

STATE OF TEXAS
CITY OF ALPINE

COUNTY OF BREWSTER

ORDINANCE 2021-04-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS AMENDING CHAPTER 22 – BUSINESS, ARTICLE III TO THE ALPINE CODE OF ORDINANCES; PROVIDING REPEALING AND SEVERABILITY CLAUSES; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Alpine has cause in its legislative pursuit to protect the health, safety and welfare of residents of the city by means of regulation of peddlers, solicitors, canvassers, transient merchants, and the like; and

WHEREAS, the current ordinance for peddlers, solicitors, canvassers and transient merchants within city requires an update to better align with values of the City; and

WHEREAS, it is deemed by the City Council of the City of Alpine to be in the public interest to update and enhance regulations regarding peddlers, solicitors, canvassers, transient merchants, and the like.

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

SECTION I
FINDINGS OF FACT

All of the premises attached in the form here to described as Exhibit “A” are hereby found to be true and correct legislative and factual findings of the City Council of the City of Alpine and are hereby approved and incorporated herein as findings of fact.

SECTION II
CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of the City of Alpine, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

SECTION III
SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council of the City of Alpine that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences paragraphs or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, clause, sentence, paragraph or section.

SECTION IV
PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted 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, Chapter 551 of the Texas Government Code.

**SECTION V
EFFECTIVE DATE**

This ordinance shall be effective upon passage and publication as required by State and Local law.

PASSED AND ADOPTED THIS 20th DAY OF APRIL 2021 BY THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS.

INTRODUCTION AND FIRST READING

APRIL 6, 2021

SECOND AND FINAL READING

APRIL 20, 2021

ATTEST:



**Andres "Andy" Ramos, Mayor
City of Alpine**



**Cynthia Salas, City Secretary
City of Alpine**

APPROVED AS TO FORM:



**Sandy Wilson, City Attorney
City of Alpine**

EXHIBIT "A"

Chapter 22 - BUSINESSES^[1]

ARTICLE III. - PEDDLERS; CANVASSERS; SOLICITORS^[3]

Footnotes:

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Cross reference— Streets, sidewalks and other public places, ch. 86.

State Law reference— Criminal trespass, V.T.C.A., Penal Code § 30.05; persons regarded as retailers under sales tax law, V.T.C.A., Tax Code § 151.024; cancellation of certain consumer transactions, V.T.C.A., Business and Commerce Code ch. 39.

DIVISION 1. - GENERALLY

Sec. 22-66. - Purpose of article.

The purpose of this article shall be to protect the health, safety and welfare of residents of the city by means of regulation of peddlers, solicitors, canvassers and transient merchants.

(Code 1978, § 16-11)

Sec. 22-67. - Definitions.

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

Canvasser includes "solicitor" and any person who makes retail sales for future delivery of tangible property from house to house or in any public place, whether or not payment is collected at the time of such sale, and such sales are taxable transactions under the provision of the limited sales, excise and use tax of the state.

Peddler shall include any person who makes retail sales of tangible property from house to house or in any public place, and such sales are not made from an established place and delivery is made at the time of sale, whether or not payment is collected at the time of such sale.

Public place shall mean, for purposes of this article, any place to which the public has access but does not include streets, shoulders and improved shoulders.

Retail sale shall mean any sale other than a sale of tangible property to any purchases who is purchasing the tangible property for the purpose of reselling it in the normal course of business either in the form or condition in which it is purchased or as an attachment to or as an integral part of other tangible property.

Tangible property shall mean property which may be seen, weighed, measured, felt or touched or which is any other manner perceptible to the senses.

- (b) For the purpose of this article the words "peddler," "solicitor," "canvasser," "transient merchant" and "itinerant merchant" are used interchangeably.

(Code 1978, § 16-13(a)—(e); Ord. No. 2004-5-3, 6-16-04)

Cross reference— Definitions generally, § 1-2.

Sec. 22-68. – General Requirements.

