

ORDINANCE NO. 1-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 28, "SOLICITATION," OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, there is a need to protect the health, safety, and welfare of the citizens of the City of Abilene; and

WHEREAS, the current provisions of Chapter 28, "Solicitations", are out of date and no longer adequate to meet the needs of the community;

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

- PART 1:** That Chapter 28, "Solicitations" of the Code of Ordinances, City of Abilene, Texas, is hereby replaced as set out in Exhibit A, attached and made a part of this ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 15th day of December, 2011.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on 8th day of January, 2012, the same being more than 24 hours prior to a public hearing being held in the Council Chamber

of City Hall in Abilene, Texas, at 8:30 a.m. on the 12th day of January, 2012, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.


PASSED ON SECOND AND FINAL READING this 12th day of January, 2012.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY

CHAPTER 28 SOLICITATIONS

ARTICLE I. IN GENERAL

Sec. 28-1. Purpose of Chapter

The purpose of this ordinance 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 licensing canvassers, solicitors and peddlers.

Sec. 28-2. City License Officer

For the purposes of this chapter, the City Secretary shall act as the city license officer and as such shall administer the provisions of this chapter.

Sec. 28-3. Definitions

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them by this section:

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

Canvasser means 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, 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 of the City of Abilene or designee.

Official shall mean City of Abilene Peace Officers, City Secretary, or City Manager or designee who administers, implements, and enforces the provisions of this chapter.

Peddler 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, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale. 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 a resident for purchase at different location or time.

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 private residence in the City, not having been invited by the occupant thereof, or upon the public right-of-way 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 request contribution of funds or anything of value, or sell goods or services for educational, political, charitable, religious, or other non-commercial purposes.

Sec. 28-4. 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 7 PM and 9 AM 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 express, prior invitation of the owner of the property or a person residing on the premises.

Sec. 28-5. Entry upon Premises Unlawful

- (a) It shall be unlawful for any person to canvass, solicit, or peddle 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 Peddlers", "No Solicitors", or words of similar import.
- (b) It shall be unlawful for any person to canvass, solicit, or peddle at any entrance to a residence other than the front door.

Sec. 28-6. Penalty for violation

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 \$75.00 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.

Sections 28-7 through 28-10 reserved.

ARTICLE II. PERMIT

Sec. 28-11. Permit Requirements and Exemptions

It shall be unlawful for any person to engage in peddling or solicitation activities within the City without first obtaining a permit issued by the city license officer; provided the following are exempted from the provisions of this section.

- (a) Any solicitation made upon premises owned or occupied by an organization upon whose behalf the solicitation is made;
- (b) Any solicitation in the form of a collection at a regular meeting, assembly, or service of a charitable person;
- (c) A canvasser as defined by the chapter;
- (d) A solicitor or peddler already licensed by the state to engage in the activity.

Sec. 28-12. Exhibition of Permit Required.

- (a) It shall be unlawful for any solicitor or peddler 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. 28-13. Permits for Minor Peddlers or Solicitors

- (a) No person under the age of 18 shall be permitted 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 solicitation 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 under the sponsor's permit.

- (d) The sponsor shall provide to each individual in its sales force 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 in their sales force to wear the identification so that it is clearly visible at all times while peddling or soliciting.

Sec. 28-14. Application.

Applicants for permits under this chapter must file with the city license officer an application in writing on a form obtained from the license officer and provide the following:

- (a) A valid Texas Driver's License or state issued photo identification.
- (b) The number of the limited sales tax permit issued to the business by the state comptroller's office, if applicable.
- (c) A brief description of the activity or business to be conducted.
- (d) The appropriate fee.
- (e) Proof of status necessary to receive an exception under Section 28-11 or 28-16 of this chapter.

Any application made pursuant to the provisions of this chapter may be presented to the Better Business Bureau of Abilene or the Abilene Police Department for investigation.

Sec. 28-15. Required fee.

The fees and charges for permits furnished by the city shall be determined from time to time and placed on file in the office of the city license officer. No application for a permit will be processed until the required fees are tendered to the city license officer. Permit fees are nonrefundable and shall not be prorated.

Sec. 28-16. Exceptions to fee.

The payment of the permit fee shall not be held to be applicable to the following organizations, however, all solicitors and peddlers are required to comply with all other applicable provisions of this chapter unless otherwise exempted:

- (a) Any local church or other religious group, or to ministers or agents thereof soliciting funds for the support of such religious group;
- (b) 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 solicitation of such organization is:

- (1) Conducted among the members thereof by other members or officers thereof, voluntarily and without remuneration for such solicitation; or
 - (2) 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.
- (c) Vendors of farm produce, poultry, stock or agricultural products in their natural state if raised on land owned or leased by the vendor, or such products may be sold by any member of the owner's or lessee's household.
- (d) 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.
- (e) Sales of goods, wares, and merchandise by any bonafide charitable, religious or philanthropic organization.

Sec. 28-17. Issuance.

Upon completion and presentation of the application, the city license officer shall issue a permit to the applicant within 5 business days unless grounds for denial exist under Section 28-21.

Sec. 28-18. Contents.

- (a) Each permit issued under this article shall show the name of the permitted individual, business address, a description of the type of solicitation, product, or activity, the date of issuance, and the expiration date of such permit.
- (b) The permit shall be numbered and printed in black; except, that the following shall be printed prominently thereon in red: "The issuance of this License is not an endorsement by the City of Abilene, or any of its officers or employees, and expires _____."

Sec. 28-19. Expiration

All permits issued under the provisions of this article shall expire 30 days from the date of issuance.

Sec. 28-20. Transfer.

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

Sec. 28-21. Denial.

An application for permit may be denied to a person under this article for the following reasons.

- (a) Because of a person's conviction of a felony or misdemeanor if the crime directly relates to the conduct of a peddler's business or results from an assault against person.
- (b) An investigation reveals that the applicant falsified information on the application.
- (c) The applicant is a registered sex offender.
- (d) The applicant has had a permit revoked for any reason within the past three years.

Sec. 28-22. Revocation.

- (a) Permits issued under the provision of this article may be revoked for any of the following causes by any official of the City of Abilene:
 - 1. Fraud, misrepresentation or false statement contained in the application for permit.
 - 2. Fraud, misrepresentation or false statement made in the course of carrying on his business.
 - 3. Any violation of this chapter.
 - 4. Conviction of a misdemeanor or any felony if the crime directly relates to the conduct of the business.
 - 5. Conducting the business of peddling 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) Notice of revocation of a permit shall be given verbally or in writing, and specify the grounds of the revocation.
- (c) When the solicitor receives notice that their permit has been revoked, they shall immediately surrender their permit to the revoking official.

Sec. 28-23. Appeals

- (a) An appeal from any act of denial or revocation of any permit shall be filed with the City Manager within five (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 shall be final and conclusive.

Sections 29-24 through 29-30 reserved.