

ORDINANCE NO. 1099

AN ORDINANCE OF THE CITY OF SNYDER, TEXAS, REPLACING ORDINANCE NO. 1016; UPDATING THE SECTIONS REGULATING AND LICENSING PEDDLERS, HAWKERS, SOLICITORS, AND ITINERANT MERCHANTS; ESTABLISHING PROTECTIONS FOR HOMEOWNERS DESIRING TO AVOID PEDDLERS, SOLICITORS AND CANVASSERS; REGULATING HANDBILLS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a Texas home-rule municipality may adopt ordinances that are for the health, welfare, peace, and order of the municipality; and

WHEREAS, many citizens 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 canvas for support for particular religious, ideological, or political causes or for reasons of prompting 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 responsibility of the City of Snyder 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, and protect the privacy of our citizens.

WHEREAS, the City of Snyder, Texas has previously enacted provisions in its Code of Ordinances defining, regulating and licensing peddlers, solicitors, and itinerant vendors; and

WHEREAS, it is necessary to repeal Ordinance No. 1016 and replace Ordinance No. 1016 with this Ordinance related to defining, regulating and licensing peddlers, solicitors, and itinerant vendors; and

WHEREAS, the City Council believes it is in the best interest of the citizens of Snyder to continue to regulate peddlers, solicitors, and itinerant vendors;

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

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

The Code of Ordinances, City of Snyder, Texas, is hereby amended to read in accordance with Attachment A. Specifically, Ordinance No. 1016 is hereby repealed and replaced in its entirety to read in accordance with

Attachment A, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Sections of the Code shall be renumbered as necessary.

3. REPEALER

All ordinances, resolutions, or parts thereof that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances.

6. EFFECTIVE DATE

This Ordinance shall become effective upon fulfillment of the City Charter provisions related to publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED on first reading this 24th day of February, 2014.



Mayor

ATTEST:



City Secretary

PASSED AND ADOPTED on second reading this 3rd day of March, 2014.



Mayor

ATTEST:



City Secretary

Attachment A

ARTICLE ____ . PEDDLERS, SOLICITORS, AND ITINERANT MERCHANTS

Section One. Definitions. As used in this ordinance the following words have the meaning indicated:

A. "Peddler" is a person who attempts to make personal contact with a resident at his/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 visit. Such a person is a "solicitor."

B. "Solicitor" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: (1) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service, or (2) distributing a handbill or flyer advertising a commercial event or service.

C. "Canvasser" is a person who attempts to make personal contact with a resident at his/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 of money for or against such cause, or (2) distributing a handbill or flyer advertising a non-commercial event or service.

D. "Itinerant Vendor" or "Hawker" is a person who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the city, soliciting, 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 solicitation is from a stand, vehicle, or freestanding.

Section Two. Exceptions. This ordinance shall not apply to a federal, state or local government employee or a public utility employee in the performance of his/her duty for his/her employer. Further, this ordinance shall not apply to the sale or soliciting of orders for the sale of milk, dairy products, bakery products, vegetable, poultry, eggs or other farm and garden products which have been raised or produced by the seller; daily deliveries of milk and bakery or other food products; newspaper distribution; ordinary commercial travelers who sell or exhibit for sale goods or merchandise to parties engaged in the business of buying and selling and dealing goods or merchandise; sales or exhibits at fairs, rodeos, conventions or events sponsored by the city, the county, civic organizations located in the county, religious organizations, public schools, or the Snyder Chamber of Commerce.

Section Three. License Required for Peddlers, Hawkers, and Solicitors, available for Canvassers. No person shall act as a peddler, hawker, or solicitor within the city without first obtaining a Peddler License in accordance with this ordinance. A canvasser is not required to have a Peddler License but any canvasser wanting a Peddler License for the purpose of reassuring city residents of the canvasser's good faith shall be issued one upon request.

Section Four. Fee. The fee for the issuance of each Peddler License shall be:

- A. For a peddler or hawker acting on behalf of a merchant a fee of \$75.00 per month.
- B. For a solicitor (including a commercial solicitor advertising an event, activity, good or service for purchase at a location away from the residence).....no fee.
- C. For a canvasser requesting a Peddler License.....no fee.

Section Five. Application for Peddler License. Any person or organization (formal or informal) may apply for one or more peddler licenses by completing an application form at the City Secretary's Office, during regular office hours.

