

ORDINANCE NO. 02-08-02

AN ORDINANCE OF THE CITY OF COOPER, TEXAS PROVIDING DEFINITIONS FOR GENERAL WORDS AND PHRASES, PROHIBITING OUTDOOR SELLING WITHOUT A PERMIT, PROVIDING A PENALTY, REQUIRING AN ITINERANT VENDOR PERMIT, PROVIDING A PROCEDURE FOR APPLICATION FOR AN ITINERANT VENDOR PERMIT, PROVIDING FOR AN APPLICATION FEE, SETTING FORTH A METHOD FOR REVIEW AND INVESTIGATION PRIOR TO THE ISSUANCE OR DENIAL OF THE ITINERANT VENDOR PERMIT, PROVIDING FOR A MEANS OF APPEAL WHERE THE PERMIT HAS BEEN DENIED, REQUIRING THE ITINERANT VENDOR PERMIT TO SPECIFY THE LOCATION OF SALES, REQUIRING COMPLIANCE WITH ALL COOPER ORDINANCES, SETTING FORTH THE FEE FOR FILING AN AMENDED SITE PLAN, REQUIRING PERMITS TO BE DISPLAYED AT ALL TIMES WHILE ENGAGED IN OUTDOOR SELLING, SETTING FORTH THE CRITERIA FOR REVOCATION OF THE ITINERANT VENDOR PERMIT, MANDATING SURRENDER OF THE PERMIT UPON EXPIRATION OR REVOCATION AND ALLOWING RENEWAL OF PERMIT; AND SETTING AN EFFECTIVE DATE.

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

SECTION 1. ITINERANT VENDORS AND SOLICITORS

- § 1.101. General Words and Phrases Defined.
- § 1.102. Permit Required.
- § 1.103. Application Procedure.
- § 1.104. Application Fee and Bond.
- § 1.105. Review and Investigation; Issuance or Denial.
- § 1.106. Exemptions.
- § 1.107. Appeal of Denial by City Secretary.
- § 1.108. Restrictions.
- § 1.109. Permit for Itinerant Vendors; Fixed Outdoor Location of Business to be Specified.
- § 1.110. General Regulations.
- § 1.111. Compliance with Site Plan Required by Itinerant Vendor; Amended Site Plans; Fee.
- § 1.112. Display.
- § 1.113. Revocation.
- § 1.114. Surrender Upon Expiration or Revocation.
- § 1.115. Renewal of Permit.
- § 1.116. Penalty.

§1.101. **General Words and Phrases Defined.**

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

- A. **Itinerant vendor** means and includes and shall be construed to mean and include all persons, firms and corporations, as well as their agents and employees, who engage in the temporary or transient business, in the city, of selling, or offering for sale, any goods and merchandise, or exhibiting the same for sale or exhibiting the same for the purpose of taking orders for the sale thereof, and who, for the purpose of carrying on such business or conducting such exhibits, either hire, rent, lease or occupy any room or space in any building, structure or other enclosure in the city, in, through, or from which any goods or merchandise may be sold, offered for sale, exhibited for sale or exhibited for the purpose of taking orders for the sale thereof. It shall also include goods, wares, merchandise, magazines, newspapers, automobiles, plates, films or agricultural products, meats, poultry or other articles of food grown or produced by such persons.
- B. **Retail sale or sales** means any sale or sales transactions of goods, products, wares, merchandise or other personal property, except as made by a person engaged in selling such personal property at wholesale to dealers in such property.
- C. **Interstate commerce** means the soliciting or taking orders for, or offering to sell or take orders for, any goods, wares, merchandise or other personal property or services which, at the time the order is taken, are in a state other than Texas, or will be produced in a state other than Texas and shipped or introduced into this City in the fulfillment of such order.
- D. **Solicitor** means any person who goes from house to house or place to place soliciting, selling or taking orders for, or offering to sell or take orders for any goods, merchandise or services. The term "solicitor" shall not include a person on property by invitation of the owner of the property.
- E. **Home Solicitation Transaction** means a consumer transaction for the purchase of goods, services or realty, payable in installments or in case, in which the merchant engages in a personal solicitation of the sale to the consumer at the consumer's residence, in person or by telephone, and the consumer's agreement or offer to purchase is given at the residence to the merchant, either in person or by telephone.

A home solicitation transaction shall not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiation between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or a sale of realty in which

transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.

- F. **Soliciting Services** means selling or attempting to sell goods or services, or taking or attempting to take orders for service or goods to be performed or furnished in the future.

§ 1.102. Permit Required.

