

ARTICLE 4.100 ITINERANT VENDORS, PEDDLERS AND SOLICITORS^{*}

Sec. 4.101 License Required

(a) It shall hereafter be unlawful for any person to go from house to house or from place to place in the city, soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, farm products, dairy products, photographs, newspapers, magazines, or subscriptions to newspapers or magazines without having first applied for and obtained a license to do so from the city police department. It shall also hereafter be unlawful to sell or solicit in the city without carrying such license while engaged in such soliciting or selling.

(b) It shall hereafter be unlawful for any person to engage in the activity of a peddler, itinerant merchant, or transient vendor within the city without having first applied for and obtained a license so to do from the city police department. It shall also hereafter be unlawful to be a peddler, itinerant merchant or transient vendor in the city without carrying such license while engaged in such selling.

Sec. 4.102 Obtaining the License

(a) Any person desiring to perform activities covered in Sections 4.101(a) or 4.101(b) shall make written application to the city police department for a license to do so, which application shall show the name and address of the applicant, the name and address of the person, firm or corporation, if any, that he or she represents and the kind of goods offered for sale, and whether such applicant upon any such sale or order shall demand, accept, or receive payment or deposit of money in advance of final delivery, and the period of time such applicant wishes to sell or solicit in said city. The applicant must also provide the name, address and phone number of the owner of the property at such location of sale. Any such license granted to any person is issued with the express provision that the licensee shall not make any false or fraudulent representation as to the goods to be sold or his or her authority to sell such goods. A separate license and application shall be required for each person who engages in the activities of a transient vendor, itinerant merchant and/or peddler, including each employee, agent or consignee who engages in such activity.

(b) If the applicant proposes to display goods to the public or to offer such goods for sale from a designated location, such applicant's application form hereunder shall be accompanied by a written permit signed by the owner or the duly authorized agent of the owner of the property at the location from which the applicant proposes to display or to offer for sale any goods. Such permit shall state that said owner consents that the

^{*} State law references—Authority of municipality to license, tax, suppress, prevent, or otherwise regulate peddlers, hawkers and pawnbrokers, V.T.C.A., Local Government Code, sec. 215.031; cancellation of certain consumer transactions, V.T.C.A., Business and Commerce Code, ch. 39; persons regarded as retailers under sales tax law, V.T.C.A., Tax Code, sec. 151.024; solicitation of business by pedestrian, V.T.C.A., Transportation Code, sec. 552.007.

applicant may use and occupy such property for the purpose of selling or offering for sale such goods.

(c) The application for license shall be accompanied by a valid sales tax permit issued by the office of the comptroller of public accounts of the state.

(d) Each application for a license required under this article shall be approved by the chief of police or his authorized representative before such license is granted. The chief of police shall have a reasonable time to conduct an investigation of an applicant for such license, but such an investigation shall not be longer than three business days. After inspection or investigation, the chief of police shall either approve or disapprove the application for license, and if disapproved shall give the applicant, upon request, a written statement setting forth the reasons for such disapproval and notifying said applicant of his right to appeal.

(e) Any person who is required to obtain a license by the provisions of this article may apply for a 30-day license. When a 30-day license is issued to any such person, such licensee shall pay to the city a license fee of \$35.00, which sum shall be used to defray part of the expense of administration and enforcement of this article. No license issued under the provisions of this article shall be issued for a longer period than 30 days. Such license shall not be assignable and shall not authorize more than one person to engage in activities set forth in this article within the city.

(f) Each licensee shall display a photo identification attached to the outer clothing of such licensee so that it is visible to any person to whom such licensee attempts to sell goods. Any licensee must exhibit a license and the photo identification issued under the provisions of this article, upon demand, to the city manager or his designated representative, to any police officer of the city or to any person to whom a sales or solicitation is attempted to be made.

(g) The chief of police, the city manager or their designated representatives may deny or revoke a license issued under this article for any of the reasons set forth below:

- (1) The applicant does not present a valid state driver's license or other positive identification by a governmental agency;
- (2) The applicant does not complete the application form and procedure;
- (3) The applicant or the proposed activity of the applicant does not comply with the applicable city ordinances and codes, including the zoning ordinance, building codes and health codes;
- (4) The applicant makes false or fraudulent statements on the application form;

- (5) The applicant or licensee is found after investigation by the chief of police or his designated agent to be misrepresenting or making false statements in regard to his authority to sell such goods;
 - (6) The applicant or licensee has been convicted of an offense involving narcotics, dangerous drugs or crimes with dangerous weapons at any time within the preceding five-year period;
 - (7) The applicant or licensee has been convicted of an offense involving the use of force and violence upon the person of another, when the offense is designated as a felony in the state, at any time within the preceding five-year period;
 - (8) The applicant or licensee has been convicted of an offense of fraud, misrepresentation, embezzlement, forgery, or theft, when such offense is designated as a felony in the state, at any time within the preceding five-year period;
 - (9) The applicant or licensee has been convicted in a court of proper jurisdiction of violating this article at any time within the preceding five-year period;
 - (10) Upon recommendation from the chief of police or his designated agent that the license be revoked because the conduct of the licensee or the manner in which the licensee is conducting his business operation endangers the health or safety of a citizen of the city.
- (h) The license holder or applicant may appeal such denial or revocation of license to the city council of the city.