The peddler license shall be issued promptly after application but in all cases within twenty-four (24) business hours of completion of an application, unless it is determined within that time that:

- A. the applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years,

B. with respect to a particular license, the individual for whom a license is requested has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven years, or

C. any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

Section Six. Contents of Application. The applicant (person or organization) shall provide the following information:

A. Name of applicant.

B. Number of peddler licenses required.

C. The name, physical description and photograph of each person for which a license is requested. In lieu of this information, a driver's license, state identification card, passport, or other government-issued identification card (issued by a government within the United States) containing this information may be provided, and a photocopy taken. If a photograph is not supplied, the city will take an instant photograph of each person for which a license is requested at the application site. The actual cost of the instant photograph will be paid by the applicant.

D. The permanent and (if any) local address of the applicant.

E. The permanent and (if any) local address of each person for whom a license is requested.

F. A brief description of the proposed activity related to this peddler license.

(Copies of literature to be distributed may be substituted for this description at the option of the applicant).

G. Date and place of birth for each person for whom a license is requested.

H. A list of all infraction, offense, misdemeanor and felony convictions of each person for whom a license is requested for the seven years immediately prior to the application.

I. The motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used by each person for whom a license is requested.

J. If a license is requested for a peddler:

1. The name and permanent address of the business offering the event, activity, good or service (i.e., the peddler's principal).

2. A copy of the principal's sales tax license as issued by the state of Texas, *provided that no copy of a license shall be required of any business which appears on the city's annual report of Sales Tax payees as provided by the Texas Comptroller's office.*

3. The location where books and records are kept of sales which occur within the city and which are available for city inspection to determine that all city sales taxes have been paid.

K. If a license is requested for a solicitor:

1. The name and permanent address of the organization, person, or group for whom donations (or proceeds) are accepted.

2. The web address for this organization, person, or group (or other address) where residents having subsequent questions can go for more information.

L. If a license is requested for a hawker:

1. The specific location where applicant will participate in sales activities and a written statement from the property owner consenting to the applicant's use of his/her property for the sales activities indicated in the permit application.

2. A copy of the applicant's sales tax license as issued by the state of Texas, *provided that no copy of a license shall be required of any business which appears on the city's annual report of Sales Tax payees as provided by the Texas Comptroller's office.*

M. Any other information the applicant wishes to provide, perhaps including copies of literature to be distributed, references to other municipalities where similar activities have occurred, etc.

Section Seven. Investigation. During the time following the application for one or more peddler licenses and its issuance, the city shall investigate as to the truth and accuracy of the information contained in the application. If the city has not completed this investigation within the twenty-four (24) business hours provided in section seven, the peddler's license will nonetheless be issued, subject, however, to administrative revocation upon completion of the investigation. If a canvasser requests a peddler license, the investigation will proceed as described above, but if the city refuses to issue the peddler license (or revokes it after issuance), the canvassers will be advised that the failure to procure a peddler license does not prevent him/her from canvassing the residents of the city.

Section Eight. Revocation of License.

A. Grounds. Any license issued hereunder may be revoked if the license 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 license under the terms of this article.

B. Notice. If the issuing officer denies (or upon completion of an investigation revokes) the peddler license to one or more persons he shall immediately convey the decision to the applicant orally and shall within sixteen (16) working hours after the denial prepare a written report of the reason for the denial which shall be immediately made available to the applicant.

C. Appeal; hearing. The licensee shall have ten (10) days from the date of revocation or denial in which to file notice of his appeal to the city council from the order denying or revoking the license. The applicant shall have at his option an appeal of the denial of his application before the city council, at its next regular meeting subject to the applicable posting requirements of the Texas Open Meetings Act. After holding the hearing on the revocation or denial, the city council shall by majority vote either sustain the action or issue an order reinstating the license.

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

Section Nine. Hearing on Appeal. If the applicant requests a hearing under Section 8(C), the hearing shall be held in accordance with the Administrative Procedure Act of the State of Texas, and review from the decision of the city council (on the record of the hearing) shall be had to the county court in which the city is located. The hearing shall also be subject to the Texas Open Meetings and Records law.

Section Ten. Display of Peddler License. Each peddler license shall be (when the individual for whom it was issued is acting as a peddler or solicitor) worn on the outer clothing of the individual or otherwise displayed, as so to be reasonably visible to any person who might be approached by said person.

Section Eleven. Validity of Peddler License. A peddler license shall be valid within the meaning of this ordinance for a period of six months from its date of issuance or the term requested, whichever is less.

Section Twelve. Revocation of License by Municipal Court Judge. A municipal court judge, in addition to imposing a fine, may institute proceedings to suspend or revoke the license of a person if the person is required by law to obtain a peddler license from the city and the judge finds the person guilty of violating a city ordinance relating to peddlers.