- (a) Any person soliciting under a permit granted herein must abide by all applicable city and state laws, including abiding by traffic laws, and may not jaywalk or solicit from city streets.
- (b) Violation of any law, or failure to abide by any traffic laws, during the pendency or a permit issued under this chapter, or failure to abide by the terms of the permit, shall result in the immediate revocation of the permit, and/or the imposition of a fine not to exceed \$500.
- (c) Any person or organization who has had a permit revoked, or who has an unpaid fine for violating the terms of a permit, may not be issued a subsequent permit.
- (d) *Duration:* The permit shall expire 90 days after it is issued and must thereafter be renewed.
- (e) If a business does not have a permanent business location, the business is required to obtain a permit.
- (f) Permits issued prior to April 20, 2021 shall have an expiration date of 90 days from the date of issue.

Sec. 22-~~69~~ ~~68~~. - Hours during which activities prohibited.

- (a) It shall be unlawful for any person to intentionally peddle, canvass or solicit, or intentionally cause or knowingly permit to be peddled, canvassed, sold or solicited any tangible property under a permit as required by this article on sidewalks and at public places between the hours of 9:00 p.m. and 9:00 a.m. or door-to-door at private residences between the hours of 6:00 p.m. and 9:00 a.m.
- (b) Solicitation on public property is permissible except as follows:
 - (1) Solicitors may not solicit in public streets or rights-of-way or from medians in the streets, or in any way block, obstruct or unduly hinder passage on public streets and rights-of-way.
 - (2) Solicitors may not block, obstruct or unduly hinder passage on public sidewalks or passageways.
- (c) For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is blocked, obstructed or passage is hindered or the public is impeded or inconvenienced.

(Code 1978, § 16-14; Ord. No. 2004-5-3, 6-16-04)

Sec. 22-~~70~~ ~~69~~. - Prohibited conduct.

A person engaged in solicitation shall not:

- (1) Make physical contact with the person being solicited unless that person's permission is obtained;
- (2) Misrepresent the purpose of the solicitation;
- (3) Misrepresent the affiliation of those engaged in the solicitation;
- (4) Continue efforts to solicit from an individual once that individual informs the solicitor that he does not wish to give anything to or to buy anything from that solicitor;
- (5) Represent the issuance of any permit or registration under this article as an endorsement or recommendation of the solicitation;
- (6) Enter upon any private premises when the private premises is posted with a sign stating "No Peddlers Allowed" or "No Solicitation Allowed" or other words to such effect.

(Code 1978, § 16-15)

Sec. 22-~~71~~ ~~70~~. - Penalty.

Any person, business, firm, company or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 1-11.

(Code 1978, § 16-24)

Secs. 22-~~72~~ ~~71~~—22-90. - Reserved.

DIVISION 2. - PERMIT

Sec. 22-91. - Permit required; exemptions.

- (a) It shall be unlawful for any peddler, canvasser or solicitor to engage in such business within the corporate limits of the city without first obtaining a permit in compliance with provisions of this article.
- (b) Those exempt from obtaining a permit are:

~~(1) Any person who distributes, transports, or sells only foods or beverages; except ice cream from an ice cream truck which travels from place to place.~~

~~(2)~~ (1) Any person who distributes or sells newspaper, pamphlets, handbills or other written or printed matter sold or distributed for the purpose of disseminating news, information or religious materials;

~~(3)~~ (2) Any **local** nonprofit or charitable organization; or any person participating in an exhibition or event sponsored by a **local** nonprofit or charitable organization;

~~(4)~~ (3) Any person who distributes or sells farm products must be under an authorized farmers market or else fees will be imposed as a regular peddler, canvasser, or solicitor; and

~~(5)~~ (4) Any person residing in the city selling used merchandise which had previously obtained for domestic or personal use.

(5) Any organization that solicits funds from its own members;

(6) Any educational institution;

(Code 1978, § 16-12; Ord. No. 2004-5-3, 6-16-04; Ord. No. 2009-11-02, 12-8-09)

Sec. 22-92. - Application.

