

**ORDINANCE NO. 2006-17**

**AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING CHAPTER 78, SECTION 78-26 THROUGH 78-66, OF THE CODE OF ORDINANCES, REGULATING PEDDLER ACTIVITIES IN THE CITY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND AN OPEN MEETINGS CLAUSE; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City of Burnet (the "City"), a home-rule city, is by State law and Charter permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

**Whereas**, protecting private residents of the City from unwanted annoyance of solicitors or peddlers protects the peace in the community;

**Whereas**, requiring solicitors and peddlers to register may deter inappropriate conduct;

**Whereas**, the City has no desire to interfere with free speech, open dialogue and exchange of opinion;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT;**

**Section. 1. Findings.** The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section. 2. Amendment.** Chapter 78, Sections 78-26 through 78-59 of the City of Burnet shall be amended in its entirety as follows:

**ARTICLE II. PEDDLERS**

**DIVISION 1. GENERALLY**

**Sec. 78-26. Definitions.**

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

*Noncommercial purpose or cause* means a purpose or cause not created, existing or espoused for the generation of profit or the remuneration of individuals, including, but not limited to, the religious or charitable solicitation of contributions, seeking political support or contributions, the promotion of civic causes, the promotion of conservation of resources or animals, advocating a philosophy or religion, or minors conducting fundraising activities, who represent an organization for the benefit of youths, including but not limited to Boy Scouts, Girl Scouts, little league groups and school groups.

*Peddler* means any person, whether a resident of this city or not, traveling from house to house or from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state; and shall also mean and include any person soliciting funds for the generation of profit or transacting a temporary business within the city. The word "peddler" shall include the terms "solicitor," "transient, itinerant merchant or vendor," or "transient or itinerant photographer."

*Special event* means an activity which makes a significant contribution to the cultural, economic, or social welfare of the city, is sponsored or organized by the City, an individual, corporation, or organization, is held at a particular time and location, and is for the purpose of the sale or distribution of services or goods on public property.

*Temporary business* means selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state from a structure or vehicle that is not required to receive a certificate of occupancy that operates from one or more locations for less than six month including, but not limited to a, fair, carnival, circus, public exhibition, or other similar gathering.

**Sec. 78-27. Exceptions.**

The provisions of this article shall not apply to the following:

- (1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business;
- (2) Sheriff's constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law;
- (3) Bona fide residents of the state selling fruits, vegetables, or farm products which were produced on land within the state, owned or controlled by such vendor; and
- (4) Ordinary commercial travelers or salesmen, transacting business only at wholesale dealers or with dealers in such goods or in goods or services for use in manufacturing or commercial purposes;
- (5) Events, solicitations, sales or distributions made for noncommercial purposes by local government, charitable, educational, or religious non-profit organizations shall not be required to obtain a permit.

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**Sec. 78-28. Refusing to leave.**

Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises, after having been notified by the owner or occupant of such premises, shall be deemed guilty of a misdemeanor.

**Sec. 78-29. Use of public and private places.**

It shall be unlawful for any peddler to sell or solicit or take orders for or offer to sell or take orders for or display any prepared foods, drinks, goods, wares, merchandise, services, photographs, animals, newspapers or magazines on or along any public square, park, street, road, highway, right-of-way, or alley within the limits of the city without having first obtained a permit as provided in section 78-46 or a special events permit as provided in section 78-66.

Peddlers utilizing private property are not required to obtain a permit but must obtain the permission of the property owner, tenant or lessee in writing prior to conducting business. The person granting such permission, along with the peddler, will be collectively and individually responsible for compliance with the adopted zoning codes as well as all other regulatory provisions of the City of Burnet or State of Texas.

**Sec. 78-30. Entrance to premises restricted.**

It shall be unlawful for any peddler to enter upon any private premises when such premises are posted with a sign stating "no peddlers allowed" or "no solicitations allowed" or other words to such effect.

