

## ARTICLE 8.04 PEDDLERS, SOLICITORS AND VENDORS

### Generally

#### Article VI. Solicitors and Peddlers

##### Sec. 8.-140. - Definitions

For the purpose of this ordinance the following terms shall have the following meanings:

Distributor. Any person who attempts to make personal contact with a resident at his residence without prior specific invitation from or appointment with the resident, for the primary purpose of attempting to sell a good or service.

Peddler. Any person who engages in commercial activities within the city limits by carrying goods or merchandise and selling or offering for sale for immediate delivery such goods or merchandise from door-to-door.

Solicitor. Any person who solicits or attempts to solicit, from door-to-door, funds or orders for services, commercial goods, wares, merchandise, subscriptions or publications to be delivered at a future date or time.

##### Sec. 8-141. – Purpose of Article

This entire article is and shall be deemed an exercise of the police power of the state and of the city for the public safety, comfort, convenience and protection of the city and citizens of said city, and all of the provisions hereof shall be construed for the accomplishment of that purpose.

##### Sec. 8-142. - Violations and penalties

(a) Any person who violates or fails to comply with the provisions of any section of this article is guilty of a class “C” misdemeanor and upon conviction shall be punishable by a fine as provided in the general penalty, [Sec. 1-15. – General Penalty for Violations](#) of this code.

(b) Any peddler or solicitor who enters upon property owned, leased, or controlled by another and willfully refuses to leave the property, after receiving notification to leave from the owner, leaser, or person controlling the property, shall be guilty of a misdemeanor criminal trespass and may be incarcerated or fined upon conviction as provided in the Texas Penal Code.

##### Sec. 8-143. - Time and location restrictions

(a) No peddler or solicitor may conduct activities defined in this article, without prior invitation or appointment with the occupant of the premises, before 9:00 a.m. and after 5:00 p.m. on any day.

(b) No peddler or solicitor may peddle or solicit in the public streets or from medians in the streets, within the city limits, or in any way block, obstruct, or unduly hinder passage on public streets within the city limits.

### **Sec. 8-144. – Trespass Enforcement**

Any distributor, peddler or solicitor who remains on private property where a notice is placed upon any door or entrance way leading into said property which notice contains the words “NO SOLICITING” or “NO SOLICITORS” and which is clearly visible to the distributor, peddler or solicitor.

## **Part II. Permit**

### **Sec. 8-145. - Required**

Except as provided under permit exemptions, it shall be unlawful for any peddler or solicitor to engage in business as defined in this article within the incorporated city limits without first obtaining a permit from the city.

### **Sec. 8-146. - Exemptions**

(a) The following are excluded from permitting provisions:

- (1) Persons distributing nonprofit pamphlets, handbills, or other printed material for the purpose of disseminating news or other information of public interest;
- (2) Persons conducting fundraising activities for local nonprofit organizations, qualified civic organizations, or educational institutions;
- (3) Persons conducting proselytizing activities or distributing religious material or literature;
- (4) Persons engaged in a business or activity regulated under the exclusive authority of the state or federal government;
- (5) Persons engaged in business activity and going to a house or business at the express invitation of the occupant or owner of such house or business.
- (6) Canvassers who attempt only to distribute not for profit handbills or to solicit political support or to determine opinions or sentiments.

(b) Persons who are exempt from the permitting requirements are encouraged to notify the city of the approximate dates of the door-to-door activities, and the areas in which they will be working.

### **Sec. 8-147. - Application**

(a) Any peddler or solicitor desiring to engage in activities as a peddler or solicitor within the city must file a written application for permit with the city manager or his/her designee, each applicant shall provide the following information:

- (1) Applicant’s name, telephone number, home address, birth date, physical description, finger or thumbprint, criminal history check from the Texas Department of Public Safety, and either: Driver’s license number and state, or government issued picture identification card;
- (2) A complete department of public safety (DPS) criminal history, issued within ninety (90) days of the date of application, for the applicant and each individual involved in the peddling, solicitation, or distribution campaign.

- (3) For each individual involved in the peddling, solicitation, or distribution campaign: name, telephone number, address, birth date, physical description, and either, 1) Driver's license number and state, or 2) government issued picture identification card;
  - (4) If the applicant is peddling or making solicitations for any commercial, charitable or political organization, the name, telephone number and address of such organization;
  - (5) Full and complete list of goods to be sold and/or services to be delivered;
  - (6) Description (year, make, model, color and type) and license plate number and state where all vehicles to be used in soliciting and peddling are registered;
  - (7) A copy of the applicant's state limited sales and use tax permit, if applicable.
- (b) Applicant must provide original identifying documents to the city manager of his/her designee upon request.

