

**ORDINANCE NO. 2012-12**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCE, CITY OF BOERNE, TEXAS, CHAPTER 15, OFFENSES AND MISCELLANEOUS PROVISIONS ARTICLE III, ENTITLED "PEDDLERS, CANVASSERS AND SOLICITORS;" ADDING SECTION 15-60 THROUGH 15-65; PROVIDING AN EFFECTIVE DATE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR A PENALTY NOT TO EXCEED \$500**

**WHEREAS**, the City Council of the City of Boerne, Texas, finds that it is in the best interests of the citizens to regulate peddlers, solicitors and vendors within the City; and

**WHEREAS**, peddling, soliciting and vending are time-honored activities which can be beneficial to the community and the citizens when conducted in a responsible manner; and

**WHEREAS**, the registration of persons who engage in peddling, soliciting and vending with the City is necessary to protect the interests of the public and also protects legitimate activities; and

**WHEREAS**, the regulations of the City governing those who engage in peddling, solicitation and vending should be amended to establish updated standards for the sale of food and beverages within the corporate limits; and

**WHEREAS**, health and safety issues exist with respect to the operation of mobile food establishments; and

**WHEREAS**, in furtherance of the health, safety, and welfare of the public, the City Council finds it is in the best interest of the City to make revisions to Chapter 15, Article III "Peddlers, Canvassers and Solicitors" of the City Code of Ordinances to establishing a permitting process and other regulations applicable to mobile food establishments.

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

**SECTION 1.** That Chapter 15, Article III "Peddlers, Canvassers and Solicitors," of the Code of Ordinances of the City of Boerne, Texas is hereby amended to read as follows:

**Sec. 15-56 - Definitions.**

- A. "Peddler" means any individual, whether a resident of the City of Boerne ("City") or not, traveling by foot, wagon, automobile, motor truck or any other means of conveyance, from place to place, house to house, business to business, or from street to street for the sale of, as well as the selling, offering for sale or taking or attempting to take orders for the sale of goods, wares and merchandise, personal property of any nature whatsoever for immediate delivery or for services to be performed immediately, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or not or whether he is collecting advance payment on such sales or not.
- B. "Solicitor" means any individual, whether a resident of the city or not, traveling by foot, wagon, automobile, motor truck or any other means of conveyance, from place to place,

house to house or street to street for the sale of, as well as the selling, offering for sale or taking or attempting to take orders for: (1) sale of goods, wares and merchandise, personal property of any nature whatsoever, for future delivery whether or not such individual has, carries or exposes for sale a sample of the subject of such sale; (2) or for services to be performed in the future whether or not such individual is collecting advance payment on such sales or not; or (3) a request, whether vocalized or not, for a donation other than in response to an inquiry from another person.

- C. "Solicit" means to request, by the spoken, written, or printed word, or by other means of communication, an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.
- D. "Aggressive solicitation" means:
1. Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
  2. following the person being solicited, if that conduct is:
    - a. intended to or 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
    - b. intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
  3. continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;
  4. intentionally or recklessly 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;
  5. using obscene or abusive language or gestures toward the person being solicited;
  6. approaching the person being solicited in a manner that:
    - a. is intended to or 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
    - b. is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- E. "Automated Teller Machine" means a device, linked to a bank's account records, which is able to carry out banking transactions.
- F. "Automated Teller Facility" means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.
- G. "Bank" includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.

- H. "Bus" means a vehicle operated by a transit authority for public transportation.
- I. "Check Cashing Business" means a person in the business of cashing checks, drafts, or money orders for consideration.
- J. "Merchandise." Merchandise shall be used in its broadest sense and includes property of every kind.
- K. "Mobile Food Vehicle" is a vehicle mounted food establishment, designed to be readily transported, pushed, or drawn.
- L. "Park" or "Parking" when prohibited, means to stand an occupied or unoccupied vehicle, including a Mobile Food Vehicle" other than temporarily while loading or unloading merchandise or passengers.
- M. "Public Area" means all areas 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, transport facility, or shop.
- N. "Services." Services shall be used in its broadest sense and includes any work done for the benefit of another person.
- O. "Special Event" means any occasion including, but not limited to, fairs, shows, exhibitions, city wide celebrations, festivals, market days, etc., within a specifically defined area for the City for a period established and/or approved by the City Council (or their duly authorized representatives) and/or the appropriate organizing body.
- P. "Stand" means any newsstand, table bench, booth, rack, handcart, pushcart, vehicle, or any other fixture or device used for display or storage of articles offered for sale by a vendor or peddler.
- Q. "Vendor" means any individual, whether a resident of this City or not, who offers for sale food, beverages, goods, merchandise, delivery, or for services to be performed immediately or in the future, from a certain location, for a period of more than fifteen (15) minutes, that is not within a building or a structure for which a certificate of occupancy is required by the City. This term shall not apply to businesses that operate from within a building or structure within the City for which a certificate of occupancy is required and also displays or sells food, beverages, goods, merchandise, etc., directly outside the building or structure which the business operates.

