by a peddler.

Peddler: Any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, or upon the public right-of-way or in a public area, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale. Peddler does include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good, or service that is offered to a resident for purchase at different location or time.

Public area: An area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transportation facility or shop.

Roadway: The roadway includes the roadbed, shoulder, median, curbs, traffic island, sidewalks, and utility easements located adjacent to or near the roadway.

Solicitation, soliciting, solicited, or any form of the word solicit means any activities ordinarily performed by a solicitor.

Solicitor: means any person who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, or upon the public right-of-way or in a public area for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for future delivery, or for services to be performed in the future. This definition includes any person who, without invitation, goes upon private property, or in the public right-of-way to (i) request contribution of funds or anything of value, or (ii) sell goods or services for educational, political, charitable, religious, or other non-commercial purposes. This definition does not include any person who serves as nothing more than an advertisement for a legal enterprise, does not accept or solicit anything of value, and does not enter into the roadbed, median, curbs or traffic island of a roadway.

-(Ord. No. 03-L-16, § 13-1, 6-3-2003)

Sec. 62-2. - Purpose.

This chapter shall be deemed an exercise of the police power of the state and of the city for the public safety, comfort, welfare, convenience and protection of the city and citizens of the city, and all of the provisions hereof shall be construed for the accomplishment of that purpose.

(Ord. No. 03-L-16, § 13-2, 6-3-2003)

Sec. 62-3. - General prohibitions.

- 1) It shall be unlawful for any peddler or solicitor to solicit to sell, offer to sale, take orders for, or offer to take orders for any goods, wares, merchandise, magazines or other things of value without first making application for and obtaining a peddlers' and solicitors' permit from the Schertz Police Department.
- 2) No peddler, solicitor, canvasser or panhandler shall allow rubbish or litter to accumulate in or around the area in which they are conducting business.
- 3) No peddler, solicitor, canvasser or panhandler shall conduct any business in such a way that would restrict or interfere with the ingress or egress of private property, public areas, or create or become a public nuisance that would increase traffic congestion or delay or constitute a hazard to traffic, life or property, or an obstruction to Police, Fire, EMS or any other emergency services and their related vehicles and equipment.
- 4) No peddler, solicitor, canvasser or panhandler shall utilize flashing or strobe lights, whistles, air horns, megaphones, amplifiers, loud noise devices or any other devices that may be used to attract attention to the merchant, yet would have a demonstrable negative impact on the health, safety, and welfare of the community.
- 5) No person shall panhandle in an aggressive manner.

(Ord. No. 03-L-16, § 13-3, 6-3-2003)

Sec. 62-4. - Exclusions from applicability of this chapter.

The provisions of this chapter shall not apply to the following:

- (1) Commercial agents dealing with local business establishments in the usual course of their business;
- (2) Insurance salesman, real estate agents, and others licensed by the state;
- (3) Vendors of farm produce or agricultural products when the vendor himself produces such produce or products;
- (4) Persons engaged in religious or political speech, which does not include the sale of any item or the solicitation of contributions;
- (5) Persons engaged in the distribution of handbills or flyers for services, commercial goods, wares, merchandise, subscriptions, or publications to be delivered at some future date, who do not engage in face-to-face contact with prospective customers or clients.

(Ord. No. 03-L-16, § 13-4, 6-3-2003; Ord. No. 11-M-24, § 2, 8-16-2011)

Sec 62-5. Distribution of Handbills and Commercial Flyers.

In addition to the other regulations contained herein, a solicitor, peddler or canvasser leaving handbills or commercial flyers about the community shall observe the following regulations:

- 1) No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way. The police and code enforcement officers are authorized to remove any handbill or flyer found within the right-of-way.
- 2) No handbill or flyer shall be left at, or attached to any privately owned property in a manner that causes damage or inconvenience to the owner of such privately owned property.

Sec. 62-6. - Underage solicitors.

No person under the age of 18 may solicit or peddle in the city unless a permit is obtained by a sponsoring adult that is 18 years of age or older, who shall also be responsible for the conduct of any the underage person while peddling or soliciting.

ARTICLE II – DOOR TO DOOR SOLICITING

Sec. 62-20. Hours of canvassing, solicitation and peddling at private residences

It shall be unlawful for persons, licensed or unlicensed, to canvass, solicit or peddle at private residences between the hours of 8:00 p.m. and 8:00 a.m., unless otherwise posted by the private property owner or by someone with apparent authority to act for the owner. This provision does not apply where the canvasser, solicitor or peddler is on the property by prior invitation of the owner of the property or a person residing on the premises.

Sec. 62-21. Entry upon premises or property unlawful

- 1) It shall be unlawful for any person to solicit, peddle or canvass upon any private property in the city where the owner, occupant, or person legally in charge of the premises has posted within five feet of the front door to the premises or main structure, or within five feet of the main entry point of the property or within five feet of the entry to the principal building on the premises, a sign bearing the words "No Solicitation" or other similar sign bearing the words "No Peddlers", "No Canvassing", "No Solicitors" or words of similar importance.
- 2) It shall be unlawful for any person to solicit, peddle or canvass at any entrance to a residence or private property other than through the use of the front door or primary entrance to the residence or private property.
- 3) It shall be unlawful for any person to solicit, peddle or canvass in a gated community or subdivision owned in common and maintained by a restrictive covenant property or homeowners association when a sign bearing the words "No Solicitation" or other words of similar importance is clearly posted at each entrance of the property and is visible from the public right of way.

- 4) It shall be unlawful for any person to continue to solicit, peddle or canvass upon any private property in the city where the owner, occupant, or person legally in charge of the premises has advised the solicitor, peddler or canvasser to leave the property.

