

CITY OF LONE OAK, HUNT COUNTY TEXAS

ORDINANCE NO: 129-2012

ITINERANT VENDORS AND SOLICITORS

AN ORDINANCE CREATING A PERMIT REQUIREMENT AND RELATED PROVISIONS FOR ITINERANT VENDORS AND DETAILING PROCEDURES FOR THE PROCUREMENT OF SUCH PERMITS.

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:

Home solicitation transaction. A consumer transaction for the purchase of goods, services, or realty, payable in installments or in cash, 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.

Interstate commerce. 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 this state or will be produced in a state other than this state and shipped or introduced into this city in the fulfillment of such order.

Itinerant vendor. Any person offering or exposing for retail sale, or making retail sales of, any goods, products, wares or merchandise or other personal property of any type, at any outdoor business location; provided, however, that this definition shall not include merchants who ordinarily and regularly offer such items for retail sale within permanent structures located on the same premises; provided further that this definition shall not include those sales commonly known as a garage sale, porch sale, backyard sale, patio sale, lawn sale, yard sale, attic sale, estate sale, moving sale, or any similar sale of tangible personal property held out for sale to the public and conducted from or on any lot in a residential zoning district conducted by an individual who owns, leases or has the permission of the owner of the structure located on the same premises.

Retail sale or sales. 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.

Soliciting services. 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.

Solicitor. 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.

Restrictions

(a) Itinerant vendors shall not do business within the City of Lone Oak unless a vendor permit has been granted.

(b) There shall be no outdoor sales of merchandise in Lone Oak, TX except for accepted outside merchandise displays by permanent vendors; 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) No vendor may operate within five hundred (500) feet of any school, hospital or church.

(d) 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.

Roadside sale of animals

(a) No person, owner, breeder or dealer shall offer, sell, barter, trade, lease, or give away any live animal, on or along any street, roadway or right-of-way; or from any parking lot along such street roadway or right-of-way.

(b) This section shall not apply to:

(1) Incidental sale of pets that are associated with sales commonly known as a garage sale, porch sale, backyard sale, patio sale, lawn sale, yard sale, attic sale, estate sale, moving sale, or any similar sale of tangible personal property held out for sale to the public and conducted from or on any lot in a residential zoning district conducted by an individual who owns, leases or has the permission of the owner of the structure located on the same premises.

(2) Transactions by a business at its permanent retail location who normally engage in the sale of pets and otherwise meet all other display and setback requirements of this article.

(3) A special adopt-a-pet event sponsored by a not-for-profit animal shelter, animal rescue or animal adoption organization, from a nonresidential location and upon

review and approval by the community development department. Such events must be located at or near the building or building entrance.

Penalty

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

Division 2. 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 without first obtaining an itinerant vendor permit from the city.

(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.

(c) Persons required by this code to possess an itinerant vendor permit from the city, upon request from any police officer, any enforcement official, or person, shall promptly produce such permit.

Application

Applicants for a permit pursuant to this division shall file with the city of Lone Oak a verified application on a form to be furnished by the city, which shall contain the following information:

- (1) 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 Lone Oak City Secretary or the police chief may request to see the originals of such documents;
- (2) The applicant's address and telephone number, both legal and local;
- (3) 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;
- (4) For interstate commerce exemption applicants, the state where the goods originate;
- (5) The time period for which the applicant desires to do business;

- (6) The license number and description of any vehicle to be used (if applicable);
- (7) 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;
- (8) The content of any signs to be used;
- (9) 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;
- (10) 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;
- (11) If employed by another, the name and address of the applicant's employer, together with a brief description of credentials showing the exact relationship; and
- (12) 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.

Application fee and bond

Any person making application for a permit required by the provisions of this division shall pay to the city a nonrefundable application fee of \$50.00. The operational fee for the permit will be \$50.00

This application for an itinerant vendor's permit shall be accompanied by a bond in the sum of two thousand dollars (\$2,000.00), signed by the applicant and signed, as surety, by a surety company authorized to do business in the state, satisfactory to the Lone Oak City Secretary, conditioned for the final delivery of goods, wares, merchandise, or services, and conditioned for the correction or remedy of any and all defects in material or workmanship that may exist in the article sold by the principal of such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 30 days after delivery, and which bond shall be for the use and benefit of all persons who may make any purchase or give any order to the principal on such bond, or to an agent or employee of the principal.