Sec. 15-57 – Aggressive Solicitation.

- A. A person commits an offense if the person solicits:
1. in an aggressive manner in a public area;
  2. in a bus, at a bus station or stop, or at a facility operated by a transportation authority for passengers;
  3. within 25 feet of:
    - a. an automated teller facility;

- b. the entrance or exit of a bank;
- c. the entrance or exit of a check cashing business; or at a marked crosswalk.
- 4. on either side of the street on a block where a school attended by minors or a child-care facility has an entrance or exit;
- 5. at a sidewalk café or the patio area of a bar or restaurant.

B. A culpable mental state is not required, and need not be proved, for an offense under Subsection (A) (2), (3), or (4).

C. This section is not intended to proscribe a demand for payment for services rendered or goods delivered.

Sec. 15-58 - Permit Required.

It is unlawful for any peddler, solicitor or vendor to engage in the business of selling, displaying, offering for sale of any food, beverages, goods, merchandise or Services of any kind within the City without first obtaining a permit from the City Manager or his duly authorized representative as provided for in the chapter.

Sec. 15-59 - Permit Exemptions.

The following are excluded from permitting provisions:

- A. Newspaper carriers;
- B. Farmers who sell agricultural products that were raised or grown by them, when located within a public way and at a time designated by City Council in advance;
- C. Non-profit organizations that maintain a principal office within Kendall County, Texas;
- D. Religious proselytizing or distribution of religious literature;
- E. Political speech;
- F. Canvassers who attempt only to solicit political support or to determine opinions or sentiments;
- G. Peddlers, Solicitors and/or Vendors operating within a designated Public Area in connection with a Special Event pre-approved by the City Council and/or appropriate body organizing and implementing the Special Event. The appropriate body organizing the Special Event must first apply and receive a Special Event permit anticipating and approving such vendor sales for the Special Event;
- H. Sales made to established businesses by commercial travelers or sales agents in the usual course of business, or to sales made under authority and by order of law;

- I. Individuals traveling to businesses or houses at the invitation of the resident or the owner; or
- J. Any operation which is exempted by state or federal statute from this chapter, only to the extent of such applicable exemption.

Sec. 16-60 - Use of State Highways Prohibited.

It shall be unlawful for any Peddler, Solicitor or Vendor to engage in business on any State Highway within the City. Furthermore, it shall be unlawful for any Mobile Food Vehicle to park on any State Highway within the City.

Sec. 15-61 - Use of State Highways Exemptions.

Peddlers, Solicitors or Vendors may engage in business or park on a State Highway in connection with a Special Event approved by the City Council and/or the appropriate body organizing and implementing the event.

Sec. 15-62 - Use of City Streets Surrounding City Park.

A Peddler, Solicitor or Vendor may engage in business on city streets surrounding city parks between the hours of 7 a.m. and 2 a.m. Monday through Thursday and 7 a.m. and 2 p.m. on Friday. In order to accommodate reserved events in and around city parks, Peddlers, Solicitors and Vendors may apply to the Parks Director for permission to operate on city streets surrounding city parks after 2 p.m. Friday and anytime on Saturday and Sunday. Such application shall be made on a monthly basis. Preference will be given to reserved events occurring in and around city parks. If the Parks Director has given permission for a Peddler, Solicitor or Vendor to operate on a city street surrounding a city park and subsequent to that time the park is reserved for an event the Peddler, Solicitor or Vendor shall maintain their right to conduct business regardless of the scheduled event unless the city manager determines that it is the best interest of the City to withdraw permission..

Sec. 63 - Use of City Parks Prohibited.

A Peddler, Solicitor or Vendor may not engage in business in city parks without approval from the Parks Director.

Sec. 15- 64 – Use of Private Property.

Peddlers, Solicitors and Vendors may operate on private property where the property is properly zoned, the operator receives written permission from the property owner for the use.

