

AN ORDINANCE AMENDING CHAPTER 20, ARTICLES I AND III OF THE CODE OF ORDINANCES OF THE CITY OF KILLEEN, TEXAS, REGARDING SOLICITORS; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the act of soliciting from motorists by entering the roadway can be a dangerous to both drivers and solicitors; AND

WHEREAS, while solicitation can be a protected activity, the law allows reasonable regulations to be placed on solicitors; AND

WHEREAS, it is not the intent of the City Council to broadly regulate First Amendment activities;

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

SECTION I. That Chapter 20, Article I of the City of Killeen Code of Ordinances is hereby amended to read as follows:

ARTICLE I. - IN GENERAL

Sec. 20-1. Definitions.

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

Business day shall mean any calendar except Saturday, Sunday or any city, state or national holiday.

Public right-of-way shall mean any public property within ten (10) feet of the curb line, and in the absence of a curb, the public property within ten (10) feet of the outside edge of the road or highway. For purposes of this chapter, right-of-way does not include the traveled portion of a public roadway or any median.

Roadway shall mean the traveled portion of a public roadway.

Solicit shall mean to request, by the spoken, written, or printed word, or by other means of communication, an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

Sec. 20-2. Application to First Amendment Activities.

This chapter is not intended to broadly regulate First Amendment activities, including but not limited to press activities, political speech, religious speech or preaching; canvassing for the purpose of soliciting political support or determining opinions or sentiment. However, no person participating in First Amendment activities shall at any time enter or remain in the traveled portion of the roadway, to include any median.

SECTION II. That Chapter 20, Article III of the City of Killeen Code of Ordinances is hereby amended to read as follows:

ARTICLE III. - SOLICITATION FROM PUBLIC RIGHTS-OF-WAY

DIVISION 1. - GENERALLY

~~Sec. 20-75. Definitions.~~

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

~~*Business day* means any calendar day except Saturday, Sunday or any city, state, or national holiday.~~

~~*Public right-of-way* shall mean the traveled portion of the road including any public property within ten (10) feet of the curb line, and in the absence of a curb, the public property within ten (10) feet of the outside edge of the road or highway. Right-of-way includes all medians within the public right-of-way.~~

~~*Solicitation, soliciting, solicited* or any other form of the word *solicit* means the act of asking, begging, pleading or communicating in any other such manner, whether orally, by written and/or printed material including but not limited to handbills or leaflets, hand signing or by any other method, direct or implied, by an individual or group of individuals for the purpose of educating, promoting, receiving or obtaining money, alms, gifts or items of value, real or intrinsic for said individual or group of individuals, or for-profit organization, a non-profit organization, joint venture, joint stock company, partnership, club, company, corporation, business trust, establishment, religious institution or religion, association, or any other organization or affiliate thereof.~~

~~Solicitor means the person soliciting.~~

Sec. 20-75. Prohibited Acts.

Except as provided herein, no person who is within a public roadway may solicit or distribute any material to the occupant of a motor vehicle stopped on a public roadway in obedience to a traffic control signal light. It is specifically provided, however, that a person may solicit or distribute material to the occupant of a motor vehicle on a public roadway so long as he or she remains on the public right-of-way, and not in or on the roadway itself, including medians.

Sec. 20-76. - Compliance generally.

- A. ~~No person shall be or go upon any public right-of-way for the purpose of soliciting from the occupant of any vehicle, except that a~~ A person in possession of a permit from the city may solicit on the designated intersections of public rights-of-way beginning on the first Monday through the following Sunday of the months of May, July, September and December, each year.
- B. It shall be unlawful for any person to solicit within the city of Killeen in the public right-of-way without first obtaining a permit from the city secretary's office.
- C. It shall be unlawful to solicit in the public right-of-way other than between dawn and dusk.
- D. It shall be unlawful for a person younger than eighteen (18) years to solicit under this article.
- E. It shall be unlawful for any person to cause a child ten (10) years of age or younger to solicit in public rights-of-way or sidewalks. For purposes of this section, the term "cause" shall mean to aid, direct, hire, encourage, permit or allow.
- F. It shall be unlawful for a solicitor to fail to wear a traffic safety vest while soliciting in public rights-of-way.
- G. It shall be unlawful for a person to solicit in the public right-of-way, except at the following designated intersections:
 - 1. Central Texas Expressway (Highway 190) and State Highway 195,
 - 2. W. S. Young and Business Highway 190,
 - 3. W. S. Young and Central Texas Expressway (Highway 190),
 - 4. Trimmier and Central Texas Expressway (Highway 190),
 - 5. Stan Schlueter (Loop 3470) and Central Texas Expressway (Highway 190),
 - 6. Business Highway 190 and State Highway 195, and
 - 7. 10th Street and Rancier.