Sec. 6.05.034 Review and investigation; issuance or denial

(a) Upon receipt of an application for a permit pursuant to this division, the Lone Oak 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 Lone Oak City Secretary shall review the application to ensure that:

- (1) The applicant or applicant's employer possesses a valid state sales tax certificate, or he or she has otherwise demonstrated that sales tax has been or is being paid on the items sold, or the applicant's employer is exempt from payment of such tax;
- (2) The applicant or the applicant's employer is aware of the responsibility to collect and pay sales tax, unless tax exempt;
- (3) 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's zoning code, and the said location does not extend onto any portion of the public right-of-way;
- (4) The applicant's character or business responsibility is not "unsatisfactory" (as defined in subsection (d) below);
- (5) The applicant's proposed signs and locations comply with all of the provisions of the city's zoning code; and
- (6) The application otherwise complies with all of the provisions of the Code of Ordinances.

(c) Within three (3) business days after receipt of the application, the Lone Oak 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 the city'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 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 Lone Oak City Secretary shall issue the permit. If the application is disapproved, the Lone Oak City Secretary shall state in writing and with specificity the reason(s) for disapproval. The Lone Oak City Secretary shall immediately notify the applicant of such disapproval. Mailing a copy of a 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 article within the preceding 12 months;

(2) A finding that a previous permit held by the applicant pursuant to the provisions of this article 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.

Exemptions

(a) The following solicitors are exempt from the permit fee:

(1) Individuals soliciting or peddling goods or services which qualify as interstate commerce;

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

(1) Any individual soliciting for a locally sponsored philanthropic, charitable, political, religious, and nonprofit corporation. These individuals shall notify the director of community development, 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.

(2) Newspaper carrier.

(3) Any person permitted for food service and engaged in the food service business.

(c) All other sections of this article shall apply.

Contents; fixed outdoor location of business to be specified

The Lone Oak 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. **No permit may be issued for any length of time longer than thirty (30) days from the date of the application.** The itinerant vendor shall engage in business only at the fixed outdoor location specified on the face of the permit.

General regulations and conditions

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

(1) The itinerant vendor shall deposit **a sum of \$100.00**, 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 permit fee within ten (10) days after said permit expires, upon certification by the Lone Oak City Secretary that all conditions of this article have been met.** Should actual costs for necessary cleaning exceed this amount, the permit fee 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 permit fee for a period of two (2) years. Nothing herein shall preclude the city from enforcing any legal or equitable remedy against the permit fee in addition to the deposit. The applicant shall have the right to present evidence to the Lone Oak 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.

(2) 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 division 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.**

(3) 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.

(4) (A) Itinerant vendors shall conduct vending operations between the hours of 9:00 a.m. and 4:00 p.m. on weekdays, and between 7:00 a.m. and 2:00 p.m. on weekends, and no vending unit shall remain on the premises except during such period of operations.

(B) No person shall go upon any residential premises and ring the doorbell, or rap or knock upon the door, or create any sound in a manner calculated to attract the attention of 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 any time on Sunday, New Year's Day, July Fourth Holiday, Labor Day, Thanksgiving Day, or Christmas Day.

(5) 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.

Compliance with site plan required; amended site plans

(a) All itinerant vendors shall comply with the site plan submitted pursuant to the provisions of this division 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 director of community development.

(c) Upon the filing of an amended site plan, the Lone Oak City Secretary shall review it to ensure compliance with the provisions of this article and all other applicable provisions of this code. If the amended site plan is approved, the Lone Oak 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 Lone Oak City Secretary shall constitute a violation of this article subject to the penalty specified in this article.

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.

Revocation

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

- (1) Fraud, misrepresentation, or any false statement contained in the application for the permit;
- (2) Conviction of the permittee of a felony;
- (3) Conviction of a misdemeanor involving fraud or dishonesty, including but not limited to fraud, larceny, burglary, robbery, or embezzlement;
- (4) A conviction of the permittee for two or more violations of the provisions of this article within the preceding 12 months; or
- (5) 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.

Surrender upon expiration or revocation

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

Appeal of denial or revocation

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 city manager no later than ten (10) days after denial or revocation. The city manager may affirm, reverse, or modify the decision of the Lone Oak City Secretary and shall do so within three (3) business days of the receipt of the appeal

Renewal

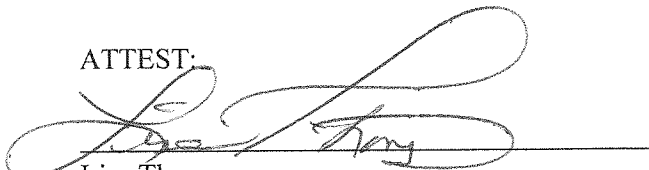
The holder of any expiring permit, issued under this division, who desires a new permit, shall file a written application for renewal with the City of Lone Oak. The application for renewal shall contain the information required in section 6.05.032 of this division. The city, in determining whether to approve or disapprove an application for renewal of a permit, shall be guided by the provisions of this ordinance.

PASSED AND APPROVED this 5th day of September, 2012.



Mona Collins, Mayor, City of Lone Oak

ATTEST:



Lisa Thompson
City Secretary, City of Lone Oak