**Sec. 78-31. Hours of operation.**

It shall be unlawful for any peddler to engage in the business of peddling within the city between the hours of 8:00 p.m. and 9:00 a.m. the following morning, or at any time on Sundays, except

by specific appointment with or invitation from the prospective customer or by first obtaining a special events permit.

**Sec. 78-32. Soliciting at intersections.**

It shall be unlawful for any peddler to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at or near any intersection or crossing of streets within the city limits.

**Sec. 78-33. Misrepresentation.**

It shall be unlawful for any peddler to make false, misleading or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

**Sec. 78-34 - Penalty**

Any person who violates this ordinance or part thereof shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not less than \$50.00 or more than \$200.00 for each offense.

**Sec. 78-35 – Food Handlers.** In addition to securing a City of Burnet permit, all prepared food vendors shall comply with the state food handler’s regulations. As it is related to this ordinance, flavored ice and drink vendors are considered food vendors.

**Sec. 78-36 – Collection of Sales Tax.** All peddlers requiring a permit or special event permit, are required under this ordinance to produce a current and valid sales tax certificate upon request.

**Sec. 78-37 – 78-45 Reserved**

**DIVISION 2. PERMIT**

**Sec. 78-46. Required; information needed prior to issuance.**

It shall be unlawful to engage in business as a peddler within this city without first obtaining a permit to do so. Such permit shall be obtained by registering with the Police Department and providing information under oath. Prior to the issuance of the permit to the peddler, the Police Department shall obtain all of the following information and any other information deemed pertinent and necessary. The information to be obtained shall be as follows:

- (1) The name, local and permanent address of the applicant and the number of the driver's license or other state identification of the applicant; in the absence of such identification, the date of birth and social security number.
- (2) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the date of the offense; the nature of the offense; the punishment or penalty assessed therefore; if previously convicted; and the place of conviction.
- (3) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.
- (4) The exact dates the applicant wishes to engage in business within this city.
- (5) The local and permanent address and the name of the person, company or corporation, if any, that the applicant represents; the applicant's tax identification number, if any.

(6) The kind of goods, wares, merchandise or services in which the applicant wishes to engage in such business within the city.

(7) The last five cities or towns wherein the applicant has worked before coming to this city.

**Sec. 78-47. False information.**

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit required by this article.

**Sec. 78-48. Fingerprints; photographs.**

At the time of making application for a permit required by this article, the applicant shall submit to fingerprinting and photographing as determined by the Police Department.

**Sec. 78-49. Bond required.**

The application for a permit required by the provisions of this article by a vendor who can not provide satisfactory proof of reputable dealings with the public, has a history of prior complainants, civil or criminal charges and arrests shall be accompanied by a bond for the penal sum of \$1,000.00, signed by the applicant and signed, as surety, by a surety company authorized to do business in this state, conditioned for the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 30 days after delivery, and which bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of such principal.

**Sec. 78-50. Fee.**

Before any permit shall be issued under the provisions of this article, the applicant therefore shall pay a fee, based upon the time period he desires to engage in business in the city, as follows:

- (1) Per week .....\$ 70.00
- (2) Per month .....225.00
- (3) Per three months .....600.00
- (4) Per six months .....1,200.00

**Sec. 78-51. Issuance.**

No permit shall be issued under the provisions of this article until the applicant shall have complied with all the provisions and requirements of this article.

**Sec. 78-52. Issuance to individuals only.**

No peddler's permit shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit, whether acting for himself or as an agent or representative of another. All persons engaged in the activity of peddling, whether assisting or observing shall be considered a peddler and require a permit.

**Sec. 78-53. Contents.**

Each permit issued under the provisions of this article shall be signed by a representative of the police department; shall be dated as of the date of its issuance; and shall state the duration or term of such permit on the face thereof. Any permit not dated and signed as provided in this section, or which was issued in violation of this section, shall be void.

