

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2024-03**

AN ORDINANCE AMENDING THE CITY'S CODE OF ORDINANCES BY REPEALING CHAPTER 78 "PEDDLERS AND SOLICITORS" IN ITS ENTIRETY AND REPLACING IT WITH A NEW ARTICLE VI "SOLICITATIONS" WITHIN CHAPTER 30 "BUSINESSES" OF THE CITY'S CODE OF ORDINANCES; THIS NEW ARTICLE ADOPTS REVISED REGULATIONS CONCERNING PEDDLERS, SOLICITORS, AND CANVASSERS AS THOSE TERMS ARE DEFINED; PROVIDING FOR PENALTIES NOT TO EXCEED \$500.00; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City of Kerrville, Texas ("City") is a home-rule municipality possessing the full power of local self-government, pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code, as amended, and the City's Charter; and

WHEREAS, regulations on peddlers and other solicitation activities in the City were adopted as early as 1968, and have since been amended and modified multiple times by the City Council as it deemed fit; and

WHEREAS, City residents expect their local government to assist them in preserving their privacy and avoiding petty annoyances that disrupt their quiet enjoyment of their homes; and

WHEREAS, other persons often desire to interrupt and intrude into the quiet enjoyment of a person's home to solicit donations for causes believed to be worthy of support; to canvas for support for particular religious, ideological, or political causes; or for reasons for securing sales of products or services; and

WHEREAS, pursuant to Section 215.075, Texas Local Government Code, City Council has the power and authority to license any lawful business or occupation; and

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference; and

WHEREAS, the United States Supreme Court consistently recognizes the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when the solicitation of money is involved; and

WHEREAS, a responsibility of government, to include local governments such as cities, is to balance these competing interests in a manner consistent with both the United States and Texas Constitutions, while protecting the privacy of its citizens and attempting to prevent crime and minimize fraud; and

WHEREAS, the current provisions of Chapter 78, “Peddlers and Solicitors”, are out of date and no longer adequate to meet the needs of the community; and

WHEREAS, City Council finds that the regulation of solicitations and similar activities within the City is in the best interest of the health, safety, and welfare of the citizens of the City; and

WHEREAS, based upon the important public policies expressed above, City Council finds it to be in the public interest to repeal Chapter 78 of the City’s Code of Ordinances in its entirety and to replace said chapter with a new Article VI within Chapter 30 of the Code as provided herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. The facts, recitations, and findings contained in the preamble of this Ordinance are found to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

SECTION TWO. Chapter 78 “Peddlers and Solicitors” of the Code of Ordinances of the City of Kerrville, Texas, is repealed and replaced in its entirety with a new Article VI “Solicitations” to be placed within Chapter 30, as provided for in **Exhibit A**, which is attached, included herein for all purposes, and hereby adopted.

SECTION THREE. The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City’s Code of Ordinances and the publisher is authorized to amend said Code to reflect the provisions adopted herein, to include the repeal and deletion of Chapter 78 in its entirety; the addition of a new Article VI to be found in Chapter 30 of the Code; to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

SECTION FOUR. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of

this Ordinance are expressly repealed to the extent of any such inconsistency or conflict. Ordinance Nos. 86-62 and 91-12 are repealed.

SECTION FIVE. It is officially found and determined that the meetings at which this Ordinance is passed were open to the public as required and that public notice of the time, place, and purpose of said meetings was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION SIX. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7 of the Code of Ordinances of the City of Kerrville, Texas and specifically a fine not exceeding FIVE HUNDRED DOLLARS (\$500.00) per day for each violation hereof.

SECTION EIGHT. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

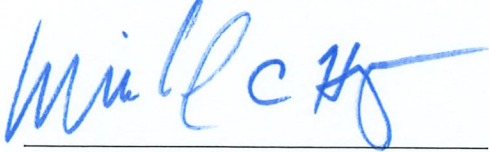
SECTION NINE. This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter, or April 10, 2024, whichever date is later.

PASSED AND APPROVED ON FIRST READING, this the 12 day of MARCH A.D., 2024.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 26 day of MARCH, A.D., 2024.

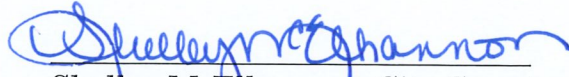

Judy Eychner, Mayor

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Michael C. Hayes", written over a horizontal line.

Michael C. Hayes, City Attorney

ATTEST:

A handwritten signature in blue ink, appearing to read "Shelley McElhannon", written over a horizontal line.

Shelley McElhannon, City Secretary

EXHIBIT A

“CHAPTER 30 BUSINESSES

ARTICLE VI. - SOLICITATIONS

Sec. 30-176. - Purpose.

