

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, AMENDING CHAPTER 111, PEDDLERS AND SOLICITORS, OF THE CODE OF ORDINANCES OF THE CITY OF PFLUGERVILLE, TEXAS, BY ADDING AN EXCEPTION FOR LEMONADE STANDS AND ADDING A DEFINITION FOR ARTERIAL ROADWAY; ESTABLISHING A PENALTY OF NOT MORE THAN \$500.00 PER VIOLATION PER DAY; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, the State of Texas passed legislation allowing for the operation of lemonade stands;

WHEREAS, the City of Pflugerville, Texas now wishes to amend the Code of Ordinances, Chapter 111, Peddlers and Solicitors to provide an exception for lemonade stands in accordance with state law and to add a definition for arterial roadway;

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

Section 1. Amending Chapter 111

Chapter 111 of the Code of Ordinances of the City of Pflugerville, Texas, is hereby repealed in its entirety and replaced by the new Chapter 111 in **Exhibit "A"**.

Section 2. Miscellaneous.

The provisions of this ordinance supersede any conflicting provisions of the City's Code. The provisions of this ordinance do not create any vested rights or property rights in any applicant. This ordinance does not extend a deadline for, or the expiration date of, an application or approval established by the City's Code.

Section 3. Effective Date.

This ordinance will take effect upon its passage by three affirmative votes on first reading; provided that this ordinance will be posted and adopted at a subsequent meeting in accordance with the provisions of Section 3.15(d) of the City Charter.

Section 4. Severability.

If any provision of this ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this ordinance.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
Victor Gonzales, Mayor

ATTEST:

\_\_\_\_\_  
Karen Thompson, City Secretary

## **CHAPTER 111: PEDDLERS AND SOLICITORS**

### **Section**

§ 111.01	Definitions
§ 111.02	Solicitors and peddlers prohibited without invitation
§ 111.03	Unlawful solicitation and peddling
§ 111.04	False or misleading solicitation
§ 111.05	Hours when peddling and solicitation prohibited
§ 111.06	Permit required for peddlers
§ 111.07	Permit required for solicitors
§ 111.08	Permit application fee
§ 111.09	Issuance of permits to peddle or solicit.
§ 111.10	Form of permits
§ 111.11	Permit display
§ 111.12	Transfer of permit prohibited
§ 111.13	Revocation of permit
§ 111.14	Expiration of permit;
§ 111.15	Public disclosure
§ 111.16	Exceptions
§ 111.17	Violation/penalty
§ 111.18	Provisions cumulative

## EXHIBIT A

### § 111.01 DEFINITIONS.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. Terms not defined in this section are construed in accordance with customary usage.

***AGGRESSIVE MANNER*** means:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
- (2) Following the person being solicited, if that conduct is:
  - (a) Intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
  - (b) Intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
  - (c) Continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;
- (3) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;
- (4) Using obscene or abusive language or gestures toward the person being solicited;
- (5) Approaching the person being solicited in a manner that:
  - (a) Is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
  - (b) Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

***ARTERIAL ROADWAY*** means a high capacity urban road, of at a minimum of four (4) lanes, that intersects at some point with an interstate highway, state highway or farm-to-market road.

***AUTOMATED TELLER MACHINE*** means a device, linked to a bank's account records, which is able to carry out banking transactions.

***AUTOMATED TELLER FACILITY*** means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.

***BANK*** includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.

***CHECK CASHING BUSINESS*** means a person in the business of cashing checks, drafts, or money orders for consideration.

***CITY MANAGER*** means the City Manager of the city or any individual employed by such department that he designates to perform any of his functions specified in this article.

***INDIVIDUAL*** means a natural person.

***MINOR*** means an individual who has not attained the age of 18.

***PUBLIC ROADWAY*** means the area including the road, median, shoulder or easement from property line to property line alongside the road.

***PEDDLE or PEDDLER*** means any person who engages in commercial activities within city limits by carrying goods or merchandise and selling or offering for sale for immediate delivery such goods or merchandise from house-to-house, business-to-business, or upon public property. Peddler also includes a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered for subsequent purchase, donation, or delivery. Peddle means to conduct any of the above described activities.

***PERSON*** means and includes any natural person, firm, partnership, corporation or association.

***POLICE DEPARTMENT*** means the police department of the City of Pflugerville.

***PUBLIC AREA*** means an outdoor area to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.

***SOLICIT or SOLICITOR*** means 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 for philanthropic, religious or other nonprofit objectives, including the benefit of poor, needy, sick, refugee or handicapped persons; the benefit of any church or religious society, sect, group or order; the benefit of a patriotic or veterans' association or organization; the benefit of any fraternal, social or civil organization, or the benefit of any educational institution or individual. Soliciting does not include activities to the benefit of any political group or political organization that is subject to financial disclosure under state or federal law. Solicitor means any person who conducts any of the above described activities.

