

ORDINANCE NO. 16-3163

AN ORDINANCE AMENDING CHAPTER 90 "PEDDLERS AND SOLICITORS" OF THE CITY OF BEDFORD CODE OF ORDINANCES BY DELETING SECTIONS 90-1 THROUGH 90-39; ADDING NEW SECTIONS 90-1 THROUGH 90-28; DELETING CHAPTER 6 "ADVERTISING", ARTICLE II "DISTRIBUTION OF HANDBILLS"; PROVIDING FOR PURPOSE, DEFINITIONS, REGULATION/RESTRICTIONS FOR COMMERCIAL AND HOME SOLICITATION AND DISTRIBUTION OF HANDBILLS; INCLUDING A DO NOT SOLICIT LIST; PROVIDING FOR PERMITS AND SUSPENSION OR REVOCATION OF PERMITS, PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Bedford desires to protect the life, health and property of the citizens and businesses of the City of Bedford; and,

WHEREAS, home safety is important to the health, safety and welfare of the citizens, businesses and visitors of the City of Bedford; and,

WHEREAS, the City of Bedford supports the First Amendment rights of the citizens or visitors of the City of Bedford.

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

SECTION 1. That all matters stated in the preamble are hereby found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2. That Chapter 90 "Peddlers and Solicitors," Sections 90-1 through 90-39 are deleted in their entirety and Section 90-1 through 90-28 as set forth below are adopted to read as follows:

Chapter 90 - PEDDLERS AND SOLICITORS

ARTICLE I. - IN GENERAL

Sec. 90-1. - Purpose.

The purpose of this article is to provide for the general health, public safety and welfare, comfort, convenience and protection of the City and the residents of the City by:

- (1) Prohibiting door-to-door solicitation and canvassing activity at residences during the times when such activity is most intrusive and disruptive to citizens' privacy;
- (2) Regulating the manner in which any solicitation activity, canvassing activity or handbill distribution may occur to promote good order, prevent litter and protect citizens from aggressive and intimidating practices; and
- (3) Requiring solicitors and handbill distributors to register with the City and obtain permits to aid in crime detection efforts and deter deceptive practices and fraud.

The provisions of this article shall be construed to accomplish these purposes.

Sec. 90-2. - Definitions.

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

City is defined as the City of Bedford, Texas.

Commercial Home Solicitation or Soliciting is defined as the solicitation at a residence through the attempt or act of asking, bartering, or communicating in any manner for the purpose of selling or

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offering to sell goods, services, or realty, which includes promoting, advertising, receiving or obtaining money, gifts or items of value.

Do Not Solicit List is defined as a list, developed and maintained by the Police Chief, or his designee, of residences where the property owner or occupant has indicated that they do not wish to be solicited.

Handbill is defined as any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any manner.

Handbill Distribution is defined as traveling by any means, going door-to-door, house-to-house or building-to-building without personally contacting persons to distribute or leave on or at each premises handbill for any purpose.

Itinerant Merchant or Itinerant Vendor is defined as any person other than a publication solicitor, engaged as a solicitor.

Mail is defined as letter, packages, or other items commonly transported and delivered by the United States Post Office, or by delivery service which requires a delivery statement specifically addressed to the address at which it is delivered and an addressee located at that location, or by a delivery service which delivers materials subscribed to by a person living at the address to which the subscribed materials are delivered.

Motor Vehicle is defined as a vehicle that is subject to registration under chapter 502 of the Texas Transportation Code or its successor chapters.

Newspaper is defined as any published materials that are printed and distributed, both daily and non-daily, to disseminate current news and information of general interest to the public.

Noncommercial solicitor means any person, other than a publication solicitor, engaged in requesting contribution of funds, property, or anything of value, or the pledge of any type of future donation, or selling or offering for sale any type of property, including but not limited to goods, tickets, books, and pamphlets, or political, charitable, religious, or other non-commercial purposes.

Place of Business is defined as an established outlet, office, or location operated by a retailer, the retailer's agent, or the retailer's employee for the purpose of receiving orders for taxable items. The term includes any location at which three or more orders are received by a retailer in a calendar year. A location such as a warehouse, storage yard, or manufacturing plant is not a "place of business" unless at least three orders for taxable items are received by the retailer during a calendar year.

