

ORDINANCE NO. O-09-022

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF SOLICITORS, PEDDLERS, ITINERANT VENDORS AND CANVASSERS WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE RENUMBERING OF CERTAIN EXISTING SECTIONS OF CHAPTER 16; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS.

WHEREAS, many residents of this community 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 the quiet enjoyment of one's home to solicit donations for causes believed to be worthy of support, or to canvass for support of a particular cause or for reasons of promoting commerce; 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 Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved; and

WHEREAS, it is the desire of the City Council of the City of Brenham, Texas to balance these competing interests in a manner consistent with the Constitution of the United States and of Texas, while attempting to minimize fraud, prevent crime, protect the privacy of the City's residents, and promote the public health, safety and welfare;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Brenham, Texas that:

SECTION 1.

Chapter 16 of the Code of Ordinances, City of Brenham, Texas is hereby amended to read as follows:

Section 16-1. Definitions.

For the purpose of this chapter, the following words and phrases shall have the following meanings:

Canvasser shall mean a person who makes, or attempts to make, personal contact with a resident at his or her residence without prior specific invitation from or appointment with the resident, for the primary purpose of:

1. Attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, measure or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause;
2. Attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political, or religious purpose; or
3. Distributing a handbill or flyer advertising a non-commercial event or service.

Charitable purpose shall mean philanthropic, religious or other nonprofit objectives, including the benefit of poor, needy, sick, refugee, or disabled persons; the benefit of any religious or church society, sect, group or order; the benefit of a patriotic or veterans association or organization; the benefit of any fraternal, social or civic organization, or the benefit of any educational institution. The term “charitable purpose” shall not be construed to include the direct benefit of the individual making the solicitation. Nor shall the term be construed to include the benefit of any political group, committee or organization which is subject to financial disclosure under federal or state law.

Charitable organization shall mean any organization holding a certificate of exemption from federal income tax or state sales or franchise taxes based on the organization’s status as a charitable organization.

Christmas tree sales shall mean sales made by a charitable organization of Christmas trees during the Christmas holiday season, that is, during the months of November and December each year.

Handbill shall mean any printed or written matter or notice in the form of a circular, leaflet, pamphlet, paper or any other printed or otherwise reproduced original or copies of any manner of literature.

Itinerant vendor or **hawker** shall mean any person who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the city, 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 forty-five days or less; and exists whether operating from a stand, vehicle, or freestanding.

Peddler shall mean any 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 a good or service. A “peddler” does not include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a time different from the time of the visit. Such a person is a “solicitor”.

Person means a natural person or any firm, corporation, partnership, company, sole proprietorship, entity, association, club, society or other organization or entity.

Solicitor shall mean any 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 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, or (2) distributing a handbill or flyer advertising a commercial event or service.

Section 16-2. License Required for Solicitors, Peddlers, and Itinerant Vendors; Available for Canvassers.

No person shall act as a solicitor, peddler or itinerant vendor within the city without first obtaining and possessing a valid license in accordance with this chapter. A canvasser is not required to have a license but any canvasser wanting a license for the purpose of reassuring city residents of the canvasser’s good faith shall be issued a permit upon request. It is an offense to act as a solicitor, peddler or itinerant vendor within the city without first obtaining and possessing a valid license as required herein.

Sec. 16-3. Application.

Any person or organization may apply for a license required by this chapter by completing the appropriate application form and submitting the form and any applicable fees to the City Secretary during regular office hours. Incomplete applications and/or applications not accompanied with the appropriate fee shall be deemed incomplete and will not be processed.

Sec. 16-4. Contents of Application.

The applicant shall appear in person at the Office of the City Secretary and provide the following information on an application form furnished by the City Secretary:

- a. Legal name of applicant.

- b. A driver's license, state identification card, passport, or other government-issued identification card (issued within the United States) containing the name, physical description, and photograph of the applicant. The applicant shall also provide two (2) photographs of the applicant which have been taken within sixty (60) days immediately prior to the date of filing the application. The photographs shall show the head and shoulders of the applicant in a clear and distinguishable manner.
- c. The permanent and local (if any) addresses of the applicant.
- d. Telephone number of applicant.
- e. Form of business entity, state of formation/incorporation, Texas state sales tax number, and federal tax identification number.
- f. A brief description of the proposed activity related to the license sought, including but not limited to the hours and location(s) for which the license is requested. (Copies of literature to be distributed may be included in this description at the option of the applicant.)
- g. The applicant's date of birth and place of birth.
- h. A list of all the applicant's infractions, offenses, and criminal convictions for the seven (7) years immediately prior to the application.
- i. The make, model, year, color, and state license plate number of any vehicle that will be used by the applicant in any activity regulated by this chapter.
- j. If applicable, with regard to a peddler:
 - i. The name and permanent address of the business offering the event, activity, goods or service (i.e., the peddler's principal).
- k. If applicable, with regard to a solicitor:
 - i. The name, permanent address, and telephone number of the organization, person or group for whom donations or proceeds are accepted.
 - ii. The web address for the applying organization, person or group where residents having subsequent questions can go for more information.
- l. Any other information the applicant wishes to provide, including copies of literature to be distributed, and references to other municipalities where similar activities have occurred.

