

**CITY OF HORSESHOE BAY**

**ORDINANCE NO. ORD 06-07-25C**

**PEDDLERS AND VENDORS ORDINANCE**

**AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS REGULATING THE ACTIVITIES OF PEDDLERS AND ITINERANT VENDORS WITHIN THE CITY, PROVIDING DEFINITIONS, PROHIBITING THE USE OF PUBLIC WAYS UNLESS EXEMPTED, REQUIRING SALES TAX PERMITS AND PEDDLER/VENDOR PERMITS AND APPLICATION FEES, PROVIDING THE PROCEDURE FOR PERMIT ISSUANCE, EXEMPTION AND REVOCATION, SPECIFYING WHEN A BOND IS REQUIRED, PROVIDING FOR AN APPEAL FROM THE DECISION OF THE CITY SECRETARY REGARDING PERMITS, PROVIDING FOR A PENALTY OF NOT MORE THAN \$500.00 FOR VIOLATION, PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING ORDINANCES, AND AN EFFECTIVE DATE**

**WHEREAS**, it is the opinion of the City Council of the City of Horseshoe Bay that it is in the best interest of the City of Horseshoe Bay to enact regulations governing the activities of itinerant vendors and peddlers within the City; and

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS**, that:

The foregoing recitals are adopted and incorporated herein for all purposes.

**I. DEFINITIONS**

The following definitions shall apply to this Ordinance:

*Interstate commerce* means soliciting, selling, taking orders for, or offering to take orders for any goods, wares, merchandise, photographs, magazines, or things which, at the time the order is taken, are in any federal district or territory, any commonwealth, or in any state other than Texas and shipped or introduced into the city in fulfillment of such orders.

*Itinerant vendor* means any individual, whether a resident of this city or not, who offers for sale food, beverages, goods, merchandise, delivery, or services to be performed immediately or in the future, from a certain location which is not within a building or structure for which a certificate of occupancy is required by the city. This term shall not apply to businesses that operate from within a building or structure within the city for which a certificate of occupancy is required but which display or sell food, beverages,

goods, or merchandise, outside the building or structure. The term shall include itinerant merchant.

*Motor vehicle* means any vehicle used for displaying, storing, or transporting of articles for sale by a itinerant vendor which is required to be licensed and registered by the state department of motor vehicles. The term is to include trailers, trucks, and automobiles.

*Peddler* means any individual, whether a resident of this city or not, traveling by foot, wagon, automobile, motor truck of any other type of conveyance, from place to place, from house to house, or from street to street, for the sale of goods, wares and merchandise, personal property of any nature whatsoever for future or immediate delivery, or for services to be performed immediately or in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales. The word “peddler” shall include the terms “canvasser” or “solicitor.” The word “peddler” shall not include individuals traveling to businesses, houses, or places at the invitation of the resident or owner.

*Public way* means all areas legally open to public use, such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the interior and areas surrounding public buildings.

*Special event* means any occasion including, but not limited to, fairs, shows, exhibitions, city wide celebrations, festivals, etc., within a specifically defined area of the city for a period of time established by the council.

*Stand* means any newsstand, table, bench, booth, rack, handcart, pushcart, vehicle or any other fixture or device used for the display or storage of articles offered for sale by a itinerant vendor or peddler. Such stands must be located at least ten (10) feet away from all property lines adjacent to a street. All stands must be removed from the property on which business is conducted each day.

## **II. USE OF PUBLIC WAYS-PROHIBITED**

It shall be unlawful for any peddler or itinerant vendor to engage in business within any public way within the city.

## **III. SAME-EXEMPTIONS**

- (a) Itinerant vendors may locate within a designated public way in connection with a special event approved by the City Council and the appropriate body organizing and implementing the special event.
- (b) Farmers may sell agricultural products that were raised or grown by them within a public way and time designated by the City Council.

- (c) Ice cream vehicles may use the public ways provided they do not remain in one location for longer than ten (10) minutes.
- (d) Peddlers may utilize streets and roads to travel from house to house or place to place in pursuit of their business.