- (a) Applicants for permit under this article shall file a written sworn application with **the office of** the city secretary at least five days prior to the date of the initial contemplated sale.
- (b) All persons who apply for a permit under this article, and all agents, servants or employees, must file a sworn application in writing, in duplicate, on a form to be furnished by the **office of the** city secretary, which shall contain, but not necessarily be limited to, the following information:
 - (1) Name and description of the applicant; if the applicant is an association, company or corporation, it shall state its name along with the names and descriptions of the persons who will be soliciting in the city.
 - (2) Address, both legal and local, street address, zip code and phone number of the headquarters of the applicant.
 - (3) A brief description of the nature of the business and the goods to be sold and in the case of products of farm or orchard, whether produced or grown by the applicant.

- (4) If permit request is associated with current employment of the applicant ~~employed~~, the name, address and phone number of the employer, together with credentials establishing the exact relationship, such as employee, agent, commission sales person or other.
- ~~(5) The length of time for which the right to do business within the City is desired.~~
- ~~(6)~~ (5) If a vehicle is to be used, a description of the vehicle, together with license number or other means of identification.
- ~~(7)~~ (6) If a permit issued to the applicant has ever been revoked.
- ~~(8)~~ (7) Proposed method of operation and location of proposed operation, and written permission of owner, lessee or agent of owner of any private property site for such operation.
- ~~(9)~~ (8) Applicant's Tax Information and driver's license number. If Tax information is not available, the applicant shall provide the City with the applicant's Social Security number.
- ~~(10)~~ (9) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal laws, the nature of the offense and the punishment or penalty assessed.
- ~~(11)~~ (10) No permit issued under this article shall be transferable, and will immediately be revoked, with no return of any part of the fee for the permit's issuance, if this article is violated by such permit holder, or with the permit holder's permission. If any permit is issued to any applicant and it shall be found that the holder of the permit is, or has been, engaged in any type of activity requiring a permit which is not covered by such issued permit, such issued permit shall be revoked and the user shall be in violation of this article.

(Code 1978, § 16-16; Ord. No. 2004-5-3, 6-16-04)

Sec. 22-93. - Investigation of applicant; issuance.

Upon receipt of an application, the office of the city secretary shall cause an investigation of the applicant's business responsibility or moral character to be made as deemed necessary to the protection of the health, safety and welfare of the public. If, as a result of the investigation, the applicant's business responsibility, character, merchandising practice or integrity are found to be unsatisfactory, the application shall be denied. If, as a result of the investigation, the character and business reputation appear to be satisfactory, a permit shall be issued by the office of the city secretary upon payment of the fee as required by this division.

(Code 1978, § 16-17)

Sec. 22-94. - Fees.

The office of the city secretary shall collect a fee based upon the following schedule for each permit issued. The fee shall be paid by the person desiring the permit upon approval of the application. The fee shall not be prorated or refunded.

Peddler Permit~~\$40.00~~ \$ 50.00

Vehicle Peddler.....~~60.00~~

Canvasser~~20.00~~

(Code 1978, § 16-18; Ord. No. 2004-5-3, 6-16-04)