**Sec. 78-54. Display.**

Every peddler having a permit issued under the provisions of this article and doing business within the city shall display his valid permit in full view at all times while engaged in peddling activities. Failure to do so shall be deemed a misdemeanor.

**Sec. 78-55. Duration.**

Every permit issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit be issued for a period of time in excess of six months.

**Sec. 78-56. Revocation.**

(1) Any permit or special events permit issued under the provisions of this article may be revoked by the Chief of Police for the violation by the permittee of any provision of this Code, state law or city ordinance that directly relates to the duties and responsibilities of the permitted occupation, drunkenness or disorderly conduct. Upon such revocation, such permit shall immediately be surrendered to the Chief of Police, and failure to do so shall be deemed a misdemeanor. Any person aggrieved by the revocation may appeal the Chief of Police's revocation within five business days of surrender of the permit by written appeal tendered to the City Secretary. A timely filed appeal shall suspend the revocation pending administrative reconsideration by the City Manager. The City Manager may uphold, revise or overturn the Chief of Police's revocation. If the City Manager upholds the revocation, the permittee may appeal to the City Council within five business days of the City Managers upholding the revocation by filing a written appeal with the City Secretary. The decision of the City Council shall be final.

(2) A previous revocation may constitute grounds for not authorizing subsequent permit applications from the same individual.

(3) Revocation will not result in reimbursement of fees paid.

**Sec. 78-57. Denial.**

Any person denied a permit or special events permit may appeal the denial within five (5) business days of the denial by filing with the City Secretary a written notice of appeal. The City Manager may uphold, revise or overturn the denial. If the City Manager upholds the denial, the applicant may appeal to the City Council within five business days of the City Managers upholding the denial by filing a written appeal with the City Secretary. The decision of the City Council shall be final.

**Sec. 78-58 – 78-65 Reserved.**

**DIVISION 3. SPECIAL EVENTS**

**Sec. 78-66. Special event permit.**

(a) *For sale or distribution of services or goods on public property.* Notwithstanding other provisions of this Code, the Police Department representative may issue a special event permit to enable the holder and assisting persons to sell or distribute services or goods on public property during special events.

(b) *Issued for specific time and location.* A special event permit shall be issued for each event. The time and location for which the permit is in effect shall be transcribed on the permit.

(c) *Application.* An applicant for a special event permit shall file with the Police Department, a written application upon a form provided for that purpose. Where an event hosts space for vendors, organizers may apply for and receive a single special event permit in the event's name for a sponsored event providing the applicant accepts responsibility for and oversees the activities of participating vendors. Organizer must have a list of participating vendors available for examination during the event.

(d) *Fee.* An applicant for, or the holder of, a special event permit shall pay as a fee for the permit, the sum of \$25.00 per event, except when a special event is held at a City owned facility and a fee has been paid for use of the facility, the special event permit fee shall be waived.

(f) *Inspection or investigation; approval or denial.* After inspection or investigation, the Police Department shall approve or deny an application for a special event permit. If such application is approved, a special event permit will be issued which shall state on its face the name of the person to whom it is granted and the expiration date. It shall be designated on such permit, the location in which the special event permit holder is allowed to do business.

(g) *Compliance of permit holder with article provisions.* Except for the permitting requirements, fingerprinting and photograph requirement, hours of operation, bonding requirement and fee requirement in Section 78-51, the applicant for a special event permit and/or the holder of a special event permit shall comply with all of the sections of this article.

**Section 3. Severability.** It is hereby declared to be the intention of the City Council that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, 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, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

**Section 4. Effective Date.** This ordinance shall take effect immediately upon its approval and passage and publication as required by law.

**Section 5. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

**PASSED AND APPROVED** on First Reading this 25<sup>th</sup> day of July.

**FINALLY PASSED AND APPROVED** on this the 8<sup>th</sup> day of August, 2006.

**CITY OF BURNET, TEXAS**

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Dennis L. Kincheloe, Mayor

ATTEST:

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Crista Bromley, Deputy City Secretary