All applicants must seek a license for itself covering all of the applicant's employees and/or agents that will be operating within the city limits. The application shall include a statement that the applicant recognizes the other individuals listed under the applicant's license are employees/agents and not as independent contractors, and that the applicant accepts the responsibilities imposed by State law, this chapter and other applicable laws and regulations for the acts of its employees/agents. If a person requests a license for employees/agents, the following information must be supplied for each individual employee/agent:

1. Employee/agent's full legal name.
2. Residence address of employee/agent.

3. Date of birth and place of birth of employee/agent.
4. Driver's license number, state identification card, passport, or other government-issued identification card (issued within the United States) containing the name, physical description, and photograph of the applicant of employee/agent.
5. Statement of any criminal offense involving crimes against property, moral turpitude and/or felony convictions.

Sec. 16-5. Investigation.

After the submission of an application to the City Secretary's office, the City Manager, or his/her designee, shall investigate the truth and accuracy of the information contained in the application.

The license shall be issued within five (5) business days after the date the application is received by the City Secretary. If the city has not completed the investigation within five (5) business days, the license shall be issued, subject to, however, administrative revocation upon completion of the investigation.

Sec. 16-6. Denial or Revocation of License.

Any application for a license may be denied or revoked if it is determined that:

1. The applicant/licensee has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven (7) years;
2. The individual for whom a license is requested or issued has been convicted of any felony or misdemeanor involving moral turpitude within the past seven (7) years;
3. Any statement upon the application is false; or
4. The applicant/licensee and/or an employee/agent of the applicant/licensee fails to comply with any other provision of this chapter. Additionally, if a licensee is convicted of any felony or a misdemeanor involving moral turpitude during the term of the license, the licensee shall notify the City Secretary of such conviction, shall forfeit the existing license, and shall be required to submit a new license application for review and consideration by the City Manager.

If the City Manager denies or revokes a license, the applicant or licensee shall be notified within two (2) business days after the denial or revocation. The reason for the denial or revocation shall be in writing and made immediately available to the applicant or licensee.

The applicant or licensee may appeal the denial or revocation of a license to the City Council. The applicant or licensee shall have ten (10) days from the date of the denial or revocation in which to file written notice, with the City Secretary, of the applicant's/licensee's appeal of the denial or revocation to the City Council. The applicant/licensee's written notice of appeal shall state the basis of the appeal and the reasons supporting the issuance or reinstatement of the license, including any relevant documentation supporting the appeal. The City Council shall hold the appeal hearing within twenty (20) days after the written request is received by the City Secretary. After holding the hearing on the revocation or denial, the City Council shall by majority vote either (1) sustain the denial or revocation of the license; or (2) issue an order approving the issuance or reinstatement of the license, as applicable.

In the event of the filing of an appeal from a revocation of a license issued under the provisions of this chapter, then until such appeal has been heard and determined by the City Council, such revocation order shall be stayed.

Sec. 16-7. Fees.

The fee for a license shall be:

1. Itinerant vendor: A license fee of \$25.00 and a badge fee of \$3.00 per person.
2. Peddler: A license fee of \$25.00 and a badge fee of \$3.00 per person.
3. Solicitor: A license fee of \$25.00 and a badge fee of \$3.00 per person.

The City Manager or his/her designee shall have the right to waive any and all fees.

Sec. 16-8. Duration of licenses.

The duration of licenses shall be for the time period(s) indicated below:

1. An itinerant vendor's license shall be valid for thirty (30) days and can be renewed.
2. A peddler's license shall be valid for thirty (30) days and can be renewed.
3. A solicitor's license shall be valid for thirty (30) days and can be renewed.

Sec. 16-9. Display of License.

Each license shall be worn on the outer clothing of the individual for whom it was issued so as to be immediately visible to any person who might be approached by said person.

Sec. 16-10. Distribution of Handbills.

In addition to the other regulations contained herein, a peddler, solicitor, itinerant vendor or canvasser leaving handbills shall observe the following regulations:

1. No handbill shall be left at, or attached to any sign, utility pole, or other structure in the public right-of-way. Any authorized representative of the city is authorized to remove any handbill found within the public right-of-way.
2. No handbill shall be left at, or attached to any privately owned property in a manner that causes damage to such privately owned property.
3. No handbill or flyer shall be left at, or attached to any of the property having a “no solicitor” sign.