#### **IV. NOT TO GO ON RESIDENTIAL PROPERTY UNINVITED**

It shall be unlawful for any peddler or itinerant vendor of merchandise or services to go on private residential property unless specifically requested or invited by the owner or occupant of such private residence.

#### **V. BUSINESS DISPLAYING “NO SOLICITING” NOTICE**

It shall be unlawful for any peddler or itinerant vendor to go to a business or commercial establishment for the purpose of taking orders or the selling of merchandise or services if the establishment has posted a sign which states “No Soliciting”. This warning must be displayed prominently at the entrance to the business.

#### **VI. SALES TAX PERMIT-REQUIRED**

It shall be unlawful for any peddler or itinerant vendor to engage in business within the city without having obtained and presented a sales tax permit issued by the State of Texas.

#### **VII. SAME-EXEMPTIONS**

The following are exempt from having to present a sales tax permit:

- a. Farmers who sell agricultural products that were raised or grown by them.
- b. Nonprofit organizations
- c. Any other business or activity exempt by the Texas State Comptroller from collecting a state sales tax.

#### **VIII. PEDDLER/ITINERANT VENDOR PERMIT REQUIRED**

It shall be unlawful for any peddler or itinerant vendor to solicit or to engage in business within the city without first obtaining a permit from the City Secretary as provided in this Ordinance.

## **IX. SAME-EXEMPTIONS**

The following are excluded from permitting provisions:

- (1) Newspaper carriers.
- (2) Farmers who sell agricultural products that were raised or grown by them when located within a public way and a time designated by the City Council.
- (3) Locally based, non-profit organizations are exempt from the formal (written) permitting process; however, the same are required to provide written notification to the City Secretary of the approximate dates of the fund-raising campaign, the areas in which they will be selling, and a description of items to be sold.
- (4) Peddlers and itinerant vendors operating within a designated public way in connection with a special event approved by the City Council and appropriate body organizing and implementing the special event.

## **X. WRITTEN APPLICATION FOR PERMIT REQUIRED**

Any peddler or itinerant vendor desiring to engage in business within the city must file a written application for permit with the City Secretary, and which shall provide the following information:

- (a) Applicant's name, telephone number, address, birth date, physical description and either:
  - (1) Driver's license number and state; or
  - (2) Social security number and an official, government-issued picture identification card.
- (b) If the applicant is peddling or making solicitations for any commercial, charitable or political organization, the name, telephone number and address of such organization.
- (c) Full and complete list of goods or services to be sold;
- (d) If different than or in addition to applicant, for each individual involved as a peddler or itinerant vendor: name, telephone number, address, birth date, physical description, and either.
  - (1) Driver's license number and state; or

- (2) Social Security number and official, government issued picture identification card number.
- (e) Description (year, make, type) and license plate number and state of all motor vehicles to be used in soliciting and peddling.
- (f) A statement that the applicant has not been convicted of any felonies of any nature or any other crimes of moral turpitude in this state or any other state; and, if having been so convicted, a full statement as to the place of conviction and crime for which applicant was convicted.
- (g) Itinerant vendors, except for special event, shall provide the following additional information:
  - (1) A letter from the owner of the property on which the itinerant vendor intends to conduct business stating that the itinerant vendor has permission to operate at that location.
  - (2) A site plan of the subject property indicating where the itinerant vendor will be located in relation to the adjacent right-of-way, adjacent buildings, and the location of two (2) nine by eighteen foot (9'x 18') on-site parking spaces with a twenty-foot backup lane. (Itinerant vendors should note that the location of their business will not be allowed if it results in a reduction in the number of parking spaces serving an existing business below that required by city Ordinances).

## **XI. PERMIT APPLICATION FEE**

A nonrefundable application fee for an itinerant merchant permit in the amount of \$100.00 shall be paid upon application for such permit, provided, however, when any person, firm, company, partnership, corporation or association acts through one or more agent or employees, such person, firm, company, partnership, corporation or association shall, in addition to such \$100.00 fee, pay an application fee of \$50.00 for each agent or employee so engaged.

