

ORDINANCE NO. 2019-34

AN ORDINANCE AMENDING CHAPTER 15, ARTICLE III. OF THE CITY CODE OF ORDINANCES OF BOERNE, TEXAS, PROVIDING FOR REGULATIONS FOR PEDDLERS, CANVASSERS, AND SOLICITORS TO INCLUDE LOITERING; ADDING SECTIONS 15-76 THROUGH SECTION 15-81, LOITERING; PROVIDING FOR A PENALTY NOT TO EXCEED \$500; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council has determined that the act of loitering is not in the best interest of the public; and

WHEREAS, the City Council has determined that it is necessary to enact and enforce the provisions set out in this ordinance in order to promote the public health, safety and welfare of its citizens;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS;

That Chapter 15, Article III. Peddlers, Canvassers and Solicitors is amended to include Loitering and Sections 15-76 through 15-81 are added as follows:

Section 15-56 *Definitions.*

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Loitering includes the following, but is not an all-inclusive list: stopping, standing, sitting, laying down or remaining in, on, or about any place, public or private, without a lawful purpose or for longer than is necessary to complete the lawful purpose.

Place, public or private , means and includes, but is not limited to, the following: all places commonly known as being distinctively public, such as public streets, public restrooms, sidewalks, parks, municipal airports, parking lots, alleys and buildings; all places privately owned but open to the public generally such as shopping centers, transportation terminals, retail stores, movie theaters, office parking lots, buildings, and restaurants; and all places distinctively private, such as homes or private residences and apartment houses.

Surrounding area means that area easily and immediately accessible to the person under observation.

Median. Area or portion of a divided street, road or highway within the city separating lanes of traffic of said street, road or highway and shall be held to include the curb, if any, at the outer edge of said area.

Roadway. Portion of the public street which is improved, designed or ordinarily used for vehicular travel, including the curb, berm or shoulder, whether or not improved.

Sidewalk. Improved surface which is between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, and is improved and designed for or is ordinarily used for pedestrian travel.

Section 15-76 *Prohibited.*

It shall be unlawful for any person to loiter, as hereinafter stated, in, on or about any place, public or private, when such loitering is accompanied by activity or is under circumstances that afford probable cause for alarm or concern for the safety and well-being of persons or for the security of property in the surrounding area.

Section 15-77 *Offense Committed.*

A person commits the offense of loitering if he/she:

- (1) Obstructs vehicular or pedestrian traffic, in a manner that would constitute a safety hazard to either the traffic or the perpetrators;
- (2) *Stopping, standing, sitting or remaining at certain intersections within the city.*
 - a. No pedestrian or other person, who is within a roadway, may stop, stand, sit or remain in any intersection or crosswalk for a period longer than is necessary to traverse said intersection or crosswalk.
 - b. No pedestrian or other person may stop, stand, sit or remain within the immediate vicinity of any vehicle stopped on a roadway for a period longer than is necessary to traverse said roadway.
 - c. It is specifically provided, however, that a pedestrian or other person may stop, stand, sit or remain on the surrounding sidewalks as long as they are not obstructing the passageway, but not in or on the roadway itself.
 - d. No pedestrian or other person shall stop, stand, sit or remain on or under any portion of a median, bridge, overpass, or viaduct for longer than is necessary to safely traverse said median, bridge, overpass or viaduct.
 - e. The above provisions apply at the following locations:
 - f. All intersections adjacent to: Interstate 10 and Scenic Loop Road; Interstate 10 and State Hwy 46; Business 87 and Christus Parkway; State Hwy 46 and Business 87; Business 87 and Herff Road.

Section 15-78 *Affirmative Defenses.*

The following activities shall not be considered loitering and shall constitute an affirmative defense to the prosecution of violations of this section:

- (1) A person shall not be considered loitering while in direct route, and not lingering, to or from work or to or from the place of the person's residence.
- (2) A person shall not be considered loitering while engaged in the repair of a disabled vehicle.
- (3) A person under the age of 18 years shall not be considered loitering while engaged in or in direct route to school, church, or entertainment activities with permission of his parent or guardian.
- (4) A person shall not be considered loitering while sleeping in a vehicle; provided that the vehicle is parked on private property with the permission of the owner or manager of the premises, or if the vehicle is parked on public property, with permission of a police officer.

Section 15-79 *Power of law enforcement to abate.*

Nothing in this section shall be construed to in any way limit the present police powers of the law enforcement officers of the city to make any investigation, detention or arrest as the circumstances may warrant, in the usual course of the enforcement of the laws and the ordinances applicable to such cases.

Section 15-80 *Standing, remaining or congregating of persons.*

- (1) *Obstructions to streets and sidewalks prohibited.* It shall be unlawful for any grouping or assemblage of persons, whose standing, remaining or congregating upon any public street or sidewalk shall obstruct, prevent or interfere with the free or unobstructed use of said street or sidewalk by other persons, to fail or refuse to move on or to disperse upon being ordered to do so by any police officer or other peace officer, unless said grouping or assemblage of persons has first obtained a permit to parade.
- (2) *Obstructions to building entrances and exits prohibited.* It shall be unlawful for any person, grouping or assemblage of persons, whose standing, remaining or congregating upon any entrance, alcove or steps leading from a public street or sidewalk to the entrance or exit of any public or private building or structure shall obstruct, prevent or interfere with the free or unobstructed use of said entrance or exit, or of the street or sidewalk adjacent thereto, by other persons; to fail or refuse to move on or disperse upon being ordered to do so by any police officer or other peace officer.

Section 15-76 81 *Violation/ Penalty.*

Any person violating the provisions of this chapter is guilty of a Class C misdemeanor and upon conviction shall be subject to a penalty not to exceed five hundred dollars (\$500.00). Each and every act constituting a violation hereof and each failure or refusal to comply with any provision shall be a separate offense and shall be punished as such.

Section 15-82 and 15-85. Reserved.

State Law Reference

Loitering near polling places prohibited, V.T.C.A., Election Code 61.003, 85.036.
Police power of city, Local Government Code 51.001, 54.001; penal code, V.T.C.A.,
Penal Code 1.01 et seq.

Severability. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

Effective Date. This ordinance shall become effective upon publication.

PASSED, APPROVED AND ADOPTED on this the second reading the ____ day of July, 2019.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney