

ORDINANCE NO. 538

AN ORDINANCE OF THE CITY OF BEE CAVE, TEXAS, AMENDING ARTICLE 14.04, CITY OF BEE CAVE CODE OF ORDINANCES REGARDING SOLICITORS, TO REVISE APPLICATION PROCEDURES, ESTABLISH LAWFUL HOURS AND MAKE OTHER CHANGES; AND PROVIDING FOR FINDINGS OF FACT, A CUMULATIVE CLAUSE, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, the City of Bee Cave is a Texas home rule municipality that has codified its regulations and enforcement; and

WHEREAS, the City of Bee Cave, as a home rule municipality, derives its powers exclusively from its home rule charter and is limited in authority only by express provisions of the Texas Constitution and the State statutes; and

WHEREAS, the City Council makes the following findings:

1. The City of Bee Cave is mainly suburban in character;
2. Residents of the City of Bee Cave value their privacy and have complained about solicitors and others invading their privacy, especially in the evening;
3. The City Council is aware that residents in other municipalities have been victims of fraud, vandalism, and other personal or property crimes committed by individuals posing as legitimate solicitors, peddlers, or other forms of door-to-door sales or communications; and
4. The City Council is aware that residents in the City and other municipalities have been approached by legitimate but overly aggressive solicitors, peddlers, and other individuals traveling door-to-door or on public right of ways within residential zones who have invaded the privacy, seclusion, and personal space of members of the public; and
5. The City Council believes it must balance the ability for legitimate solicitors, peddlers, and other individuals going door-to-door to approach residents with the resident's rights to privacy, seclusion, and safety.

WHEREAS, the City Council of the City of Bee Cave desires to amend Article 14.04, Code of Ordinances of the City of Bee Cave, related to solicitors and peddlers to revise application procedures, establish lawful hours, and make other changes; and

WHEREAS, the City Council finds and determines that adoption of this Ordinance promotes the health, safety, and welfare of the public; and

WHEREAS, the City Council of the City of Bee Cave finds and determines 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 Texas Open Meetings Act, Chapter 551, Texas Government Code;

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

**I.
FINDINGS OF FACT**

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

**II.
ENACTMENT**

Article 14.04, Code of Ordinances of the City Bee Cave, Texas, is amended as set forth below, with insertions indicated by underlines (e.g. underlines) and deletions indicated by strikethroughs (e.g. ~~strikethroughs~~):

**ARTICLE 14.04
SOLICITATION**

§ 14.04.001. Purpose.

The purpose of this article is to:

- (1) Protect the sanctity of the public's right to privacy and freedom from the disturbance of unwanted solicitation within the city; and
- (2) Enact the minimal regulations to ensure the right to freedom of speech is not infringed upon.

§ 14.04.002. Definitions.

For the purpose of this article, the following words have the meanings ascribed to them below:

Canvasser. A person who attempts to make personal contact with a resident at his/her residence without a 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.

Residence. Every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Solicit. Any of the following activities, or any combination thereof:

- (1) Making, or attempting 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.

- (2) Making, or attempting 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 obtaining a donation to, or raising funds for, 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 sales of some good or service; or
- (3) Distributing handbills or flyers for a commercial purpose advertising an event, activity, service, good, or other commercial matter.

Soliciting Organization. A business, organization, corporation, company, partnership, sole-proprietorship, individual, association, or any other legal entity that utilizes, or causes to be utilized, solicitors or other persons to attempt personal contact with a resident, property owner, or occupier of a residential property at his/her residence without prior specific invitation or appointment from the resident, property owner, or occupier for the primary purpose of acting as a solicitor.

Solicitor. Any person who solicits.

Sunrise and Sunset. Sunrise and sunset are the times of day published by the U.S. Naval Observatory Astronomical Applications Department for sunrise and sunset on the relevant day in Austin, Travis County, Texas, or if such time is not available from the U.S. Naval Observatory Astronomical Applications Department, then such time of day established by a similar, reasonably reliable source.

§ 14.04.003. Permit required.

- (a) No person shall act as a solicitor within the city without first obtaining a solicitor permit in accordance with this article.
- (b) No soliciting organization may utilize, or cause to be utilized, more than one individual as a solicitor in the city during a calendar year without first obtaining a solicitor permit in the name of the soliciting organization. Each solicitor utilized by the soliciting organization, or under the direction of the soliciting organization, must have an individual solicitor permit issued under this article.
- (c) A canvasser is not required to have a solicitor permit but any canvasser wanting a solicitor permit for the purpose of reassuring city residents of the canvasser's good faith may be issued one upon the same terms as a solicitor, including but not limited to the application requirements under this article.

§ 14.04.004. Exception.

This article 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.

§ 14.04.005. Issuance of Permits.

- (a) Issuance. The city will issue a permit under this article within a reasonable time of receiving a complete application and completing any background checks or other investigations.
- (b) Permit prohibited. The city will not issue a permit to any person if the city reasonably

determines that:

- (1) The applicant or any adult acting on behalf of the applicant has been convicted of a felony (except crimes relating to political protest) or a misdemeanor involving moral turpitude under the laws of the State of Texas, any other state, or any law of the United States within seven (7) years of the date of the application;
 - (2) Any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect;
 - (3) The city has received three (3) or more complaints from different residential property owners or occupiers within eighteen months prior to the date of the application, that the applicant has trespassed upon their property, been deceptive in prior transactions or dealings with the property owner or occupier, or violated any prohibition within this ordinance, including failing to honor a no solicitor sign/banner;
 - (4) The applicant has been convicted of, or pled no contest to, violating the terms of this article any time in the five years prior to the application;
 - (5) A permit issued to the applicant under this article has previously been revoked;
 - (6) The applicant is a person required to be registered as a sex offender under Texas law; or
 - (7) The applicant, or the person or entity on whose behalf the applicant will be conducting activities, is not authorized to conduct business in the State of Texas.
- (c) Background checks. The city will determine the above facts using sources of information available to the city, including but not limited to background checks using publicly available information or commercial background check services. Background checks will not be conducted by the city's police department except in connection with a criminal investigation related to the application. The city reserves the right to conduct further investigation regarding any application based on the information obtained during the city's initial investigation.
- (d) Contents. All permits shall display the name, issue date, expiration date, and photo of the individual holder. Permits for individuals that have been identified by a soliciting organization as being associated with a soliciting organization shall also include the name and contact information for the soliciting organization.

§ 14.04.006. Contents of application.

- (a) Individual permits. Application for an individual permit under this article shall be made upon a form provided by the city during regular business hours and shall contain such information requested in the application or as otherwise reasonably requested by the city. The applicant shall truthfully state in full the information requested on the application and information shall be submitted for each person for which a permit is requested.
- (b) Soliciting organization permit. Application for a permit for a soliciting organization under this article shall be made upon a form provided by the city during regular business hours and shall contain such information requested in the application or as otherwise

reasonably requested by the city. An authorized representative of the soliciting organization shall truthfully state in full the information requested on the application as well as the following information:

- (1) The name, type, and state of organization of the organization;
 - (2) An authorized agent to act on behalf of the organization regarding the organization's soliciting activities including name, phone number, mailing address for notice, email address, and any other information reasonably requested by the city;
 - (3) Federal employer identification number of the organization;
 - (4) A copy of the organization's registration to do business in the State of Texas filed with the Texas Secretary of State; and
 - (5) A copy of the organization's Texas sales tax license or proof of tax-exempt status.
- (c) Under oath. All statements made by the applicant upon the application or in connection therewith shall be under oath.
- (d) Application fees. Applicants shall pay fees for permits and renewals in accordance with the following or as may be provided by ordinance adopted by the city council:
- (1) Soliciting organization permit. The fee for an initial soliciting organization permit and each renewal is \$300.00. Such fee is non-refundable. Payment of such fee does not relieve any individual permit applicants identified by the soliciting organization from paying the applicable individual permit fee.
 - (2) Individual permit. The fee for an initial individual permit and each renewal is \$50.00. Such fee is non-refundable.
 - (3) Purpose; additional fees. Application fees are intended to reimburse the city as passthrough charges for background search and other administrative costs. Should a specific application require additional charges, such additional costs shall be passed onto the applicant at the rate of the actual out-of-pocket expenses incurred by the city. No permit will be issued unless any additional charges assessed under this subsection have been paid..

§ 14.04.007. Display of permit.