Sec. 16-11. General Prohibitions and Hours Permitted.

No solicitor, peddler or canvasser shall:

1. Solicit or peddle for a purpose other than that set out in the application upon which the license was issued.
2. Act as a canvasser, peddler or solicitor except during the hours between 10:00 a.m. and 8:00 p.m.

Sec. 16-12. Restrictions.

No solicitor, peddler, itinerant vendor or canvasser shall:

1. 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). This restriction shall not apply when the peddler, itinerant vendor, solicitor, or canvasser has an express invitation or request from the resident or occupant allowing him/her to enter upon the posted property.
2. Remain upon any private property where a notice in the form of a sign or sticker is placed upon any door or entrance way 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 solicitor, peddler, itinerant vendor or canvasser. This restriction shall not apply when the peddler, itinerant vendor, solicitor, or canvasser has an express invitation or request from the resident or occupant allowing him/her to enter upon the posted property.

3. Remain on any private property without the permission of the owner or occupant, or if asked to leave.
4. Use or attempt to use any entrance other than the front or main entrance to the residence or dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.
5. Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite solicitors.
6. Enter upon the property of another except between the hours of 10:00 a.m. and 8:00 p.m. This restriction shall not apply when the peddler, itinerant vendor, solicitor, or canvasser has an express invitation or request from the resident or occupant allowing him/her to enter upon the property.
7. Shall not locate in any street or highway right-of-way.

Sec. 16-13. Exemptions.

Under this chapter the following are exempt in whole or in part:

1. Any person acting as a canvasser shall not be required to obtain a license.
2. Any person or other business entity engaging in interstate commerce shall be required to obtain a license but shall not be required to pay an application fee.
3. Christmas tree sales are exempt during the Christmas holiday season – November 1st thru December 31st.

Sec. 16-14 – Violations.

It shall be unlawful for any itinerant vendor, peddler or solicitor to act without a current, valid license issued under this chapter, or for any itinerant vendor, peddler, solicitor, or canvasser to fail to comply with each and every applicable provision of this chapter and all other applicable laws and regulations.

It shall be the duty of all city police officers and other authorized representatives of the city to examine all places of business and persons subject to the provisions of this chapter to determine if this chapter has been complied with and to enforce the provisions of this chapter against any person found to be in violation of the same.

Sec. 16-15. Inns, hotels and motels.

- (a) *Scope; definitions.* The scope of this section shall include any lodging enterprise which is subject to taxation under chapter 351 of the Texas Tax Code and all definitions included under such chapter are incorporated by reference.
- (b) *Compliance with state health and safety codes.* All persons operating an inn, hotel or motel shall comply with the provisions of section 341.066 of the Texas Health and Safety Code and violations thereof shall be subject to a penalty as provided herein.

- (c) *Violation of city mechanical, electrical, substandard buildings, plumbing and gas codes.* Any inn, hotel or motel which violates the city's mechanical code, electric code, substandard building code, plumbing code or gas code shall be subject to a penalty as provided herein.
- (d) *Signs promoting sexually oriented films.* No inn, hotel or motel shall establish a sign which promotes the showing of sexually oriented films and violations thereof shall be subject to a penalty as provided herein.
- (e) *Swimming pools.* All inns, hotels and motels which have swimming pools shall maintain at least one life preserver and one rescue pole per pool and maintain such equipment in good working order and violation thereof shall be subject to a penalty as provided herein.
- (f) *Smoke detectors.* All inns, hotels and motels shall maintain working smoke detectors in each unit which is available for rent in accordance with chapter 792 of the Texas Health and Safety Code and violation thereof shall be subject to a penalty as provided herein.
- (g) *Penalty provisions.* Any person who shall violate any of the provisions of this section, or shall fail to comply therewith or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and shall be liable to a fine, and upon conviction of any such violation shall be fined in any sum of not more than five hundred dollars (\$500.00), and each day any such violation shall be permitted to exist shall constitute a separate and distinct offense.

Sec. 16-16. Sexually oriented commercial activities.

- (a) *Definition.* The following definition shall apply to this section:

Enterprise means a "sexually oriented business," which includes a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer as defined under Texas Local Government Code, chapter 243.

- (b) *Application.* This section does not apply to any bookstore, movie theater or video store, unless that business is an adult bookstore, adult movie theater or adult video store.

- (c) *Limitation on permits.* No permit shall be issued for an enterprise located within a one thousand-foot radius of any regular place of worship, school, residential neighborhood or licensed day care center.

SECTION 2.
SAVINGS CLAUSE

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 3.
SEVERABILITY

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 4.
REPEALER

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 5.
EFFECTIVE DATE

This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 6.
PROPER NOTICE AND MEETINGS

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

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the 19th day of November, 2009.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the 3rd day of December, 2009.

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC, City Secretary