

## **ORDINANCE NO. 2019-**

**AMENDING THE CITY OF NEW BRAUNFELS, TEXAS, CODE OF ORDINANCES CHAPTER 90-PEDDLERS AND SOLICITORS, PROHIBITING THE PLACEMENT OF COMMERCIAL HANDBILLS OR FLYERS ON PRIVATE PROPERTY THAT HAS A SIGN POSTED PROHIBITING SOLICITATION; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the City Council is concerned with the unwanted placement of commercial handbills and flyers on private property as it has become an increasing problem in some neighborhoods; and

WHEREAS, individuals leave unwanted commercial handbills and flyers in spite of the fact that the resident has a posted sign that notifying solicitors that they are not welcome on their property; and

WHEREAS, the current ordinance does not specifically and clearly address this activity that both offends and concerns law abiding residents whose posted “no soliciting” are being ignored by the depositing of these commercial handbills or flyers.

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

### **Section 1**

The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

### **Section 2**

That the New Braunfels Code of Ordinances, Chapter 90 is amended by adding the language indicated below using underlined font and removing language indicated with strikethrough font, as follows:

#### **Chapter 90 - PEDDLERS AND SOLICITORS**

Sec. 90-1. - 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:

Canvasser means a 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: (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 noncommercial event or service.

Peddler means a 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.

Sell or selling means any exchange of money for goods or services, including but not limited to orders involving future payment or delivery.

Service(s) means the performance of work or labor, including but not limited to work or labor furnished in connection with the sale or repair of goods.

Solicitor means a 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: (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, good, or service that is offered to the resident for purchase at another time or at a location away from the residence.

Mobile food unit (MFU) means any individual, firm, or corporation who may be traveling from place to place in a n-approved and permitted vehicle-mounted, self or otherwise propelled, self-contained food service vehicle, designed to be readily movable, used to store, prepare, display, serve or sell frozen or refrigerated confections, including but not limited to ice cream cones, frozen ice cream novelties, raspas or paletas, that are available for sale. A mobile food unit does not include a stand, booth, push cart, or peddle cart.

Posted notice means a sign or signs posted on the property or at or near the entrance to a building, reasonably likely to come to the attention of solicitors, peddlers, or other individuals, indicating that soliciting activities are forbidden.

Soliciting activities means any of those activities engaged in by a solicitor, peddler, or mobile food unit as described in this section.

~~Solicitor or peddler or mobile food unit (MFU) means any individual, firm, or corporation who may be traveling from place to place and who:~~

- ~~(1) Sells or attempts to sell frozen or refrigerated confections or takes or attempts to take orders for the sale of goods, wares, merchandise, or personal property (including tickets for shows and books of coupons which could be traded in for goods or services) for immediate or future delivery;~~
- ~~(2) Collects or attempts to collect money or property.~~

Sec. 90-2. - Regulation of activities.

- (a) It shall be unlawful for any person to engage in soliciting activities upon premises where a posted notice exists prohibiting such soliciting activities, with wording such as "No solicitors" or wording with similar intent.
- (b) Mobile food units are prohibited to operate on vacant or unimproved properties at any time.
- (c) Mobile food units shall not vend or sell within any city park, including streets within said parks, unless first approved by the city's parks and recreation department.
- (d) Mobile food units shall be subject to permitting through the city environmental services division, and shall comply with all applicable planning and zoning requirements, if applicable, in addition to complying with all statutory and local traffic codes and regulations.
- (e) Mobile food unit operators and food handlers, shall be subject to national, state, and local criminal background checks as administered through an accredited processor. The fees for local, state and national background checks are the responsibility of the applicant. Documentation of clearance of applicable criminal background checks shall be provided to the environmental services division and renewed every two years for all mobile food unit personnel vending frozen or refrigerated confections. Based on the results of the background check into the applicant's criminal history, the permitting authority will determine the applicant's eligibility. However, in no case will a permit be issued to a person who is a sex offender.
  - (1) Mobile food unit operators and food handlers shall wear a photo ID badge visible to patrons indicating their name and the date their background clearance was issued.
  - (2) Mobile food units shall prominently display their New Braunfels' mobile food unit permit number on the outside of vehicle that is visible and legible to patrons standing five feet from the vehicle.

Sec. 90-4. - Penalty for violation of chapter.

~~Any person or agent thereof who shall violate a provision of this chapter shall be deemed guilty of a misdemeanor offense and, upon conviction, shall be punished by a fine of not more than \$500.00.~~

- (a) Any violation of this ordinance is deemed a Class C misdemeanor punishable by a fine of not more than \$500.00. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense.
- (b) No culpable mental state required. The culpable mental state required by chapter 6.02 of the Texas Penal Code is hereby specifically negated. The offenses under this ordinance shall be strict liability offenses.

Sec. 90-5. Exceptions.

- (a) This article shall not apply to a federal, state or local government employee or a public utility employee in the performance of his or her duties for his or her employer.
- (b) This article does not apply to a person peddling goods or soliciting funds for a school sponsored event or program, a nonprofit sporting or cultural organization created specifically to benefit the youth of the community, scouting groups, or other similar organizations.
- (c) This article does not apply to canvassers.

**Section 3. Severability**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**Section 4. Repealer**

All provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect and all ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

**Section 5. Effective Date**

This Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, filing with the City Secretary's Office.

**PASSED AND APPROVED:** First reading this \_\_\_\_\_ day of September, 2019

**PASSED AND APPROVED:** Second reading this \_\_\_\_\_ day of October, 2019.

**CITY OF NEW BRAUNFELS, TEXAS**

By: \_\_\_\_\_  
**Barron Casteel, Mayor**

**ATTEST:**

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**Patrick D. Aten, City Secretary**

**APPROVED AS TO FORM:**

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**Valeria M. Acevedo, City Attorney**