Except for children under the age of 18, each permit shall be (when the individual for whom it was issued is acting as a solicitor) kept on the person soliciting so that it may be presented to any person whom they are approaching if requested, or to any peace officer or city employee or official, when requested.

§ 14.04.008. Validity of permit; Renewal

Unless revoked, a permit shall be valid within the meaning of this article for a period of one year from its date of issuance or the term requested, whichever is less. The permit shall state the expiration date thereof. Permits may be renewed annually in the same manner as the initial

application.

§ 14.04.009. Revocation of permit.

- (a) Grounds. Any permit issued hereunder shall be revoked by the city manager or designee thereof if the holder of the permit receives 3 or more complaints from different residential property owners or occupiers, is convicted in municipal court of a violation of any of the provisions of this article, has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a permit under the terms of this article.
- (b) Notice. Immediately upon such revocation, written notice thereof shall be given by the city to the holder of the permit in person or by certified United States mail addressed to his or her residence address set forth in the application. Immediately upon the giving of such notice, the permit shall become null and void.
- (c) Appeal. The permittee shall have ten (10) days from the date of revocation or denial in which to file notice of appeal to the city council. Upon receipt of an appeal, the city council will conduct a hearing on the denial or revocation within 30 days from the date of receipt of the appeal. After holding a hearing on the revocation or denial, the city council shall by majority vote either sustain the action or issue an order reinstating the permit. In the event of the filing of an appeal from a revocation issued under the provisions of this section, then, until such appeal has been determined by the city council, such revocation order shall be stayed.

§ 14.04.010. Notice regulating soliciting.

- (a) Every person desiring to limit permissible solicitation may post a weatherproof card, at least three inches by four inches (3" x 4") in size, upon or near the main entrance door to the residence, at the entrance driveway or other main access point, containing wording substantially as follows:
 - (1) "ONLY SOLICITORS PERMITTED IN THE CITY OF BEE CAVE INVITED;"
 - or
 - (2) "NO SOLICITORS INVITED."
- (b) Such card so exhibited shall constitute sufficient notice to any solicitor that soliciting is limited as stated on the card.

§ 14.04.011. Duty of solicitors and canvassers.

- (a) It shall be the duty of every solicitor and canvasser upon going onto any premises in the city upon which a residence as herein defined is located, to first examine the notice provided for in this article, if any is attached, and be governed by the statement contained on any notice. If the notice states "ONLY SOLICITORS PERMITTED IN THE CITY OF BEE CAVE INVITED," then the solicitor not possessing a valid permit as herein provided shall immediately and peacefully depart from the premises, and if the notice states "NO SOLICITORS INVITED," then the solicitor or canvasser, whether permitted

or not, shall immediately and peacefully depart from the premises and shall not leave any material, merchandise, handbill, or literature whatsoever on the premises.

- (b) No solicitor or canvasser shall engage in any conduct, activity or gesture which is threatening, offensive, or obnoxious in order to gain access or maintain access or contact with any person, including but not limited to, preventing the closing of a door or gate by physical means.
- (d) Every solicitor or canvasser shall identify himself as a solicitor upon approaching a citizen at a residence and explain his purpose, whether it be direct sales, solicitation of orders, or the demonstration of goods or merchandise, or any combination of such purposes.
- (e) Every solicitor shall provide identification when requested by the citizen they are approaching, or if requested by a peace officer or other city employee or official.
- (f) Any solicitor or canvasser who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.
- (g) No solicitor or canvasser shall 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.
- (h) No solicitor, canvasser or any person working on their behalf, shall shout, make any outcry, blow a horn or whistle, ring a bell, or use any sound device, including any loud-speaking radio or sound-amplifying system, upon any of the streets, avenues, alleys, parks or other public places of the city, or upon any private premises of the city where sound of sufficient volume is emitted or produced therefrom to be capable to be plainly heard upon the streets, avenues, alleys, parks or other places, for the purpose of attracting attention to the location or to any goods, wares or merchandise which any person permitted pursuant to this article proposes to sell. This subsection also prohibits the use of any audio device for the purpose of attracting customers to retail establishments or merchants.
- (i) No solicitor or canvasser shall enter a private residence under false pretenses.
- (j) The permittee is responsible for all actions of the persons acting on its behalf within the scope of the permit issued.
- (k) No person under the age of 18 shall be permitted to solicit or canvass without being accompanied and supervised by an adult.
- (l) All holders of permits under this Article must report any conviction or other matter that would make such permit holder ineligible to hold a permit under this Article, including but not limited to conviction of a crime.