- A. It shall be unlawful for any person to engage in business as a solicitor or itinerant vendor within the corporate limits of the City of Cooper without first obtaining an Itinerant Vendor Permit from the City of Cooper.
- B. It shall be unlawful for any person to state, maintain, imply or represent that he has an Itinerant Vendor Permit when he does not, in fact, possess a valid Itinerant Vendor Permit from the City of Cooper.
- C. Persons required by this Code to possess an Itinerant Vendor Permit from the City of Cooper, upon request from any police officer, any code enforcement officer, or person, shall promptly produce such permit.

§ 1.103. Application Procedure.

Applicants for a permit pursuant to this section shall file with the City Secretary a verified application on a form to be furnished by the City, which shall contain the following information:

- A. The full name, description, birth date, and social security number of the applicant, include driver's license number or other form of government identification which includes a photograph. The City Secretary may request to see the originals of such documents;
- B. The applicant's address and telephone number, both legal and local;
- C. A brief description of the business to be conducted, items to be sold, and the legal description and address of any fixed outdoor location desired for business;
- D. For Interstate Commerce exemption applicants, the state(s) where the goods originate;
- E. The time period for which the applicant desires to do business;
- F. The license number and description of any vehicle to be used (if applicable);

- G. A verification that the applicant or the applicant's employer possesses a valid state sales tax certificate, or other proof that sales tax has been or is being paid on the items sold or to be sold; or proof that the applicant or the applicant's employer is exempt from the payment of sales tax;
- H. The content of any signs to be used;
- I. A site plan depicting the fixed outdoor location desired, if any, and the location of any structure, vehicle, sign or display to be used while conducting the business at such fixed location;
- J. A written, notarized statement by the legal owner of the land upon which any fixed outdoor business location shall be located authorizing the use of the land for the purposes desired by the applicant;
- K. If employed by another, the name and address of the applicant's employer, together with a brief description of credentials showing the exact relationship;
- L. A statement of whether the applicant has been convicted within the previous five years of a felony or misdemeanor involving dishonesty or fraud, burglary, theft, robbery, homicide, murder or any sex offense, and the punishment or penalty assessed.

§ 1.104. Application Fee.

Any person making application for a permit required by the provisions of this section shall pay to the City of Cooper a non-refundable application fee. The amount of such fee shall be Ten Dollars (\$10.00) per month for a permit.

§1.105. Review and Investigation; Issuance or Denial.

- A. Upon receipt of an application for a permit pursuant to this section, the City Secretary shall make or cause to be made any inquiry or investigation that may be necessary to determine whether the applicant is in compliance with the provisions of all laws and ordinances applicable to outdoor selling as well as other applicable provisions of this Code.
- B. Upon completion of any investigation as provided for by this section, the City Secretary shall review the application to ensure:
 - 1. That the applicant or applicant's employer possesses a valid state sales tax certificate, or that he or she has otherwise demonstrated that sales tax has been or is being paid on the items sold, or that the applicant or the applicant's employer is exempt from payment of such tax;

2. That the applicant or the applicant's employer is aware of the responsibility to collect and pay sales tax, unless tax exempt;
 3. That the site chosen for any fixed outdoor business location is appropriately zoned for such a land use, is otherwise in full compliance with the City of Cooper's Zoning Code, and that the said location does not extend onto any portion of the public right-of-way;
 4. That the applicant's character or business responsibility is not "unsatisfactory" (as defined in subsection D below);
 5. That the applicant's proposed signs and locations comply with all of the provisions of the City of Cooper's Zoning Code; and
 6. That the application otherwise complies with all of the provisions of the City of Cooper Code of Ordinances.
- C. Within three (3) business days after receipt of the application, the City Secretary shall either approve or disapprove of the application. Grounds for disapproval shall be the following:
1. A finding that the application is incomplete or insufficient;
 2. Nonpayment of the application fee;
 3. Failure of the applicant to verify that he or she, or the applicant's employer, possesses a valid state sales tax certificate; or that sales tax has been or is being paid on the items sold; or that he or she, or the applicant's employer, is otherwise exempt from payment of sales tax;
 4. A finding that the site chosen for a fixed outdoor business location is not properly zoned for the proposed land use or that said site extends onto a portion of the public right-of-way;
 5. A finding that the applicant's proposed signs and locations therefor are not in compliance with City of Cooper's Zoning Code;
 6. A finding that a false statement or material representation is made on the application, which shall be grounds for immediate denial or revocation of a permit;
 7. A finding that the application is not in conformance with any other applicable provisions of the City of Cooper Code of Ordinances; or