The purpose of this article is to protect against criminal activity, including fraud and burglary, minimize the unwelcome disturbance of citizens and the disruption of privacy, and to otherwise preserve the public health, safety, and welfare by regulating, controlling, and/or licensing peddlers, solicitors, and canvassers.

Sec. 30-177. - City Manager.

The City Manager shall administer the provisions of this article.

Sec. 30-178. - Definitions.

Business day means any calendar day except Saturday, Sunday, or any City holiday.

Canvasser means a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident 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 for money for or against such cause; or (2) distributing a handbill or flyer advertising a non-commercial event or service.

City Manager means the City Manager or designee.

Official means the City Manager, City's Peace Officers, or Code Enforcement Officers.

Peddler means a person who attempts to make personal contact with a resident at his or her residence without prior specific invitation or appointment from the resident for the primary purpose of attempting to sell goods, merchandise, wares, or other personal property of any nature or service.

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

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 residence in the City, not having been invited by the occupant thereof 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 the premises of any residence in the City to request a contribution of funds or anything of value, or sell goods or services for educational, political, charitable, religious, or other non-commercial purposes.

Sec. 30-179. - Hours of Peddling, Soliciting, or Canvassing at Private Residences.

It is unlawful for any person, whether permitted or exempted from needing a permit, to peddle, solicit, or canvass at residences between the hours of 8:00 p.m. and 8:00 a.m. unless permission is 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 peddler, solicitor, or canvasser is on the property by express, prior invitation of the owner of the property or a person residing on the premises.

Sec. 30-180. - Entry upon Premises Unlawful.

It is unlawful for any person to peddle, solicit, or canvass upon any private property in the City where the owner, occupant, or person legally in charge of the premises has posted at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Solicitors", "No Trespassing", or words of similar intent.

Sec. 30-181. - Penalty for violation.

- (a) Any person, firm, partnership, corporation, association, agent, or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not less than \$50.00 nor more than \$500.00 for each offense. Each and every hour that such violation shall continue shall be deemed to constitute a separate offense.
- (b) The culpable mental state required by Section 6.02, Texas Penal Code, is hereby specifically negated. The offenses under this article shall be strict liability offenses.

Sec. 30-182. - Permit Requirements and Exemptions.

It is unlawful for any person to engage in peddling or solicitation activities within the City without first obtaining a permit issued by the City Manager. The following activities are exempted from the provisions of this section:

- (1) A canvasser;
- (2) A peddler or solicitor currently licensed by the state to engage in the activity;
- (3) persons selling fresh produce;
- (4) mobile food establishments and temporary food establishments that are required to get a food establishment permit from the City to sell food; and
- (5) temporary sales sponsored by charitable, non-profit organizations including, Boy Scouts and Girl Scouts, service clubs, and school organizations.

Sec. 30-183. - Solicitation on public property.

- (a) It is unlawful for any person to peddle, hawk, sell, solicit, distribute, or take orders for any services, wares, merchandise, or goods, including magazines, encyclopedias, tools, photographs, flowers, candy, or plants on the streets, street rights-of-way, or medians of the City. This prohibition shall apply to and include any institution or group organized for a political, religious, or charitable purpose, or individuals engaging in such commercial activities on behalf of any such institution or group.
- (b) No permit provided for herein shall be issued for selling in the above manner.
- (c) An exception applies to vendors authorized to sell within the City's parks and recreational areas pursuant to permission granted by the City Manager, authorized by law, or where similarly authorized by other public entities.

Sec. 30-184. - Exhibition of Permit Required.

- (a) It is unlawful for any peddler or solicitor to fail to conspicuously display on or about their person the permit issued by the City.

- (b) "Conspicuously displayed" shall mean displayed to the front and visible to whomever the permit holder is conversing at all times they are engaged in a permitted activity.

Sec. 30-185. - Permits for Minor Peddlers and Solicitors.

- (a) It is unlawful for any person under the age of 18 to engage in peddling or soliciting except as provided in this section.
- (b) A permit shall be obtained by a sponsoring person, company, or organization for the conduct of any peddling or soliciting activities involving in whole or in part a sales force of one or more persons under the age of eighteen years of age.
- (c) The sponsor shall be responsible for supervising and controlling all persons peddling or soliciting under the sponsor's permit.
- (d) The sponsor shall provide to each individual peddling or soliciting under its authority a badge or other easily readable form of identification that identifies the name of the sponsor and the name of the individual. The sponsor shall require all individuals to wear the identification so that it is clearly visible at all times while peddling or soliciting.

Sec. 30-186. - Application.

Applicants for permits under this article shall file with the City Manager an application in writing on a form obtained from the officer and provide the following:

- (1) A valid Texas driver's license or state issued photo identification;
- (2) The number of the limited sales tax permit issued to the business by the state comptroller's office, if applicable;
- (3) A brief description of the activity or business to be conducted;
- (4) The appropriate fee;
- (5) Proof of status necessary to receive an exception under Sections 30-182 or 30-189 of this article.