## **XII. PERMIT EXEMPTIONS**

The following are exempt from the permit fee:

- (a) Any individual soliciting or peddling for a philanthropic, charitable, political or religious organization provided such activity is for the sole exclusive benefit of that organization and so long as the person engaging in such activity does not receive compensation in the form of a commission, salary, or other monies paid to him for such activity.

### **XIII. PERMIT ISSUANCE; INVESTIGATION**

A copy of the application for permit will be referred to the Chief of Police who will undertake an investigation of the applicant's record and background such as shall be reasonably necessary to protect the public. An applicant for permit under this Ordinance may be reasonably denied if he or she is currently wanted on warrant for arrest, or if the applicant has been convicted of a felony involving theft, fraud, bribery, perjury, or any proof is developed that false information was presented for purposes of permit issuance.

### **XIV. PROCEDURES FOR PERMIT ISSUANCE**

The City Secretary shall review all information relevant to the issuance of a peddlers/itinerant vendor's license and make the determination of whether said license is granted or denied. Before any license is denied, the City Secretary shall consult the General Manager and the Chief of Police. Said determination shall be made within five (5) working days of the filing of an application or registration information.

If the City Secretary and the Chief of Police find that all of the conditions precedent to the issuance of an itinerant vendor permit has been met and the applicant is qualified to receive a peddler and itinerant vendor permit, the City Secretary shall issue the permit. Permits will be issued for a period of 30 days. Upon a showing by the applicant of necessity, the City Secretary may approve an issuance of a permit for a period not to exceed one year.

Any changes to agents or itinerant vendors must be submitted as an addendum to the original application and subject to the same permit fees and investigation. Failure to register new agents will be grounds for cancellation of the permit.

### **XV. BOND REQUIRED**

- (a) Solicitors requiring cash deposits or payment for future delivery or who require a contract of agreement to finance the sale of goods or services for future delivery, or for services to be performed in the future, shall furnish to the city a bond with the application in the amount listed below. This bond is to be signed by the applicant and surety company authorized to do business in the state of Texas, conditioned:
- (1) For the final delivery of goods or services in accordance with the terms or any order obtained;
  - (2) To indemnify purchasers for defects in material or workmanship that may exist in the goods sold and that are discovered within 30 days after delivery; and;

- (3) For the use and benefit of persons, firms, or corporations that may make a purchase or give an order to the principal of the bond or to the agent or employee of the principal of the bond.
- (b) If the applicant is a person, firm, or corporation engaging in solicitation activities through one or more agents or employees, only one bond is required for the activities of all the agents or employee solicitors.
  - (1) The amount of the bond is determined by the number of solicitors acting as agents or employees of the same person, firm, or corporation with a \$1000.00 bond to be posted for each such person.

#### **XVI. PERMIT REVOCATION.**

After the registration provided for in this article has been issued, the General Manager of the city or his/her duly authorized representative may revoke such registration if it is found that:

- (a) The registration was obtained by false representation;
- (b) The holder of the registration has violated any Ordinance of the city, or any law of the state in connection with any soliciting by such holder or in connection with the collecting or attempted collection of any account due to such registration holder or his employer or in connection with the repossession or attempted repossession of goods sold;
- (c) The holder of the registration is convicted of a felony, misdemeanor, or Ordinance violation involving a sexual offense, assault, possession or sale of a controlled substance, or any violent act against person or property. Also any judgment based upon or conviction for fraud, deceit, or misrepresentation or involving moral turpitude; or
- (d) If the holder of registration has endangered the health or safety of a citizen of the city.

#### **XVII. APPEALS FROM DECISIONS OF THE CITY SECRETARY**

If the applicant for a permit under this section or the holder of such permit is dissatisfied with any holding or finding of the City Secretary, he or she shall have the right to appeal to the City Council by filing a written notice of such appeal with the City Secretary within ten (10) days from the making and filing of such decision of the City Secretary. Upon filing of such notice of appeal, the application for the permit and all papers possessed by the City Secretary in connection with such application and such permit shall be delivered to the City Council. And such matter as may be in controversy shall be heard by the Council at its next available meeting after the filing of the notice of appeal.