**§ 111.02 SOLICITORS AND PEDDLERS PROHIBITED WITHOUT INVITATION.**

Solicitation or peddling in and upon the premises of a private residence or commercial establishment in the city, for the purpose of soliciting or peddling, whenever the premises are posted with a sign containing the phrase “no solicitation,” or some similar sign.

**§ 111.03 UNLAWFUL SOLICITATION AND PEDDLING.**

A person commits an offense if the person solicits or peddles:

- A. Without a permit as required by this Chapter;
- B. In violation of any provision of this Chapter;
- C. After the expiration of a permit as required by this Chapter;
- D. To solicit for a purpose other than the purpose identified in the permit issued to a person;
- E. To allow a minor to solicit funds on a public roadway;
- F. In an aggressive manner in a public area, residence or business;
- G. Within 25 feet of:
  - (1) An automated teller facility;
  - (2) The entrance or exit of a bank; or
  - (3) The entrance or exit of a check cashing business; or
- H. At a marked crosswalk;
- I. At a sidewalk café or the patio area of a bar or restaurant;
- J. In the Central Business District of the City of Pflugerville, Texas, as defined in Chapter 155 of this Code, between 7:00 p.m. and 7:00 a.m.; or
- K. Upon or within the public right of way of an interstate highway, state highway, farm-to-market road or any arterial roadway.
- L. A culpable mental state is not required, and need not be proved, for an offense under Subsection (B) or subsection (C) of this Section 111.05.
- M. This chapter is not intended to proscribe a demand for payment for services rendered or goods delivered.

**§ 111.04 FALSE OR MISLEADING SOLICITATION.**

Any person that makes a false or misleading representation in the course of solicitation violates this Chapter. False or misleading representations include, but are not limited to, the following:

(A) Stating that the solicitation so funds is being carried out on behalf of an organization that does not exist.

(B) Stating that the solicitor represents an organization when such statement is false.

(C) Exhibiting military, medical, or religious order uniform or other indication of military service or membership in a medical profession or religious order when the person soliciting funds is neither a present nor former member of the service indicated or a member of a medical profession or religious order, unless the person is soliciting funds on behalf of the military branch, medical profession or religious order indicated in the statement.

(D) Exhibiting an indication of physical disability or using makeup or a device to stimulate any deformity or disability, when the person soliciting funds does not suffer the deformity or disability indicated.

#### **§ 111.05 HOURS WHEN PEDDLING AND SOLICITATION PROHIBITED.**

No peddler or solicitor may operate on the residence of another person or the public rights-of-way in the City limits of the City of Pflugerville between the hours of 9:00 p.m. and 8:00 a.m.

#### **§ 111.06 PERMIT REQUIRED FOR PEDDLERS.**

Every peddler or solicitor must obtain a permit from the City Manager before peddling or soliciting and it is the duty of the Police Department to make an investigation of all persons requesting such a permit to determine their authority for making such sales and taking such orders and before issuing such permit must determine that they actually represent the parties they claim to represent and that they are actual bona fide representatives of a reliable concern. In order to make such determinations concerning whether an individual actually represents the party they claim to, each peddler or solicitor must present a valid state photo identification card, operators license or company photo identification card to the Police Department in order to receive a permit. A representative of an organization who wishes to solicit to private residences, businesses or on public roadways must also present a valid state photo identification card, operators license or organization photo identification card.

#### **§ 111.07 PERMIT REQUIRED FOR SOLICITORS.**

Any person who seeks to solicit within the corporate limits of the city must file with the Police Department a permit, on forms provided by the Police Department, containing the following:

(A) The name of the person registering to solicit.

(B) Whether the person registering is an individual, partnership, corporation or association, and:

(1) If an individual, his or her business or residence address and telephone number.

(2) If a partnership, the names of all partners and the principal business address and telephone number of each partner.

(3) If a corporation, whether it is organized under the laws of Texas or is a foreign corporation, the mailing address, business location, telephone number, and name of the individual in charge of the Pflugerville office of the corporation.

(4) If an association, the association's principal business address and telephone number, if any, and the names and principal business or residence addresses and telephone numbers of five members and two officers of the association. If the association is part of a multi-state organization or association, the mailing address and business location of its principal headquarters must be given, in addition to the mailing address and business location of its local office.

(C) A brief description of the purpose for which the funds are to be solicited and the intended use of the funds toward that purpose.

(D) The time period within which the solicitation is to be made, giving the date of the beginning of solicitation and its projected conclusion.

(E) A description of the means and methods by which the solicitation is to be accomplished, including whether such means and methods will include any solicitation of occupants of vehicles on public streets.

(F) A statement to the effect that if a permit is granted, such permit will not be used as or represented to be an endorsement by the city or any of its officers or employees.