**Sec. 8-148. - Fees**

- (a) All peddlers and solicitors not exempted by this article shall pay a permit fee to the city as provided in the fee schedule in [Sec. 1-15. – General Penalty for Violations](#) of this code for each person permitted.
- (b) All distributors not exempted by this article shall pay a permit fee to the city as provided in the fee schedule in [Sec. 1-15. – General Penalty for Violations](#) of this code for any individual or any group of individuals.

**Sec. 8-149. - Exemptions from fees**

The following are exempt from the permit fee:

- (1) Any individual soliciting or peddling for a philanthropic, charitable, political or religious organization.

**Sec. 8-150. - Denial**

- (a) A copy of the application for permit will be referred to the city police services department who will undertake an investigation of the applicant's record and background, which is reasonably necessary to protect the public. An application for permit under this article may be denied where:
- (1) Required application information is incomplete or incorrect.
  - (2) Applicant is currently wanted on warrant for arrest.
  - (3) Applicant has been convicted of any offense reportable by the city to the Texas Department of Public Safety or the Federal Bureau of Investigation under "Index Crimes" part I or other law enforcement reporting system (e.g. murder, nonnegligent manslaughter, sexual assault, aggravated assault, robbery, burglary, theft, and motor vehicle theft).
- (b) If the city manager denies a permit, applicant may appeal this decision in writing to the city council, which may affirm, modify or reverse the decision of the city manager.

**Sec. 8-151. - Issuance; duration; additions to permit**

(a) If the city manager finds that the application is completed and in conformance with the provisions of this article, a permit shall be issued within ten (10) working days. Each permit will be valid for thirty (30) days from date of issue.

(b) Only those peddlers or solicitors whose names are listed on the approved application may conduct business under the issued permit. If any new peddlers or solicitors join the campaign after the original permit is issued, they must supply updated personal information required in the original application to the city manager or his/her designee.

**Sec. 8-152. - Display**

Each peddler, solicitor, and distributor will prominently display his/her permit or City Issued ID Card at all times while engaging in business in the city.

**Sec. 8-153. - Permit nontransferable**

Permits issued under the provisions of this article are not transferable in any situation and will be clearly marked "not transferable."

**Sec. 8-154. - Suspension**

(a) The city manager or his/her designee may, upon documented complaint or violation of law, suspend and confiscate a permit issued under this article.

(b) Peddlers and solicitors whose permits are suspended have three business days during which to request an administrative review of the suspension. If request for administrative review is not made within three business days, the permit is revoked.

**Sec. 8-155. - Revocation**

(a) Upon request, the city manager shall provide the revoked peddler or solicitor with written notice containing particulars of any and all complaints against him/her, and the time, date and place for an administrative review of the suspension.

(b) The city manager will conduct an administrative review to determine whether the permit shall be restored or revoked.

(c) After notice and review, the city manager may revoke any permit issued under this article for the following reasons:

- (1) Fraudulent statements, omissions on permit application or in conduct of permitted business;
- (2) Violation of law;
- (3) Endangerment of public welfare, health or safety.

(d) If within 3 days after revocation the applicant must appeal this decision in writing to the city council, which may affirm, modify, or reverse the decision of the city manager.

(e) Revocation of a permit shall bar the peddler, solicitor, or distributor from obtaining a permit under this article for a period of one year.

## **Sec. 8-156. - Duration**

Each itinerant vendor's or peddler's permit issued under the authority of this article shall be valid for the period of anticipated use of the applicant, but not to exceed ten (10) days for itinerant vendors, one hundred eighty (180) days for itinerant vendors operating out of a motor vehicle or trailer, as defined by the Texas Transportation Code, within the designated vendor zone within the historic district, and ninety (90) days for peddlers from the date it is issued, or until revoked under the provisions of this article.

## **Itinerant Vendors and Mobile Street Vendors**

### **Part I. In General**

#### **Sec. 8-157.100 Definitions**

For the purpose of this ordinance the following terms shall have the following meanings:

*Business*. The purchase and sale of goods in an attempt to make a profit.