§ 14.04.012. Uninvited soliciting prohibited.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of section 14.04.010 of this article.

§ 14.04.013. Time limit on soliciting.

It is hereby declared to be unlawful and shall constitute a nuisance for any person, whether registered under this article or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of soliciting as herein defined, prior to 9:00 a.m. or after sunset of any day, or at any time on a Sunday or on a state or national holiday. Except that the above prohibitions in this section and in section 14.04.012 shall not apply when the solicitor or canvasser has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any posted property.

§ 14.04.014. Distribution of handbills and commercial flyers.

In addition to the other regulations contained herein, a solicitor or canvasser leaving handbills or commercial flyers in the city shall observe the following regulations:

- (1) 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 city may remove any handbill or flyer found within the right-of-way.
- (2) 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.
- (3) No handbill or flyer shall be left at, or attached to, any property having a “no solicitor” sign.
- (4) Any person observed distributing handbills or flyers shall be required to identify himself/herself to the police by producing a permit and one other form of photo identification issued by a governmental entity. 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.

§ 14.04.015. 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 in those areas and during those times prohibited in this article.
- (b) A person may conduct commercial solicitation in or upon the public right-of-way, except in those areas and during those times prohibited in this article if the solicitor has obtained a permit or who is a member of an organization that has obtained a permit.

- (c) Solicitation for any purpose in the public right-of-way shall be conducted only during the hours of daylight, specifically one-half (1/2) hour after sunrise and one-half (1/2) hour before sunset based on the times of sunrise and 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 section 552.0071 of chapter 552 of the Texas Transportation Code.
- (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.

§ 14.04.016. Solicitation in selected public rights-of-way prohibited.

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

- (1) Highway 71 at FM 2244 (Bee Caves Road);
- (2) Highway 71 at RR 620;
- (3) Bee Cave Parkway at RR 620;
- (4) Bee Cave Parkway at FM 2244;
- (5) FM 2244 at Resaca;
- (6) Highway 71 at Galleria Parkway (Hill Country Blvd.);
- (7) Highway 71 at Hamilton Pool Road;
- (8) RR 620 at Falconhead Boulevard; and
- (9) RR 620 at Home Depot Boulevard.

§ 14.04.017. Fee exemption.

Organizations that provide written evidence that they are a 501(c)(3) nonprofit organization according to the regulations of the Internal Revenue Service, shall be exempt from paying the permit fee; however, such nonprofit organizations are subject to and shall comply with the

application and permit requirements herein.

§ 14.04.018. Penalty.

Any person who violates any provision of this article or fails 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 (\$500.00) Every day the violation continues and every occurrence or the doing of any act or thing prohibited, or the neglect or refusal to do any act or thing required by this article, shall constitute a separate offense. It shall not be necessary for the complaint to allege or for proof to be made that the act was knowingly done; nor shall it be necessary for the complaint to negative any exception contained in this article concerning any prohibited act, but any such exception made herein may be urged as a defense by any person charged by such complaint.

**III.
CUMULATIVE CLAUSE**

The provisions of this Ordinance are cumulative of all provisions of the City of Bee Cave Code of Ordinances; provided, however, all ordinances, resolutions, or parts thereof, that are in conflict or are inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict or inconsistency leaving the remainder of such other ordinance, resolution, or parts thereof intact, and the provisions of this Ordinance shall be and remain controlling as to the matter regulated herein.

**IV.
SEVERABILITY**

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 or invalid by final judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity 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 or invalid phrases, sentences, paragraphs, or sections.

**V.
EFFECTIVE DATE**

This Ordinance shall be effective as of the date of adoption.

DULY PASSED AND APPROVED, on the _____ day of _____, 2024 at a regular meeting of the City Council of the City of Bee Cave, Texas, which was held in compliance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, at which meeting a quorum was present and voting.

CITY OF BEE CAVE, TEXAS:

Kara King, Mayor

ATTEST:

City Secretary, Jo Ann Touchstone

APPROVED:

City Attorney, Ryan Henry