~~Sec. 22-95.—Solicitations by religious, charitable and civic organizations.~~

- ~~(a) *Definition:* The term "solicitation by religious, charitable, and civic organization" shall mean any act by an organization or its member(s) to solicit property or financial assistance of any kind or sell or offer to sell anything of value on the plea or representation that such solicitation is for a charitable, educational, patriotic, philanthropic, or religious purpose.~~
- ~~(b) *Permit:* It shall be unlawful for an organization or its member(s) to conduct or participate in any solicitation campaign on any street, in any office building, at the public place, house to house, place to place or by telephone in the city without having secured a permit.~~
- ~~(c) *Exceptions:*~~
- ~~(1) Any organization that solicits funds from its own members;~~
 - ~~(2) Any educational institution;~~
 - ~~(3) An individual or a family;~~
 - ~~(4) Any organization that has maintained an active membership for at least six months prior to the commencement of such solicitation(s).~~
- ~~(d) No person may solicit for money or contributions for any cause, organization, charity or corporation unless, at the time the application for a permit is made, complete disclosure is made of the name, address, charter, purpose, and responsible party of and for the organization for which the permit is sought. Failure to provide such information shall be sufficient grounds upon which to deny a permit. Permits may be denied to any group which is soliciting funds within the city limits for use outside the city.~~
- ~~(e) Any person soliciting under a permit granted herein must abide by all applicable city and state laws, including abiding by traffic laws, and may not jaywalk or solicit from city streets.~~
- ~~(f) Violation of any law, or failure to abide by any traffic laws, during the pendency of a permit issued under this chapter, or failure to abide by the terms of the permit, shall result in the immediate revocation of the permit, and/or the imposition of a fine in the amount of up to \$200.00.~~
- ~~(g) Any person or organization who has had a permit revoked, or who has an unpaid fine for violating the terms of a permit, may not be issued a subsequent permit.~~
- ~~(h) *Duration:* The permit shall expire one week after it is issued and must thereafter be renewed.~~
- ~~(i) *Prohibited hours:* There shall not be any solicitation at public places between the hours of 6:00 p.m. and 8:00 a.m. Door to door at private residences between the hours of 6:00 p.m. and 10:00 a.m., any time on Sundays is prohibited.~~

~~(Ord. No. 2006 10 02, 11 7 06)~~

Sec. 22-~~95~~ 96. - Revocation.

- (a) The city secretary, city manager, and/or chief or assistant chief of police shall have the power to revoke, at any time, any permit granted in accordance with this division for any of the following causes:
- (1) Fraud, misrepresentation or false statement contained in the application for the license;
 - (2) Fraud, misrepresentation or false statement made in the course of carrying on the applicant's business;
 - (3) Any violation of this article;
 - (4) Conviction of any crime or misdemeanor involving moral turpitude that directly relates to the duties and responsibilities of the permitted occupation;
 - (5) Conducting business 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 or general welfare of the public.

- (b) If, after a permit has been issued and the vendor has operated under the permit, complaints are received and determined to be reasonable upon investigation, no further permits shall be issued to such applicant until satisfactory proof is received that such complaints were unfounded or that restitution to the complainant has been made by the applicant.

(Code 1978, § 16-20)

Sec. 22-~~96~~ 97. - Appeal from denial or revocation.

If an applicant is denied a permit, or has a permit revoked, he may appeal that action to the city council by submitting a letter to the ~~city manager's office~~ office of the city manager within ten days of the action complained of. A hearing on the denial will then be scheduled for the next regular meeting of the council, or a special meeting of the council, to be held within 15 days of the appeal. The council will render a decision on the appeal within ten days of the hearing.

(Code 1978, § 16-21)

Sec. 22-~~97~~ 98. - Exhibition.

A peddler, canvasser or solicitor is required to exhibit his/her permit at the request of any citizen or peace officer of the City. When traveling door to door the person is required to show his/her permit.

(Code 1978, § 16-23; Ord. No. 2004-5-3, 6-16-04)

Sec. 22-~~98~~ 99. - Expiration.

All permits issued under the provisions of this article shall expire on the date specified in the permit. No permit shall be issued for a period longer than ~~90~~ 30 days.(Code 1978, § 16-22; Ord. No. 2004-5-3, 6-16-04)

~~Sec. 22-100.—Permits prohibited on certain holidays.~~

~~It shall be unlawful for any person to peddle, canvass or solicit or causes or permit to be peddled, canvassed or solicited any tangible property five days before and five days after Valentines day and Mother's day.~~

~~(Ord. No. 2004-5-3, 6-16-04)~~

Secs. 22-~~99~~ 101—22-120. - Reserved.