*Commodity*. Goods, wares, or merchandise including but not limited to: fruits, vegetables, farm products or provisions, dairy products, pets, animals, fish, game, poultry, meat, plants, flowers, appliances, wearing apparel, jewelry, ornaments, art work, cosmetics and beauty aids, health products, medicines, household or garden items or furnishings, food of any kind, whether or not for immediate consumption, confections or drinks. Nothing in this article shall allow the exhibiting, display or sale of any merchandise that is indecent, profane, obscene, or vulgar.

*Historic district*. The area inside of the cities incorporated boundaries of the city and as so designated by ordinance adopted by city council.

*Interstate commerce*. Soliciting, selling, or taking orders, or offering to take orders, for any commodity or services which, at the time the order is taken, are in or will be produced in any federal district or territory, any commonwealth, or any state other than Texas, and shipped or introduced into this city in the fulfillment of such orders.

*Itinerant vendor*. Any person who exhibits, displays, sells or offers for sale any commodity from a stand located on public or private property or on the streets of the city. This definition does not include:

- (1) A door-to-door "peddler" or "solicitor" as defined in this code;
- (2) Activities authorized by a "special event permit" issued pursuant to this code;
- (3) "Temporary use permit" pursuant to the city's unified development code; and
- (4) Persons selling agricultural products, which are raised or produced by them, within the city authorized public sales of farm goods.

*Mobile street vendors*. Persons who offer food or drink or other commodities for sale from a motor vehicle or any other conveyance such as a push cart in a public place.

*Motor vehicle*. Every motor vehicle or any other conveyance such as a push cart used to vend food or

drink on city streets.

Operator. Any person, firm or corporation who owns, leases, contracts or in any other manner operates or permits a person to operate upon the city streets any motor vehicles for the purpose of vending as herein defined.

Stand. The ground, or any place, showcase, table, bench, rack, handcart, pushcart, stall, booth, vehicle or any other fixture or device or thing that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any commodity.

Street. All areas legally open to public use as public streets, and sidewalks, roadways, highways, parkways, alleys and any other public way.

Vend or vending. Offering food or drink for sale from a motor vehicle on the city streets.

#### **Sec. 8-157.101 Applicability**

The special provisions set forth in this ordinance shall apply to mobile street vendors and operators as herein defined and shall supersede any conflicting provisions found elsewhere in the city code.

#### **Sec. 8-157.102 Penalty; impoundment of vehicles**

(a) Any person who violates or fails to comply with the provisions of any section of this article is guilty of a class C misdemeanor and upon conviction shall be punishable by a fine as provided in the general penalty [Sec. 1-15. – General Penalty for Violations](#) of this code.

(b) A peace officer may impound a vehicle used for the sale of a commodity which is placed, parked, or maintained on a street in violation of this article.

#### **Sec. 8-157.103 Itinerant vendor time restrictions**

No itinerant vendor may conduct business activities defined in this article, without prior invitation or appointment with the occupant of the premises, before 9:00 a.m. and after 8:00 p.m. on any day.

#### **Sec. 8-157.104 Itinerant vendor location and operation**

The following rules and regulations shall be complied with by each itinerant vendor. It shall be unlawful for any itinerant vendor to sell or attempt to sell any commodity:

- (1) By means of any outcry, sound, speaker or amplifier, or any instrument, or device, which can be heard for a distance greater than three hundred feet;
- (2) In any manner that distracts drivers, such as by displaying fluttering, undulating, rotating, spinning or waving devices, whether or not such devices are for sale;
- (3) Within 1,000 feet of a hospital, college, elementary school, middle school or high school;
- (4) Inside the boundaries of the historic district without warrant approval by the historic review board commission;
- (5) In such a way that pedestrian or motor vehicle traffic is obstructed;
- (6) In such way that obstructs traffic signals or regulatory signs;
- (7) Having signage that is not in compliance with the provisions of the unified development code; or

(8) In such a place or in a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to city vehicles, including emergency and sanitation vehicles.

**Sec. 8-157.105 Special requirements for mobile street vendors**

Mobile street vendors shall be required to comply and it shall be an offense not to comply with any of the following special requirements:

- (1) A person shall vend only when the motor vehicle is lawfully stopped.
- (2) A person shall vend only from the side of the motor vehicle away from moving traffic and as near as possible to the curb or side of the street.
- (3) A person shall not vend to a person standing in the roadway.
- (4) A person shall not stop on the left side of a one-way street to vend.
- (5) A person shall not stop in a congested area where vending might impede or inconvenience the public.
- (6) A person shall not vend in a street adjacent to a public school.
- (7) A person shall not stop a motor vehicle for purposes of vending within one hundred (100) feet of a street intersection.
- (8) No mobile street vendor shall be in operation, doing business, or going from place to place before 7:00 a.m. or after 8:00 p.m. A violation of this subsection shall be a misdemeanor offense.
- (9) A mobile food vendor shall not use any outcry, sound, speaker or amplifier, or any instrument, or device which can be heard for a distance greater than three hundred feet.