(G) As to each, if any, officer, director, trustee, partner, or any current agent or employee engaging in the solicitation of funds who within the past seven years has been convicted of (or been incarcerated for any conviction of) a felony or a misdemeanor involving moral turpitude, the name of the individual, the nature of the offense, the name of the state where the conviction occurred, and the year of the conviction.

(H) An explanation of the reasons, if the person registering is unable to provide any of the foregoing information, why such information is not available.

(I) The signature of an individual on behalf of the person registering. If the person registering is an individual, this is the applicant. If the person registering is a partnership, this is the partner charged with disbursing the funds solicited. If the person registering is a corporation or an association, this is its officer charged with disbursing the funds solicited. The individual signing the permit must sign the statement and swear before an officer authorized to administer oaths that he or she has carefully read the permit and that all the information contained therein is true and correct.



**§ 111.08 PERMIT APPLICATION FEE.**

Every request for a permit to peddle or solicit must be accompanied by a registration fee of \$35 from each organization, company, entity or business to compensate the city for the cost of administering this chapter. Such fee will be nonrefundable, irrespective of whether a permit is issued.

**§ 111.09 ISSUANCE OF PERMITS TO PEDDLE OR SOLICIT.**

A request for a permit to peddle or a permit to solicit must be filed not later than the eleventh day before the date the solicitation or peddling is to begin. Within five working days of the receipt of the application for a permit, the Police Department will either issue a permit, as provided in Section 111.07 or notify the person registering that the application does not comply with the requirements of Section 111.07 and specifically point out what information or explanation has not been furnished that is required before a permit can be issued. An applicant for a permit may appeal the denial of a permit to the City Manager within ten days to the City Council which will conduct a hearing at a time and place designated for the purpose of determining whether or not there was good cause for such revocation.

**§ 111.10 FORM OF PERMITS.**

The Police Department will prescribe the form of each permit, each of which will be printed in black except that the following will be printed prominently thereon in red: "The issuance of this permit is not an endorsement by the City of Pflugerville or any of its departments, officers or employees." Each permit must specify the period of its validity and bear a registration number.

**§ 111.11 PERMIT DISPLAY.**

Each peddler or solicitor will carry his or her permit at all times while engaging in business in the City. Upon request or demand, the peddler or solicitor must display his or her permit bearing his or her name. The peddler or solicitor must exhibit the permit to indicate compliance with all of the relevant requirements of this Chapter.

**§ 111.12 TRANSFER OF PERMIT PROHIBITED.**

A permit issued under the provisions of this article is not transferable, and the authority a permit confers is conferred only to the holder named therein. The permit will have endorsed thereon in red letters the words "NOT TRANSFERABLE."

**§ 111.13 REVOCATION OF PERMIT.**

Any permit issued pursuant to the above section is subject to revocation upon discovery of any false or misleading statements contained in the application, or for failure of the applicant to fulfill obligations which he incurs to purchasers or potential purchasers, or for other good

cause. Upon revocation of such permits the permit holder may appeal such revocation within ten days to the City Manager who will conduct an investigation at a time and place designated for the purpose of determining whether or not there was good cause for such revocation.

#### **§ 111.14 EXPIRATION OF PERMIT.**

Each permit issued by the Police Department expires not later than one year from the date of issuance, or upon the termination of the solicitation or peddling period specified, whichever is less.

#### **§ 111.15 PUBLIC DISCLOSURE**

All permits to peddle and solicitation permits filed with the Police Department, whether or not a permit has been issued, are public records and must be available for inspection by members of the public during the regular business hours of the Central Records Department of the Pflugerville Police Department. Copies may be obtained at the fees prescribed by law for copies of city records.

#### **§ 111.16 EXCEPTIONS**

The following are excepted from the operation of this Chapter:

- (1) Solicitation by any organization or association from its members;
- (2) Solicitation by a person when such solicitation occurs on premises owned or controlled by the person soliciting or with the permission of the person who owns or controls the premises;
- (3) The issuance of any announcement or advertisement which states that a solicitation as described in subsections (1) and (2) above will occur or which announces or advertises an event at which unannounced solicitation as described in subsections (1) and (2) above occurs;
- (4) Exemptions specifically granted by the City Manager.
- (5) The temporary selling of lemonade or other nonalcoholic beverages from a stand on private property with permission of the property owner by an individual younger than 18 years of age.

#### **§ 111.17 VIOLATION/PENALTY.**

Any person violating the provisions of this chapter is guilty of a Class C misdemeanor and upon conviction will be fined not more than \$500.

**§ 111.18        PROVISIONS CUMULATIVE**

The provisions of this Chapter are cumulative of any other valid and applicable laws, rules, or regulations governing solicitation or any activity which may be associated therewith. Compliance with this Chapter does not excuse compliance with any other valid and applicable laws, rules or regulations governing the solicitation or any activity which may be associated therewith.