Sec. 15- 65 - Restrictions applicable to all Peddlers, Solicitors and Vendors

- A. Stands and/or Mobile Food Vehicles shall not:
  - 1. Exceed ten (10) feet in width or thirteen (13) feet in height;
  - 2. Impede access to the entrance or driveway of an adjacent building.
- B. Hours of Operation. Hours of operation shall be between the hours of 7 a.m. and 2 a.m. unless otherwise stated herein. All Stands and Mobile Food Vehicles shall be removed during non operation hours this includes those Mobile Food Vehicles that are participating in a reserved event associated at a city park. Mobile Food Vehicles are not allowed to

remain on public right-of-way during overnight hours even if they are associated with a reserved event at a city park

- C. Removal of Trash. All Vendors selling food or beverages must provide at least one (1) trash receptacle adjacent to or as part of their operations if said receptacle is placed on a sidewalk adjacent to a city park, there shall be a minimum of 4 feet of clearance maintained between the park side of the sidewalk and the trash receptacle this action shall not be deemed "use of the park".
- D. Signage. All signage must comply with the City sign ordinance.
- E. Tables and Chairs. Peddlers, Solicitors and Vendors are prohibited from placing tables and chairs around or near the vending stand unless operating upon private property pursuant to this Ordinance.

Sec. 15-66 - Permit, Written Application Required.

Any person desiring to engage in activities as a Peddler, Solicitor or Vendor within the City must complete and file a written application for permit with the City Manager or his duly authorized representative which application shall give the following information:

- A. Applicant's name, telephone number, address, birth date, physical description, and either:
  - 1. Driver's license number and state, or
  - 2. Social security number and an official, government-issued picture identification card.
- B. If the applicant is peddling or making solicitations for any commercial, charitable or political organization, the full legal name, telephone number and address of such organization.
- C. Full and complete list of goods or merchandise to be sold and/or Services to be delivered.
- D. For each individual involved in the Peddling, Vending or Solicitation campaign: full legal name, telephone number, address, birth date, physical description of the Stand and/or Mobile Food Vehicle, if any, and either:
  - 1. Driver's license number and state, or
  - 2. Social Security number and an official, government-issued picture identification card.
- E. Description (year, make, type) and license plate number and state of registration of all vehicles to be used in Soliciting, Vending and Peddling and a copy of the vehicle's current proof of liability insurance.
- F. If the applicant or any involved individual does not have a telephone number and/or an address, the telephone number and/or address of a relative or third party that can contact the applicant or any involved individual.
- G. A statement that the applicant has not been convicted of any felonies of any nature or of any other crimes of moral turpitude in the State or any other State; and, if having been

so convicted, a full statement as to the place of conviction and crime for which the applicant was convicted.

- H. A copy of the applicant's current State of Texas Sales and Use Tax Permit together with written documentation from the State Comptroller that all sales tax that may be due and owing by the vendor has been paid in full.
- I. Applicants engaged in the sale or distribution of food or beverages must submit a copy of the vendor's current mobile food vendor license or roadside vendor license issued by the Kendall County Sanitarian.
- J. Applicant must provide original identifying documents to the City Manager or his duly authorized representative upon request.

Sec. 15-67 - Permit Fees.

Permit fees shall be accompanied with the permit application. All Peddlers, Vendors and Solicitors not exempted by Section 15-59 shall be required to pay the permit fee as set out in the City of Boerne's Fee Ordinance.

- A. The permit fees may be reduced or may be waived if the City Manager or his duly authorized representative determines that the applicant is indigent.
- B. An applicant requesting a waiver of the permit fees shall submit an affidavit of indigency with the application materials.
- C. For purposes of this section, an applicant is indigent if the applicant's income is not more than 100 percent of the applicable income level established by the federal poverty guidelines.

Sec. 15-68- Permit Denial.

- A. A copy of the application for permit will be referred to the Police Department who will undertake an investigation of the applicant's record and background, such as shall be reasonably necessary to protect the public. An application for permit under this chapter may be denied where:
  - 1. Required application information is incomplete or incorrect;
  - 2. Applicant is currently wanted on warrant for arrest;
  - 3. A permit fee has not been paid and affidavit of indigence has not been filed;
  - 4. Fraudulent statements or omissions on permit application;
  - 5. More than one prior conviction for violation of the prohibition against aggressive solicitation within any consecutive twelve months; or
  - 6. Prior felony convictions or convictions for other crimes of moral turpitude.