Section Thirteen. "No Visit" List. The issuing officer shall maintain a list of persons within the city who restrict visits to their residential property (including their leasehold, in the case of a tenant) by peddlers, solicitors, and canvassers. The issuing officer may provide a form to assist residents, and this form may allow the resident to select certain types of visits that the resident finds acceptable while refusing permission to others. This "no visit" list shall be a public document, and may be reproduced on the city's web site and available for public inspection and copying. A copy of the "no visit" list shall be provided to each applicant for and each recipient of a peddler license. If a canvasser chooses not to apply for a peddler license, it will be the responsibility of that canvasser to obtain in some other way a copy of the current "no visit" list.

Section Fourteen. Distribution of Handbills and Commercial Flyers. In addition to the other regulations contained herein, a solicitor or canvasser leaving handbills or commercial flyers about the community shall observe the following regulations:

A. No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way. The police are authorized to remove any handbill or flyer found within the right-of-way.

B. No handbill or flyer shall be left at, or attached to any privately owned property in a manner that causes damage to such privately owned property.

C. No handbill or flyer shall be left at, or attached to any of the property: (a) listed on the city "no visit" list, or (b) having a "no solicitor" sign.

D. Any person observed distributing handbills or flyers shall be required to identify himself/herself to the police (either by producing a peddler license or other form of

identification). This is for the purpose of knowing the likely identity of the perpetrator if the city receives a complaint of damage caused to private property during the distribution of handbills or flyers.

Section Fifteen. General Prohibitions. No peddler, hawker, solicitor or canvasser shall:

A. 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, hawkers, and canvassers)

B. 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 peddler, solicitor or canvasser.

C. Enter upon any private property where the current occupant has posted the property on the city’s “no visit” list (except where the posting form indicates the occupant has given permission for this type of visit), regardless of whether a front yard sign is posted.

D. Use or attempt to use any entrance other than the front or main entrance to the 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.

1. Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.

2. Enter upon the property of another except between the hours of 8:00 a.m. and 9:00 p.m. Except that the above prohibitions shall not apply when the peddler, hawker, solicitor, or canvassers has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any posted property.

E. For a commercial solicitor, peddler, or hawker to solicit for a purpose other than that set out in the application upon which the license was issued.

Section Sixteen. Violation. Any person violating any part of this ordinance or failing to observe any provision of this article shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars. Every day the violation continues shall be deemed as a separate offense.

Section Seventeen. Solicitation in public right-of-way.

A. A person may solicit for a charitable or political purpose in or upon the public right-of-way, except those areas prohibited in this article.

B. A person may conduct commercial solicitation in or upon the public right-of way, except those areas prohibited in this article, if the solicitor has obtained a license or who is a member of an organization that has obtained a license.

C. Solicitation for any purpose in the public right-of-way shall be conducted only during the hours of daylight, specifically one (1) hour after sunrise and one (1) hour before sunset.

D. It shall be unlawful for a person younger than eighteen (18) years of age to solicit in the public right-of-way.

E. It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway unless the solicitor has been granted authorization pursuant to §552.0071 of Chapter 552 of the Texas Transportation Code. The restriction on solicitation in the traveled portion of the roadway does not apply to public residential streets.

F. It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway of residential streets so that their presence impedes the flow of traffic.

G. It shall be unlawful for a person to solicit in the public right-of-way that is within one thousand (1,000) feet of any public or private elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when such school is in session. The measurement of the distance shall be made from the nearest property line of the public or private elementary or secondary school.

Section Eighteen. Solicitation in selected public rights-of-way prohibited.

A. It shall be unlawful for any person to solicit, peddle, or to distribute handbills at any time in the public rights-of-way, with or without a license, within one thousand (1,000) feet of the following intersections.

1. Cogdell and College Avenue (TX Hwy 350)
2. 42nd and College Avenue (TX Hwy 350)
3. 37th and College Avenue (TX Hwy 350)
4. 30th and College Avenue (TX Hwy 350)
5. 27th and College Avenue (TX Hwy 350)
6. 26th and College Avenue (TX Hwy 350)
7. 25th and College Avenue (TX Hwy 350)
8. 13th and College Avenue (TX Hwy 350)
9. 25th (US Hwy 180) and Avenue R
10. 25th (US Hwy 180) and Avenue E

B. The restrictions in Section Eighteen (A) do not apply to a person who has received authorization pursuant to §552.0071 of Chapter 552 of the Texas Transportation Code.