**Sec. 8-157.106 Police officer's judgment deemed conclusive**

For purposes of this ordinance, the judgment of a police officer exercised in good faith shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced or a stop is for a temporary or stationary period of time.

**Sec. 8-157.107 Vendors in the historic district**

Any itinerant vendor or vendor operating out of a motor vehicle or trailer, as defined in the Texas Transportation Code, that wishes to locate within the historic district, as described in [section 8-156](#) of this article, shall submit an application for modification to the Elgin Historic Review Board. This section does not apply to special events and small market events. Motor vehicles that sell food items shall be designed and intended for vending. Ordinary vehicles, vans, and pick-up trucks shall not be permitted for food vending operations. The International Property Maintenance Code, International Residential Code, federal, state and county codes, and all other applicable codes and ordinances adopted by the city shall apply to the designated vendor zone regarding structures and properties.

## Part II. Permit

### Sec. 8-157.130 Required

It shall be unlawful for any itinerant vendor or mobile street vendor to engage in business as defined in this article within the incorporated city limits without first obtaining a permit from the city.

### Sec. 8-157.131 Application

Any person desiring to engage in activities as an itinerant vendor or mobile street vendor within the city must file a written application for permit with the city manager or his/her designee at least twenty-one (21) days prior to the initial contemplated sale or exhibit. Each applicant shall provide the following information:

- (1) Full name and address of the itinerant vendor, including current telephone number;
- (2) Proof of identity, including date of birth, a copy of a current driver's license or identification card and a recent photographic likeness of the applicant's face;
- (3) The location of the applicant's principal office and place of business;
- (4) If the applicant is employed by another, the names, dates of birth, and addresses of the person, firm, association, organization, company or corporation;
- (5) A complete Department of Public Safety (DPS) criminal history, issued within ninety (90) days of the date of application, for the applicant and each individual involved and/or the owners of the entity making the application, as well as for all workers, helpers, employees, assistants, agents or other persons who will be on the site;
- (6) If a motor vehicle is to be used, a description of the vehicle together with the vehicle identification number and license plate number;
- (7) If the vending is to occur on private property, written proof of the property owner's permission must accompany the application, and must include a statement from the owner as to the exact dates and times that the applicant is allowed to conduct itinerant vendor activities on the owner's property;
- (8) A statement detailing the type and character of the commodity to be sold, offered for sale or exhibited. Nothing in this chapter shall allow the exhibiting, display or sale of any merchandise that is indecent, profane, obscene, or vulgar;
- (9) A copy of the applicant's state limited sales and use tax permit; and
- (10) If the commodity being vended is food or drink, a copy of the Bastrop County Cities and Health District permit.

### Sec. 8-157.132 Exemptions

The provisions of this ordinance concerning permit requirements shall not apply to persons who come within any of the following classifications:

- (1) Persons engaged in a business or activity which the state or federal government has exclusive

authority to regulate.

- (2) Persons living in the city that holds a garage sale, in accordance with [Sec. 46.1. – Zoning \(Definitions\)](#)
- (3) Persons engaged in business activity at the express invitation of the occupant or owner of such house or business.
- (4) Individuals, who are engaged in, belonging to, or member of, an entity of the Elgin Independent School District; a qualified civic organization; 501c3 nonprofit organization; or religious organization, as determined by the Chief of Police, for the express purpose of fundraising, when no other permits are required. Determination of Chief of Police may be appealed to the city council if written notice is filed with the city secretary within ten days of said determination.
- (5) Governmental entities.
- (6) Lemonade stands and similar activities conducted and operated entirely by children under the age of sixteen (16) years and upon the private residential premises of such children.

**Sec. 8-157.133 Fees and duration**

- (a) The permit application shall be accompanied by fees for each vehicle or stand used in vending in accordance with the fee schedule in [Sec. 1-15. – General Penalty for Violations](#) of this code.
- (b) No fee shall be charged to any bona fide certified charitable, religious, educational, or philanthropic organization, or persons engaged in interstate commerce.

**Sec. 8-157.134 Historic district permit duration**

180 days for Itinerant vendors and vendors operating out of a trailer, as defined by the Texas Transportation Code, within the designated vendor zone within the historic district, or until revoked under the provisions of this article.