- B. If the Police Department denies a permit, the applicant may appeal the decision in writing to the Chief of Police within ten (10) business days of the denial. The Chief of Police may affirm, modify or reverse the decision of the Police Department.

Sec. 15-69 - Permit Issuance, Duration.

- A. If the Police Department finds that the application is completed in conformance with Sections 15-60 and 15-61, a permit shall be issued within five working days. The permit shall be the original application with an official stamp indicating approval. Each permit will be valid for 12 months from date of issue.
- B. The permittee is required to notify the Police Department before any Peddling, Vending or Soliciting under the issued permit is conducted in any new calendar month after the issuance of the permit. At this time, the permittee will update any information required under Section 15-60 that has changed.
- C. The Police Department will retain one copy of the approved permit for official records. The permit may not be represented as an endorsement or approval by the City of the purposes of a solicitation or a product offered by the permittee.
- D. Only those Peddlers, Vendors or Solicitors whose names are listed on the approved application may conduct business under the issued permit. If any new Peddlers, Vendors or Solicitors join the campaign after the original permit is issued, they must supply the Police Department with the information required in Section 15-60.
- E. It shall be unlawful for any Peddler, Vendor or Solicitor to intimidate or aggressively solicit or beg a person into giving money, goods or services.

Sec. 15-70- Permit Display.

Each Peddler, Vendor or Solicitor will carry his or her permit at all times while engaging in business in the City. Upon request or demand, the Peddler, Vendor or Solicitor will exhibit the permit to indicate compliance with all of the relevant requirements of this chapter.

Sec. 15-71 - Permit Nontransferability.

Permits issued under the provisions of this chapter are not transferable in any situation and will be clearly marked "Not transferable."

Sec. 15-72- Permit Suspension.

- A. The Chief of Police or the Chief's designee may, upon documented complaint or violation of law, suspend and confiscate a permit issued under this chapter.
- B. Peddlers, Vendors and Solicitors whose licenses are suspended have three business days during which to request an administrative review of the suspension. If request for administrative review is not made within three business days, the permit is revoked.

Sec. 15-73 - Permit Revocation.

- A. Upon permittee's request, made within three business days of the revocation, the Police Department shall provide the permittee with written notice containing particulars of any and all complaints against him or her, and the time, date and place for an administrative review of the suspension.
- B. The City Manager or his duly authorized representative will conduct an administrative review to determine whether the permit shall be restored or revoked.
- C. After notice and review, the City Manager may revoke any permit issued under this chapter for the following reasons:
  - 1. Fraudulent statements, omissions on permit application or in conduct of permitted business;
  - 2. Any violation of federal or state statute, or city ordinance;
  - 3. Endangerment of public welfare, health or safety.
  - 4. More than one conviction for violation of the prohibition against aggressive solicitation within any consecutive twelve months.
- D. If the City Manager revokes a permit, applicant may appeal this decision in writing to the City Council, which may affirm, modify, or reverse the decision of the City Manager.
- E. Revocation of any permit shall bar the permittee from eligibility for any person under this chapter for a period of one year from the date of revocation.

Section 15-74 - Hours of Operation.

No peddler or solicitor may conduct activities defined in Section 15-56 except between the hours of eight o'clock a.m. and sunset, local time in Boerne, Texas, unless in conjunction with a Special Event unless otherwise noted in the ordinance.

Section 15-75 - No Solicitor Signs.

Any peddler or solicitor who conducts or attempts to conduct business at a place where a sign clearly indicates that solicitors or peddlers are unwelcome is in violation of this chapter.

Section 15-76- Violation / Penalty.

Any person violating the provisions of this chapter is guilty of a Class C misdemeanor and upon conviction shall be subject to a penalty not to exceed five hundred dollars (\$500.00). Each and every act constituting a violation hereof and each failure or refusal to comply with any provision shall be a separate offense and shall be punished as such.

**SECTION 2.** If any section, subsection, sentence, clause or phrase of this Ordinance is held for any reason to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Boerne, Texas hereby declares that it would have passed and adopted 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 3.** This ordinance shall become effective immediately upon its final passage and approval.

PASSED AND APPROVED on first reading on the 10<sup>th</sup> day of April, 2012, and

PASSED AND APPROVED on second reading on the 24<sup>th</sup> day of April, 2012.

APPROVED:

s/s Michael D. Schultz  
Mayor

ATTEST:

s/s Lori A. Carroll  
City Secretary

APPROVED AS TO FORM:

s/s Kirsten B. Cohoon  
City Attorney