(Ordinance 2007.10.16 adopted 10/16/07)

Sec. 4.103 Surety Bond Required

(a) The application mentioned in Section 4.102 above shall be accompanied by a bond in the penal sum of one thousand dollars (\$1,000.00) signed by applicant and signed, as surety, by some surety company authorized to do business in the State of Texas, conditioned for the final delivery of goods, wares, merchandise, services, farm products, dairy products, photographs, magazines and newspapers 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 articles sold, by the principal of said bond, at the time of delivery, and that may be discovered by such purchaser or customer within thirty (30) days after delivery and which bond shall be for the sum and benefit of all persons, firms, or corporations that may make any purchase or give any order to the principal on said bond, or to an agent or employee of the principal.

(b) Provided that in case applicant is a person, firm, company, partnership, corporation or association engaging in any activity mentioned in Section 4.101 above through one or more agents or employees, such persons, firm, company, partnership, corporation or association shall be required to enter into only one bond, in the sum of one thousand dollars (\$1,000.00) as above required, which bond shall be made to cover the activities of all its agents or employees.

(1983 Code of Ordinances, Chapter 4, Section 4-33)

Sec. 4.104 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:

Commercial Traveler. A person who is employed by or who represents a manufacturer, wholesaler, or importer who sells or exhibits goods to parties who engage in the business of purchasing such goods for the purpose of resale to the general public.

Goods. Tangible chattels of every kind and character.

Itinerant Merchant. A person, or the agent, consignee, or employee of a person, engaged in the temporary business of moving stocks of goods or samples of goods into the city for the purpose of selling or offering for sale or taking orders for the sale of such goods with the intention of removing such samples or the unsold portion of such goods away from the city before the expiration of 30 days from the date such goods were first moved into the city.

Peddler. A person, or the agent, consignee, or employee of a person, who carries goods upon a truck or other vehicle on the streets of the city for the purpose of exhibiting, selling, or offering for sale such goods from such truck or other vehicle or who within the city goes from door to door of residences, offices or places of business to display, sell, offer for sale, or take orders for the sale of goods or to exhibit brochures, sales literature or price lists for the purpose of taking orders for the sale of goods.

Person. An individual natural person, whether residing within or without the city limits, and does not include any corporation, firm, association, partnership or joint venture.

Temporary Business. Any business activity which has not been conducted for a period of not less than 30 consecutive days within the city.

Transient Vendor. A person, or the agent, consignee or employee of a person, who within the city engages in the temporary business of exhibiting, delivering, selling or offering

for sale any goods or exhibiting brochures, sales literature, or price lists for the purpose of taking orders for the sale of goods.

(Ordinance 2007.10.16 adopted 10/16/07)

Sec. 4.105 Exceptions

The provisions of this article shall not apply to sales made to dealers by commercial travelers or sales agents in the usual course of business, nor to sales made under authority and by order of law. Provided persons offering for sale agricultural products, meats, poultry, or other articles of food grown or produced by such persons shall not be required to pay the license fees, but license shall be issued to such persons by the city clerk upon satisfactory proof that they have produced or grown the products to be peddled and such license shall so state. (1983 Code of Ordinances, Chapter 4, Section 4-36)

Sec. 4.106 Persons Engaged in Interstate Commerce Excepted

(a) The provisions of this article shall not apply to persons engaged in interstate commerce as that term is herein defined; provided, however, that it shall be unlawful for persons engaged in interstate commerce to engage in activities set forth in this article without having first registered with the city clerk of said city giving the following information:

- (1) Name, home address and local address, if any, of registrant.
- (2) Name and address of the person, firm or corporation, if any, that he or she represents or for whom or through whom orders are to be solicited or cleared.
- (3) Nature of the articles or things which are to be sold or for which orders are to be solicited.
- (4) Whether registrant, upon any sale or order shall demand or receive or accept payment or deposit of money on advance of final delivery.
- (5) Period of time which registrant wishes to solicit or sell in said city.

(b) The registrant at the time of the registration as herein provided for shall submit for inspection of the city clerk written proof of his identity which may be in the form of an automobile operators license, identification letter or card issued to registrant by the person, firm or corporation for whom or through whom orders are to be solicited or cleared.

(c) The term interstate commerce means soliciting, selling or taking orders for or offering to take orders for any good, wares, merchandise, photographs, newspapers, or magazines, or subscriptions to newspapers or magazines, which at the time the order is

taken are in another state or will be produced in another state and shipped or introduced into this city in the fulfillment of such orders.