**Sec. 8-157.13 Issuance; permit nontransferable; display**

Upon receipt of a completed application and fees, the city manager or his/her designee shall review the application and consider the issuance of a permit authorizing the sale, exhibit for sale, offer for sale, or exhibit for the purpose of taking orders for the sale thereof, in the city for a period not to exceed one hundred and eighty (180) days. The permit is not transferable or assignable. The itinerant vendor permit, or mobile street vendor permit must be conspicuously displayed at all times during the operation of the vending business. A person commits an offense under this article if the person fails to display the itinerant vendor permit or mobile street vendor permit to a peace officer or code enforcement officer during the time the person is operating at the permitted location.

**Sec. 8-157.136 Denial**

The city manager or his/her designee may not issue a permit under this section unless the city's engineer (or his/her designee) has reviewed the request for a permit and determines that the proposed location:

- (1) Has been approved by the Texas Department of Transportation engineer if the location involves a

right-of-way covered by a state-city maintenance agreement;

- (2) Has been the site of more than three motor vehicle accidents during the 12-month period immediately preceding the date of the application;
- (3) Has a turnout, curbside parking, or other parking space available that may be used to transact a sale;
- (4) Is not expected to cause excessive vehicle delays, vehicle surges, or lane changes;
- (5) Has customary street traffic volumes that do not significantly impede the flow of vehicular traffic;
- (6) Complies with the provisions of section 552.007 (solicitation by pedestrians) of the Texas Transportation Code and section 42.03 (obstructing highway or other passageway) of the Texas Penal Code;
- (7) Is not expected to cause or significantly contribute to street congestion or make access to abutting public or private property unreasonable inconvenient or hazardous;
- (8) Is not expected to impede the flow of street traffic to make the use of the street unreasonably inconvenient or hazardous; or
- (9) If other permits are issued for that location for the same time period(s), and whether the applicant failed to pay any outstanding debts, fines, or fees owed to the city or a consumer.

**Sec. 8-157.137 Renewal**

A permit may be renewed, provided an application for renewal and permit fees are received by the city no later than the expiration date of the current permit. Any application received after that date shall be processed as a new application. The city manager or his/her designee shall review each application for renewal, and upon determining that the applicant is in full compliance with the provisions of this article, shall issue a new permit.

**Sec. 8-157.138 Suspension and revocation**

- (a) In addition to the penalties contained herein, any permit issued under this article may be suspended or revoked for any of the following reasons:
  - (1) Fraud, misrepresentation or knowingly making a false statement in the application for the permit;
  - (2) Fraud, misrepresentation or knowingly making a false statement in the course of carrying on the business of vending;
  - (3) Refusing to fully reimburse consumer if provided with timely notice of the consumer's intent to cancel the transaction and return of the commodity;
  - (4) Conducting the business of vending in any manner contrary to the conditions of the permit or this article;
  - (5) Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners; or

(6) Violating any other applicable city code provision.

(b) The city manager or his/her designee shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation, and notifying the permitted itinerant vendor or mobile street vendor permit of the right to appeal. Such notice shall be mailed to the address on the itinerant vendor application by certified mail, return receipt requested, or presented in person or via hand delivery to the itinerant vendor.

(c) If the city revokes an itinerant vendor permit or mobile street vendor permit, the fee already paid shall be forfeited. A person whose permit has been revoked under this article may not apply for a new permit for a period of one year from the date that the revocation took effect.

**Secs. 8-157.139–8-157.169 Reserved**

### **Other Street Vendors**

#### **Sec. 8-157.170 Applicability**

The special provisions set forth herein shall apply to other street vendors as herein defined and shall supersede any conflicting provisions found elsewhere in the city code.

#### **Sec. 8-157.171 Appeals**

(a) If the city manager or his/her designee denies the issuance of a permit, suspends or revokes a permit, or orders the cessation of any part of the business operation conducted under the permit, the aggrieved party may appeal the decision in writing to the city council within three business days of the action. If a request for an appeal is not made within three business days, the decision becomes final.

(b) The filing of an appeal stays the action of the city manager in suspending or revoking a permit or any part of the business operation being conducted under such permit until the city council makes a final decision, unless the city manager determines that continued operation of the vending business constitutes an imminent and serious threat to the public health or safety, in which case the city shall take or cause to be taken such action as is necessary to immediately enforce the suspension, revocation or order.