Sec. 30-187. - Investigation by the police department.

- (a) Upon the initial submission of permit application, the police department shall obtain the applicant's fingerprints and run a background check on

the applicant as the police department deems necessary. If the applicant returns to renew the application within the calendar year of the initial submission, the retaking of fingerprints will not be required as long as the individual can present valid identification that corresponds with the initial identification. A background check will be conducted each time the permit is renewed and fingerprints will be retaken during the first application process in each calendar year.

- (b) The police department is authorized to investigate the affairs of any person peddling or soliciting in violation of this article.
- (c) The police department may recommend denial of a permit to any applicant for good cause, which may include the following:
 - (1) being a fugitive from justice;
 - (2) providing false and/or misleading statements on the permit application; or
 - (3) conducting peddling or soliciting activities contrary to regulations contained herein.

Sec. 30-188. - Application fee.

The City shall charge a nonrefundable fee for the administration and investigation of the application. Such fee shall not be prorated and shall be paid at the time the application is made and shall not be returned to the applicant, regardless of whether a permit is issued. The fees and charges for permits furnished by the City are established by City Council and adopted as part of the City's annual fee schedule.

Sec. 30-189. - Exceptions to fee.

The following organizations are exempt from paying a permit fee; however, all peddlers and solicitors are required to comply with all other applicable provisions of this article unless otherwise exempted:

- (1) Any local church or other religious group, or to ministers or agents thereof soliciting funds for the support of such religious group;
- (2) Any established society, association, or corporation that is organized and operated exclusively for educational, philanthropic, benevolent, fraternal, or charitable purposes, not operated for pecuniary profit, where no part of the net earnings inures to the benefit of any person,

private shareholder, or individual, where the peddling or soliciting of such organization is:

- a. conducted among the members thereof by other members or officers thereof, voluntarily and without remuneration for the activity; or
 - b. in the form of collections or contributions at the regular exercises or services of any society, lodge, benevolent order, or fraternity or similar organization, or any branch thereof.
- (3) Sales of goods, wares, and merchandise donated by the owners thereof, the proceeds of which are to be used and applied to some charitable, religious, or philanthropic purposes.
- (4) Sales of goods, wares, and merchandise by any bonafide charitable, religious, or philanthropic organization.

Sec. 30-190. - Issuance.

Upon presentation of an administratively complete application, the City shall issue a permit to the applicant within 10 business days unless grounds for denial exist under Section 30-194.

Sec. 30-191. - Contents.

- (a) Each permit issued under this article shall show the name of the permitted individual, business address, a description of the type of peddling or soliciting, product, or activity, the date of issuance, and the expiration date of such permit.
- (b) The City will number each permit and include the following language prominently displayed: *"The issuance of this Permit is not an endorsement by the City of Kerrville, or any of its officers or employees, and expires _____."*

Sec. 30-192. - Expiration.

All permits issued under the provisions of this article shall expire 90 days from the date of issuance.

Sec. 30-193. - Transfer.

No permit issued under the provisions of this article shall be transferred or assigned.

Sec. 30-194. - Denial.

The City Manager may deny issuing a permit to a person under this article for the following reasons:

- (1) Because of a person's conviction of a felony or misdemeanor if the crime directly relates to the conduct of a business or results from an assault against a person.
- (2) An investigation reveals that the applicant falsified information on the application.
- (3) The applicant is a registered sex offender.

Sec. 30-195. - Revocation.

- (a) Permits issued under the provision of this article may be revoked for any of the following causes by any official other than the City Manager:
 1. Fraud, misrepresentation, or false statement contained in the application for permit;
 2. Fraud, misrepresentation, or false statement made in the course of carrying out business or other activities;
 3. Any violation of this article;
 4. Conviction of a misdemeanor or any felony if the crime directly relates to the conduct of business; or
 5. Conducting the business of peddling or soliciting in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, and general welfare of the public.
- (b) The official revoking the permit shall provide notice of the revocation both verbally and in writing and shall specify the basis of a revocation.
- (c) When the peddler or solicitor receives notice that his/her permit has been revoked, said person shall immediately surrender the permit to the City.

Sec. 30-196. Appeals.

- (a) A permit holder may appeal the act of denial or revocation of any permit to the City Manager within 5 business days from the date of denial or revocation.
- (b) Such appeal shall be taken by filing with the City Manager a written statement setting forth fully the grounds for the appeal.
- (c) The City Manager shall issue a decision on the denial or revocation in writing within 5 business days of receipt of the appeal.
- (d) The revocation or denial is not stayed pending the City Manager's decision.
- (e) The decision and order of the City Manager on such appeal is final and conclusive."