Publication Solicitor is defined as any itinerant merchant or itinerant vendor who sells or takes orders for sales of newspapers, magazines, or other publications, including audio and visual recordings.

Selling is defined as selling, dispensing, peddling, hawking, displaying, offering to sell or soliciting for sale by offering or exposing for sale any goods, wares, merchandise or services.

Solicitation Activities is defined as traveling by any means, going door-to-door, house-to-house or building-to-building personally contacting persons to ask, barter or communicate in any manner, whether orally, by written or printed materials including, but not limited to, handbills or leaflets, hand signing or by any other method, direct or implied, for the purpose of selling or taking orders for goods, wares, merchandise or services or collecting money for any purpose that does not reflect on the exemption list.

Solicitor is defined as any person who engages in the practice of going door-to-door, house-to-house, or along any streets within the city:

- (1) Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares, or other items of value for further delivery, or for services to be performed in the future, for commercial purposes; or

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- (2) Any itinerant merchant, itinerant vendor, publication solicitor or non-commercial solicitor as those terms are defined herein.

Traffic Safety Vest is defined as a high visibility vest made of fluorescent material that may be clearly seen at any time of the day and is issued through the Police Department for the purposes of this ordinance.

Sec. 90-3. - Commercial home solicitation and commercial home distribution on private property.

- (a) It shall be unlawful for any person to conduct commercial home solicitation or commercial home distribution upon residential property within the city without first obtaining a written permit as required by this Chapter.
- (b) It shall be unlawful to approach any part of a residence other than the front door.

Sec. 90-4. - Exhibiting card prohibiting solicitors.

- (a) A person desiring that no solicitor or other person engage in a solicitation at his residence shall exhibit in a conspicuous place upon or near the main entrance to the residence a weatherproof card not less than three inches by four inches in size, containing the words, "NO SOLICITORS" or "NO TRESPASSING" or "NO ADVERTISEMENTS" or "NO HANDBILLS" or any similar notice. The letters shall be not less than two-thirds of an inch in height.
- (b) Every solicitor upon going onto any premises upon which a residence is located shall first examine the residence to determine if any notice prohibiting soliciting is exhibited upon or near the main entrance to the residence. If any notice prohibiting soliciting is exhibited, the itinerant vendor, itinerant merchant, or publication solicitor shall immediately depart from the premises without disturbing the occupant unless the visit is the result of a request made by the occupant.
- (c) No person shall go upon any residential premises and ring the doorbell or rap or knock upon the door or create any sound in a manner calculated to attract attention of the occupant of the residence for the purpose of securing an audience with the occupant and engaging in or attempting to engage in the business of solicitation if a card as described in subsection (a) of this section is exhibited in a conspicuous place upon or near the main entrance to the residence unless the visit is the result of a request made by the occupant.
- (d) No person, other than the occupant of the residence, shall remove, deface or render illegible a card placed by the occupant pursuant to subsection (a) of this section.
- (e) Request to leave
- (1) Any solicitor who has gained entrance to a residence or audience with the occupant, whether invited or not, shall immediately depart from the premises without disturbing the occupant further when requested to leave by the occupant.
- (2) Subsection (1) immediately above shall apply in all cases, regardless of whether a sign is posted and regardless of whether the solicitation was initially invited.

Sec. 90-5. - Do Not Solicit List.

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- (a) The Police Chief, or their designee, shall develop and maintain a list of residences where commercial home solicitation is prohibited and such list shall be referred to as the do not solicit list.
- (b) Any property owner or occupant may elect to add or remove his or her residence to or from the do not solicit list through the procedures developed by the Police Chief. The property owner or occupant making such a request will be required to affirm that he or she is an owner or occupant of the residence, and is making the request on their behalf and on behalf of any other occupant at that address.
- (c) The Police Chief shall make the do not solicit list available on the City's website and to any person upon request.
- (d) The Police Chief shall provide a copy of the do not solicit list to each person issued a permit under this article.
- (e) Solicitation of any residence on the do not solicit list shall be grounds for the immediate revocation of the solicitor's permit.

Sec. 90-6. - Cleanliness of products and vehicles; honest weights and measures required.