Sec. 20-77. Exemption.

The provisions of this article shall not apply to a person that meets and complies with the requirements of Texas Transportation Code section 552.0071 as may be amended.

Secs. 20-77~~8~~—20-79. - Reserved.

DIVISION 2.PERMIT - FOR SOLICITATION IN PUBLIC RIGHTS-OF-WAY

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Sec. 20-82. - Application for permit.

- A. A person or organization seeking a solicitation permit shall file an application with the city secretary's office. Such application shall, at a minimum, contain the following information:
1. full name, street address and telephone number of the person or organization for whom solicitations are made, and the website, if any, for the person or organization where residents having subsequent questions can access additional information;
 2. full name, street address, date of birth and telephone number of each solicitor working under this permit (copy of each solicitor's driver's license/photo identification required); and
 3. location where, and days on which, solicitation will occur, if approved;
 4. The full name, street address and telephone number of each individual who will be directly in charge or control of the solicitation;
 5. A statement to the effect that if the permit is granted, such permit will not be used as, or be represented to be, an endorsement by the city or any of its officers or employees; and
 6. Any other information that the city deems necessary for the administration of this article.
- B. The application must be signed by the applicant, if the person applying is an individual; if the applicant is a partnership, by the partner charged with disbursing funds solicited; if the applicant is a corporation or an association, by its officer charged with dispersing the funds solicited. The person signing the application shall sign the application and swear before an officer authorized to administer oaths that he has carefully read the application and that all the information contained therein is true and correct.
- C. Information provided by applicant is subject to verification by the police department.
- D. Such application shall also show satisfactory written proof of the individual's authority to represent the company, association or partnership, when applicable.
- E. The application shall be accompanied by all applicable fees, as established in sec. 20-~~44~~81. No permit provided for by this division shall be issued until such fees have been paid by applicant.

- F. The application shall be accompanied by an executed copy of a waiver of liability in favor of the city on a form provided by the city.
- G. The application shall be accompanied by an insurance policy evidenced by a certificate of insurance signed by an agent authorized to bind coverage indicating that the applicant has obtained, at his sole expense, insurance coverage (1) that is written by an insurance company with an A- or better rating by AM Best and that is admitted and licensed to do business in the state of Texas; (2) that is in full force and effect for the duration of the permit period; (3) that provides at least one million dollars (\$1,000,000.00) of liability coverage per person and five million dollars (\$5,000,000.00) per occurrence, and one hundred thousand dollars (\$100,000.00) for property damage and with no deductible; (4) that insures the applicant and all persons who will be soliciting; (5) that names the city of Killeen, its officers, employees, and elected representatives as additional insureds; (6) that provides that any insurance or self-insurance maintained by the city shall apply in excess of and not contribute with it; (7) that is written on an occurrence basis; and (8) that is otherwise acceptable to and approved by the city attorney of the city of Killeen.

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Sec. 20-86. - Appeal from denial or revocation of permit to solicit.

Should an applicant ~~or registrant~~ be denied a permit or have a permit revoked, he may appeal that action to the city manager or his designee by submitting a letter to the city secretary within ten (10) business days of the action complained of. A hearing on the denial or revocation will be held within fifteen business (15) days. The city manager or his designee shall render a decision on the appeal within five (5) business days of the date of the hearing. The decision of the city manager or his designee shall be final.

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SECTION III. That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION IV. That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

SECTION V. That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION VI. That this ordinance shall be effective upon passage.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this _____ day of March, 2019, at which a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

APPROVED

Jose L. Segarra, MAYOR

ATTEST:

APPROVED AS TO FORM:

Lucy Aldrich, CITY SECRETARY

Kathryn H. Davis, CITY ATTORNEY