8. A finding that the applicant's character or business responsibility for an Itinerant Vendor Permit is "unsatisfactory" (as defined in Subsection D below); or if the application is approved, the City Secretary shall issue the permit. If the application is disapproved, the City Secretary shall state in writing and with specificity the reason(s) for disapproval. The City Secretary shall immediately notify the applicant of such disapproval. Mailing a copy of the letter of disapproval to the address shown on the application shall be deemed to be adequate notification of the applicant.
- D. For the purpose of this section, "unsatisfactory character or business responsibility" of an applicant shall be defined as follows:
1. A finding that the applicant has been convicted of two or more violations of the provisions of this section within the preceding 12 months;
 2. A finding that a previous permit held by the applicant pursuant to the provisions of this section was revoked within the previous 12 months; or
 3. A conviction, within the previous five years, of either a felony or misdemeanor offense involving fraud or dishonesty, including but not limited to larceny, theft, burglary, robbery, embezzlement, homicide, murder or any sex offense, or crimes involving fraud.

§ 1.106. Exemptions.

The following solicitors are exempt from the permit fee:

- A. Individuals soliciting or peddling goods or services which qualify as interstate commerce;
- B. Those persons exempted from an ordinance of this type by law or court order.

The following are exempt from the permit fee, application and restrictions:

- A. Any individual soliciting for a locally-sponsored philanthropic, charitable, political, religious, and non-profit corporation. These individuals shall notify the City Secretary, in writing, of the approximate dates they are soliciting in the area, persons who will solicit, a description of items to be sold, and the organization they represent.
- B. Newspaper carriers.
- C. Any person permitted for food service and engaged in the food service business.

- D. Persons holding a State of Texas issued license, such as insurance agents or real estate agents.
- E. Local Delta County farmers with locally grown products.
- F. Sales or exhibits at fairs, conventions or events sponsored by one or more civic organizations, schools, churches, chamber of commerce or the city, or at organized events sponsored by local businesses.

It is the policy of the City of Cooper to encourage vendor participation in special events, i.e., Chiggerfest, Saturday Sidewalk Sale, etc., without obtaining a permit or paying a fee.

All other sections of this Section shall apply.

§ 1.107. Appeal of Denial by City Secretary.

In the event an applicant is denied a permit or a permit is revoked, the applicant may appeal the decision by filing a written statement to the Mayor no later than ten (10) days after denial or revocation. The Mayor may affirm, reverse, or modify the decision of the City Secretary, and shall do so within three (3) business days of the receipt of the appeal.

§ 1.108. Restrictions.

- A. Itinerant vendors shall not do business on the following streets:
 - 1. City Square
- B. There shall be no outdoor sales of merchandise on Dallas Avenue, except for outside merchandise displays by permanent vendors whose businesses are located on Dallas Avenue; however, such displays must be set back from all street-front property lines and from all rights-of-way by a minimum of thirty (30) feet.
- C. It is a violation for any solicitor to conduct or attempt to conduct business at a location where a sign clearly indicates that solicitation is unwelcome.

§ 1.109. Permit for Itinerant Vendors; Fixed Outdoor Location of Business to be Specified.

The City Secretary shall specify on the face of the permit the legal description and address of the fixed outdoor location desired for business by any itinerant vendor. The City Secretary shall specify on the face of the permit the expiration date. The itinerant vendor shall engage in business only at the fixed outdoor location specified on the face of the permit.

§ 1.110. General Regulations.

All vendors permitted under the provisions of this Section shall comply with the following rules and regulations which shall be conditions of the permits:

- A. The itinerant vendor shall deposit a sum of one hundred dollars (\$100.00) with the City, conditioned that no paper, litter or other debris will be permitted to remain upon the site of the temporary sale. The deposit shall be returned to the permittee within ten (10) days after said permit expires, upon certification by the City Secretary that all conditions of this Section have been met. Should actual costs for necessary cleaning exceed this amount, the permittee shall pay such additional sum to the City within ten (10) days from the date of notification. If that amount is not paid, no future permits shall be issued to the same permittee for a period of two (2) years. Nothing herein shall preclude the City from enforcing any legal or equitable remedy against the permittee in addition to the deposit. The applicant shall have the right to present evidence to the City Secretary of why the deposit should be lowered or waived and the building official shall have the authority to grant such reduction or waiver.
- B. All vendor premises and surrounding area shall be kept clean and free of trash and litter. A trash receptacle shall be available upon or within seventy-five (75) feet of every vending unit. Every vendor issued a permit under the provisions of this section shall, within five (5) days of such issuance, verify in writing that he has obtained training or information on litter and waste handling from Keep America Beautiful Inc., or some other approved organization operating an educational program to reduce litter in the city.
- C. The itinerant vendor shall provide one (1) unisex portable sanitary facility. In lieu of the portable sanitary facility, the vendor may provide a permission letter from the owner or manager of a property located within a two hundred foot radius of the sale property granting permission to use their sanitary facilities; however, the property within a 200 foot radius of the sale property shall not be located across a thoroughfare of four lanes or larger.
- D. No itinerant vendor shall conduct his vending operations except between the hours of 9:00 a.m. and 6:00 p.m. on weekdays, and between 7:00 a.m. and 8:00 p.m. on weekends, and no vending unit shall remain on the premises except during such period of operations.