Every person who shall comply with this chapter and shall sell, or offer for sale, any of the articles as herein specified, shall at all times keep the same in a clean and sanitary condition, and shall also keep their wagons, vehicles, or other conveyances in a clean and sanitary condition, and they shall not sell, or offer for sale, any unsound or unwholesome articles, nor shall they give, or make, any false weights or measures of any of the various articles as specified and covered by this chapter.

Sec. 90-7. - Consent to enter residences.

It shall be unlawful for any solicitor except as herein provided, to go inside of a private residence in the city unless requested or invited so to do by the owner or occupant of said residence for the purpose of selling or dispensing of or peddling the same.

Sec. 90-8. - Penalties; civil remedies; permit forfeiture.

- (a) Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined as provided in the Code of Ordinances, Chapter 1, Section 1-7: General Penalty – Continuing Violations; each day such violation continues shall constitute a separate and distinct offense.
- (b) In case of any willful violation of any of the terms and provisions of this chapter, the city, in addition to imposing the penalties above provided, may institute any appropriate action or proceeding in any court having proper jurisdiction, to restrain, correct or abate such violations; and the definition of any violation of the terms of this chapter as a misdemeanor, shall not preclude the city from invoking the civil remedies given it by the laws of the state, but same shall be cumulative and subject to prosecution as hereinabove prescribed for such violations.
- (c) Each day's engaging in the business regulated by this chapter without the payment of the fee due thereon, and procuring a receipt, or permit, therefore, and each day's failure to comply with any of the other provisions of this chapter, shall constitute a separate offense, and the person so found guilty of such violation, or failing to comply with the provisions hereof, shall upon conviction be punished therefor as hereinabove provided.

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Sec. 90-9. - Handbill restrictions.

- (a) No person shall throw or deposit or cause any handbill to be placed in or upon more than three (3) vehicles at the same location.**
- (b) No person shall throw or deposit any handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.**
- (c) No person shall distribute, deposit, place, or throw any handbill in or upon any private premises which are inhabited if the premises has a sign posted providing that there is No Solicitation on the premises or similar sign as set out in section 90-4 or if the location is on the list set out in 90-5. Provided however, in the case of inhabited private premises which are not posted as provided in this article, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere. In no event shall such handbill be deposited in a mailbox when so prohibited by federal postal laws or regulations.**

Sec. 90-10. - Vest Requirement; Display of permit.

- (a) Each solicitor shall wear a traffic safety vest provided by the City and displaying the current year.**
- (b) Each permit shall be worn as part of the traffic safety vest required to be worn by the individual who was issued the permit.**

Sec. 90-11. - Time restrictions.

- (a) No Person may conduct commercial home Solicitations or Handbill distributions before the hour of 9:00 A.M.; or**
- (b) After 8:00 P.M.; or**
- (c) Sunday; or**
- (d) Any of the following holidays: New Year's Day; Martin Luther King's Birthday; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; the day after Thanksgiving, Christmas Eve, and Christmas Day.**

Section 90-12 through 90-25 Reserved

ARTICLE II. - PERMIT

Sec. 90- 26. – Permit required for solicitation and handbill distribution.

- (a) A person commits an offense if the person engages in commercial home solicitation or handbill distribution activities in the city without a valid permit issued by the City of Bedford.**
- (b) A permit shall be valid for the calendar year in which it was issued. No permit shall be valid past December 31 of the year of issuance.**
- (c) Individuals engaged in soliciting activities in the City of Bedford are required to pay a non-refundable registration fee listed on the fee schedule.**