(Ordinance 2007.10.16 adopted 10/16/07)

Sec. 4.107 Penalty for Violations

Any person, firm or corporation violating any provisions of this article or failing to observe any provisions hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum in accordance with the general penalty provision in Section 1.109 of this code and each and every day or fraction of a day during which this article or any part thereof shall be violated shall be deemed a separate offense and punishable as such. (1983 Code of Ordinances, Chapter 4, Section 44-38)

**ARTICLE 4.200 DISPLAY AND/OR SALE OF MERCHANDISE OR OTHER
ITEMS IN PUBLIC AREAS**

A special temporary display or sale of merchandise or other items conducted on a public sidewalk or in any area accessible by the public by any person, retail or wholesale business is permissible only in the following circumstances and is further governed by the following circumstances:

- (1) A person or business desiring to display and/or sell merchandise or other items on sidewalks or other public areas in the city must apply for a permit to do so by completing the sidewalk sale/display permit application, available at the city's main office, 623 Main Street, Friona, Texas.
- (2) All sidewalk sale/display permit applications will be considered by the city council, after the completed permit application is returned to the city's main office, at the following regularly scheduled city council meeting, so long as the application has been received prior to the preparation of that meeting's agenda.
- (3) Permits shall be approved so long as they are in compliance with the provisions set forth in this article, and so long as the applicant has not exhausted the number of sidewalk sales/displays it may have as set forth in this article.
- (4) The fee for a permit to conduct a sidewalk sale/display shall be \$25.00; checks shall be made payable to the city.
- (5) Only two sidewalk sale/displays shall be permitted during any twelve-month period and the period of the sale/display shall be limited to two consecutive days.

- (6) Any storage or display of merchandise or other items by a person or business engaged in selling merchandise or other items within the city limits shall meet the following requirements:
- (A) The displayed merchandise shall be items regularly sold by the person or business displaying the merchandise;
 - (B) The display shall not exceed a size of 15 feet by 45 feet, and any display shall not extend beyond either end of the front exterior wall of said business;
 - (C) Notwithstanding subsection (B) above, an area of not less than five feet of unobstructed pedestrian passageway shall be maintained at all times between any display and the nearest curb, tree, pole or other public structure;
 - (D) All displays shall be set up so that the displays are easily detectable by the visually impaired;
 - (E) All final sale transactions between business and customer shall be conducted within the business establishment, not on the sidewalk;
 - (F) All displays and/or merchandise or other items displayed in a sidewalk sale/display shall be removed from the sidewalk during any time when the business conducting said sale/display is closed to customers;
 - (G) The following are prohibited in any display or sale: tobacco products, alcoholic beverages, obscene material, weapons, live animals, pawned items, previously owned items or items that pose a danger to pedestrians, children, and/or customers;
 - (H) The city council or its designee shall have the sole discretion to determine if items displayed are "prohibited" as set forth in (G) above; and
 - (I) Any business conducting sidewalk sales/displays shall not cause any loud or offensive noise, either from the person(s) running the sidewalk sale or from any device, instrument or equipment for the purpose of attracting attention to such display or to the sale of any goods or merchandise.

CITY OF FRIONA
ITINERANT VENDOR/PEDDLERS AND SOLICITORS
PERMIT APPLICATION

APPLICANT INFORMATION

Name of Applicant _____
Date of Birth _____ Driver's License # _____ State _____
Residence Address _____

BUSINESS INFORMATION

Sole Proprietorship Yes _____ No _____
Legal Name of Business Entity _____
Permanent Business Address _____
State of Incorporation or Filing of Partnership/ Articles of Incorporation/Assumed Name _____
Sales Tax Number _____ Business Phone _____
Attach copy of sales tax permit.

LOCATION OF SALES

Name of Property Owner where you intend to sell _____
Address _____
Phone Number _____
Written Permission of Owner of Land Attached _____

EMPLOYEE INFORMATION

[Attach separate listing for additional employees]

Employee Name _____
Date of Birth _____ Location _____ DL # _____ State _____
Permanent Address _____
Employee Name _____
Date of Birth _____ Location _____ DL # _____ State _____
Permanent Address _____
Employee Name _____
Date of Birth _____ Location _____ DL # _____ State _____
Permanent Address _____

As the employer of individuals whose names are listed in this application, I accept the responsibilities imposed by State Law for the acts of my employees. [Initial] _____

Has the applicant or any employee listed above been found guilty of one or more criminal offenses involving crimes against property and/or a felony by any Court in this State or any other State? Yes _____ No _____ If "Yes," identify the individual, offense, State of conviction and penalty imposed: _____

Does the applicant or any employee listed above have any unpaid civil judgments against him/her in any State or U.S. possession arising from a business activity which would have been covered this Section? Yes _____ No _____

Time period(s) and dates for which business will be conducted: _____

Location(s) where business will be conducted: _____

Type of goods to be sold _____

Location(s) where the goods to be sold are located now and the last previous location (where required):

If solicitation is for funds, description of the purpose: _____

Will you accept or receive payment or deposit of money in advance of final delivery? _____

STATE OF TEXAS §

§

COUNTY OF PARMER §

Before me, the undersigned Notary Public, on this day personally appeared _____, who, after being duly sworn, stated under oath that he has read the above statements and that every statement contained herein is within his personal knowledge and is true and correct.

[Signature of Applicant]

[Title]

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of _____, 2007.

Notary Public in and for the State of Texas