No person shall go upon any residential premises and ring the door bell, or rap or knock upon the door, or create any sound in a manner calculated to attract the attention of the occupant, or by telephone contact the occupant, for the purpose of engaging or attempting to engage in a home solicitation transaction, prior to 9:00 a.m. or after 9:00 p.m. of any day, Monday through Saturday, or at any time on Sunday,

New Year's Day, July Fourth Holiday, Labor Day, Thanksgiving Day, or Christmas Day.

- E. All permits shall be prominently displayed and plainly visible within or upon the vending unit. Identification cards shall be displayed to any person so requesting.

§ 1.111. Compliance with Site Plan Required by Itinerant Vendor; Amended Site Plans; Fee.

- A. All itinerant vendors shall comply with the site plan submitted pursuant to the provisions of this section in regard to the fixed outdoor location specified therein, and in regard to the location of any structure, vehicle, sign, or display to be used while conducting business at such fixed outdoor location.
- B. An itinerant vendor who desires a different fixed outdoor location for conducting business, or who desires to otherwise amend the submitted site plan, shall file an amended site plan prior to deviating from the site plan then on file with the City Secretary.
- C. Upon the filing of an amended site plan, the City Secretary shall review it to ensure compliance with the provisions of this section and all other applicable provisions of this code. If the amended site plan is approved, the City Secretary shall amend the permit to indicate any new fixed outdoor location for the conduct of the business.
- D. Failure of an itinerant vendor to comply with the original or amended site plan on file with the City Secretary shall constitute a violation of this section subject to the penalty specified in this section.

§ 1.112. Display.

Itinerant vendors are hereby required to exhibit and display their permits or authorized evidence thereof at all times whenever they are engaged in outdoor selling.

§ 1.113. Revocation.

Permits issued under the provisions of this section may be revoked. Grounds for revocation shall include but not be limited to the following:

- A. Fraud, misrepresentation, or any false statement contained in the application for the permit;
- B. Conviction of the permittee of a felony;

- C. Conviction of a misdemeanor involving fraud or dishonesty, including but not limited to fraud, larceny, burglary, robbery, or embezzlement;
- D. A conviction of the permittee for two or more violations of the provisions of this section within the preceding 12 months;
- E. A finding that the permittee has conducted the business for which the permit was issued in an unlawful manner or in such manner as to constitute a breach of the peace.

§ 1.114. Surrender Upon Expiration or Revocation.

When a permit issued pursuant to the provisions of this section expires, or is revoked, its holder shall surrender it to the City Secretary and the permit shall become the property of the City.

§ 1.115. Renewal of Permit

The holder of any expiring permit, issued under this section, who desires a new permit, shall file a written application for renewal with the City Secretary. The application for renewal shall contain the information required in § 1.103 of this section. The City Secretary, in determining whether to approve or disapprove an application for renewal of a permit, shall be guided by the provisions in § 1.107 of this section.

§ 1.116. Penalty.

Any person violating any provision of this Code shall be, upon conviction, adjudged guilty of a misdemeanor and fined up to \$200.00 for each offense. Every sale of an itinerant vendor without a permit or otherwise in violation of this section shall constitute a separate offense.

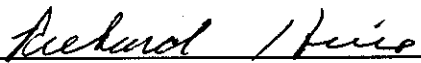
[End of § 1.100]

SECTION 2. That if any section, provision, subsection, paragraph, sentence, clause, phrase or word in this Ordinance or application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such holdings shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Cooper, Texas hereby declares it would have enacted such remaining portions, despite such invalidity.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby expressly repealed.

SECTION 4. This Ordinance shall be in full force and effect from and after its publication in the official newspaper of the City of Cooper.

PASSED AND APPROVED, this the 12th day of August, 2002.




Richard Huie, Mayor

ATTEST:



Margaret Eudy, City Secretary

APPROVED AS TO FORM:



Jay Garrett, City Attorney