Sec. 90-27. - Permit Application

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- (a) A person desiring to conduct soliciting or handbill distribution activities within the City shall complete a permit application prior to any distribution.**
- (b) A separate permit shall be required for every person involved in soliciting or handbill distribution.**
- (c) A separate permit shall be required for each company or entity involved in soliciting or handbill distribution.**
- (d) No permit can be valid for multiple people, companies or entities even if it is the same person involved in soliciting or handbill distribution for multiple people, companies or entities.**
- (e) A solicitor or handbill distribution permit shall be valid for the duration of the current calendar year.**
- (f) The application shall contain or be submitted with the following information:**
 - (1) The full name, date of birth, phone number and permanent and (if different) current address of the applicant;**
 - (2) A valid state driver's license number or a state-approved identification card number (the Police Department will make a photocopy and attach to the application) of the applicant;**
 - (3) The desired calendar year in which the applicant will be engaging in solicitor or handbill distribution activities;**
 - (4) The name, address and telephone number of the person, company or entity that is employing the applicant to distribute handbills, if applicable;**
 - (5) If a vehicle or vehicles are used to conduct the solicitation or handbill distribution activity, a description of each vehicle, its license plate number and vehicle identification number; the name and license number of the driver who will operate each vehicle, and adequate proof under state law that each driver maintains financial responsibility for the vehicle they will operate shall be attached to the application;**
 - (6) The nature of the solicitation or handbill distribution activity. (i.e. the merchandise to be sold or offered for sale; or the nature of the services to be furnished; or the type of pamphlets or handbills to be distributed);**
 - (7) The names of all cities in which the applicant has conducted solicitation or handbill distribution in the past six months;**
 - (8) Whether the applicant will receive a payment for goods or services at the time of solicitation or will demand, accept or receive payment or the deposit of money in advance of final delivery, and if so, the amount sought or the basis for calculation of such payment;**
 - (9) If the applicant, or the applicant's employer or principal has pled guilty, or nolo contendere to, or has been convicted of a felony or misdemeanor involving fraud, deceit, theft, embezzlement, burglary, larceny, crimes against persons, fraudulent conversion, misrepresentation, or misappropriation of property within ten years preceding the date of application, a description of each such conviction or plea, the name of the court and jurisdiction in which the complaint or indictment was filed and the date of the offense;**

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- (10) If the applicant, or the applicant's employer or principal is a person against whom a civil judgment or administrative decision based upon fraud, deceit, theft, embezzlement, burglary, larceny, crimes against persons, fraudulent conversion, misrepresentation, or misappropriation of property has been entered or ordered within ten years preceding the date of application, a description of judgment or action, the case or cause number, if any, and the court or administrative agency that rendered the judgment or decision;**
- (11) It shall be the responsibility of a licensed handbill distributor to update the information provided on application for a handbill distribution permit as such information may change.**

Sec. 90- 28. - Denial, suspension or revocation of permit.

Grounds. Any permit issued hereunder may be denied or revoked if the permit holder is convicted of a violation of any provisions of this article or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a permit under the terms of this chapter.

Notice. If it is found that a permit should be denied or revoked, there shall be a denial letter written or electronic report of the reason for the denial or revocation which shall be immediately made available to the applicant within 10 business days from the date of the denial.

Appeal; hearing. The permittee shall have ten (10) calendar days after receipt of notice of revocation or denial in which to file notice of appeal to the Police Chief from the order denying or revoking the permit. If notice is received within the ten (10) day period, the Police Chief shall make an inquiry and determine whether the applicant's permit was wrongfully revoked or denied and will schedule a hearing with the applicant within 10 business days after the Police Chief receives the applicant's appeal. The applicant will be notified of the time, date, and place of such hearing. After the hearing, the decision will be made in writing affirming or reversing the revocation or denial. In the event a revocation is upheld, the permittee will return the permit to the City.

In the event of filing of an appeal from a denial or revocation issued under the provisions of this article, then, until such appeal has been determined such revocation order shall be stayed.

A municipal court judge, in addition to imposing a fine, may institute proceedings to suspend or revoke the permit of a person if the person is required by law to obtain a permit from the city and the judge finds the person guilty of violation a city ordinance relation to peddlers, itinerant vendors or solicitors.

SECTION 3. That Chapter 6 "Advertising", Article II "Distribution of Handbills" of the City of Bedford Code of Ordinances is deleted in its entirety.

SECTION 4. That this Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

SECTION 5. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby

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declares it would have passed such remaining portion of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6. That any person, organization, corporation, partnership or entity that violates, disobeys, omits, neglects or fails to comply with the provisions of this ordinance shall be fined not more than five hundred dollars (\$500.00) for each offense or violation. Each day that an offense or violation occurs shall constitute a separate offense.

SECTION 7. This Ordinance shall take effect from and after its date of passage in accordance with the laws of the State of Texas.

PRESENTED AND PASSED on this 10th day of May, 2016, by a vote of 6 ayes, 0 nays and 0 abstentions, at a regular meeting of the City Council of the City of Bedford, Texas.

Jim Griffin, Mayor

ATTEST:

Michael Wells, City Secretary

APPROVED AS TO FORM:

Stan Lowry, City Attorney