ARTICLE III – SOLICITING IN ROADWAYS

Sec. 62-30. Solicitation in public roadways.

Pursuant to Section 552.007 “Solicitation by Pedestrians” of the Texas Transportation Code, a person may not stand in a roadway to solicit a ride, contribution, employment, or business from an occupant of a vehicle, except that a person may stand in a roadway to solicit a charitable contribution if authorized to do so by the local authority having jurisdiction over the roadway.

Pursuant to Section 552.0071 “Local Authorization for Solicitation by Pedestrian” of the Texas Transportation Code, a local authority shall grant authorization for a person to stand in a roadway to solicit a charitable contribution as provided by Section 552.007

- (a) If the persons to be engaged in the solicitation are employees or agents of the local authority and the other requirements of this section are met.
- (b) A person seeking authorization under this section shall file a written application with the local authority not later than the 11th day before the date the solicitation is to begin. The application must include:
 - (1) The date or dates and times when the solicitation is to occur;
 - (2) Each location at which solicitation is to occur; and
 - (3) The number of solicitors to be involved in solicitation at each location.

ARTICLE IV – PERMITS

Sec. 62-40. - Application for permit.

Any person subject to the provisions of this Ordinance shall file a written application with the City of Schertz Police Department. Permits are issued for individuals and not companies or organizations as a whole. Permits are not transferable. The application form is furnished by the City and shall include the following information:

- 1) Each applicant's name, current address, driver's license number, or State issued identification number, telephone number, birth date and physical description.
- 2) A photocopy of a government issued identification card of the applicant that includes a photograph.

- 3) If the applicant is peddling or soliciting for a commercial organization, the applicant must provide the organizations name, address, telephone number and name of the organizations owner or Chief Operating Officer.
- 4) If the applicant is peddling or soliciting for a commercial organization, the applicant must provide the name, title, address, driver's license number, or State issued identification number, date of birth, telephone number and e-mail address of their immediate supervisor.
- 5) A full and complete list of goods to be sold and/or services to be rendered and a copy of the sales contract / agreement and cancellation clause that complies with Texas Business & Commerce Code, Chapter 601.
- 6) Description (year, make, model, color) and the issuing state and license plate number for any and all vehicles to be used in soliciting and peddling.
- 7) Whether the applicant has ever been convicted of a felony or misdemeanor involving moral turpitude, fraud, theft or assault of any kind;
- 8) The period of time during which the applicant wishes to solicit or sell in the city.

Sec. 62-41. - Investigation.

- 1) Each applicant shall submit the information required, together with an investigation fee as determined from time to time by ordinance, which will be used to help defray the expense of investigating the applicant to verify the statements on the application and shall not be refundable.
- 2) It shall be the duty of the Chief of Police or their designee to investigate each applicant.

(Ord. No. 03-L-16, § 13-6, 6-3-2003)

Sec. 62-42. - Issuance or denial.

- (a) It shall be the duty of the Chief of Police or their designee to issue or refuse to issue a peddler's and solicitor's permit applied for under this chapter no later than two weeks from the time a complete application is filed. A peddler's and solicitor's permit shall be in the form as established by the city.
- (b) An application for permit may be denied due to a person's conviction of a felony or misdemeanor if the crime directly relates to the conduct of a peddlers or solicitors business or results from an assault against another person. In determining whether a criminal conviction directly relates to the occupation, the police department shall consider:
 - 1) The nature and seriousness of the crime;
 - 2) The relationship of the crime to the purposes for requiring a license to engage in the occupation;

- 3) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- 4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

c. An application for permit may be denied if:

- 1) An investigation reveals that the applicant falsified or omitted information on the application.
- 2) The applicant is a registered sex offender.
- 3) The applicant has had a permit revoked for any reason within the past three (3) years.
- 4) The applicant has failed to provide all required documentation with the application.

d. A peddler's and solicitor's permit issued hereunder shall be valid for 90 days, after which the holder thereof must reapply pursuant to section 62-50 if the holder desires to continue to peddle or solicit in the city.

(Ord. No. 03-L-16, § 13-8, 6-3-2003)

Sec. 62-43. - Fees.

- 1) If the-Chief of Police or their designee approves an application, the applicant shall pay a fee as determined from time to time by ordinance upon issuance of the peddler's and solicitor's permit. No permit shall be issued for more than 90 days or before all fees as required by this chapter have been paid.

(Ord. No. 03-L-16, § 13-9, 6-3-2003; Ord. No. 12-M-17, § 1, 8-7-2012)

Note— See current fee schedule on file in the office of the city clerk.

Sec. 62-44. - Appeal of denial.

If the-Chief of Police or their designee denies a peddler's and solicitor's permit to any applicant, the applicant may appeal such denial by written request or reconsider filing with the city manager within seven days of such denial, providing such additional information as the applicant believes is pertinent to the city manager reconsideration of such denial. The city manager shall deny the appeal or issue the permit within seven days of receiving a request to reconsider.

Sec. 62-45 Exhibition of permit required

A solicitor or peddler must possess their city issued permit at all times when soliciting within the City of Schertz. If requested in the course of soliciting in the city, the person soliciting must produce the permit for inspection.

ARTICLE V – VIOLATIONS

Sec. 62-57. - Penalty.

Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a class C misdemeanor and upon conviction thereof shall be punished by a fine not to exceed more than \$200.00. Each day any violation of the chapter shall continue shall constitute a separate offense.

(Ord. No. 03-L-16, § 13-13, 6-3-2003)