

AN ORDINANCE DEFINING ITINERANT VENDORS, SOLICITORS AND PEDDLERS, REQUIRING A LICENSE TO SELL, OFFER FOR SALE, EXHIBIT FOR SALE, OR EXHIBIT FOR THE PURPOSE OF TAKING ORDERS FOR THE SALE OF GOODS AND MERCHANDISE; PROVIDING FOR AN APPLICATION AND BOND; PROVIDING FOR ISSUANCE OF A LICENSE AND THE FEE THEREFOR; RESTRICTING THE TRANSFER OF THE LICENSE; LIMITING THE DURATION OF THE LICENSE; PROVIDING PENALTIES FOR VIOLATION OF THE ORDINANCE; ESTABLISHING EXEMPTIONS FROM THE ORDINANCE; PROHIBITING GOING UPON PRIVATE PROPERTY WITHOUT INVITATION; PROHIBITING REFUSING TO LEAVE; PROVIDING A PENALTY OF A FINE NOT TO EXCEED \$200.00 FOR THE VIOLATION OF THIS ORDINANCE; DECLARING AN EMERGENCY; AND PROVIDING THAT THE ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ORCHARD, STATE OF TEXAS:

SECTION ONE: DEFINITIONS. Shall be applicable to this Ordinance:

(a) Itinerant Vendor. The term "itinerant vendor" means and includes, and shall be construed to mean and include, all persons as well as their agents and employees, who engage in the temporary or transient business in the city of selling, or offering for sell, any goods or 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 out such business or conducting such exhibits thereof display, exhibit, sell, or offer for sale, such goods or merchandise upon or from a truck, or other vehicle on the streets of the city, or who hire, rent, lease, or occupy any room or space in any building, structure, or other enclosure, vacant lot or any property whatever in the city in, through, or from which any goods, merchandise may be sold, offered for sale, exhibited for sale or exhibited for the purpose of taking orders for the sale thereof.

(b) Temporary. The word "temporary" as used in this article means and shall be construed to mean any such business transacted or conducted in the city for which definite arrangements have not been made for the hire, rental or lease of premises for at least one month in or upon which business is to be operated or conducted.

(c) Transient. The word "transient" as used in this article means and shall be construed to mean any such business as may be operated or conducted by persons or by their agents or employees who reside away from the city or who have fixed places of business in places other than this city, or who have their headquarters in places other than this city, or who moves stocks of goods or merchandise or samples thereof, into this city with the purpose or intention of removing them or the unsold portion thereof away from this city before the expiration of one month.

Provided, however, that the term "itinerant vendor" as used herein, shall not include or be construed to include anyone engaged in interstate commerce or anyone upon whom the provisions of the following section would impose a direct and unlawful burden on interstate commerce.

SECTION TWO: LICENSE REQUIRED. It shall be unlawful for any itinerate vendor to sell, offer for sale, exhibit for sale, or exhibit for the purpose of taking orders for the sale thereof, any goods or merchandise in the city without first obtaining a license or permit as provided for in the next two succeeding sections.

SECTION THREE: APPLICATION AND BOND. Every itinerant vendor shall make an application to the City Secretary at least ten (10) days prior to the date of his contemplated sale or exhibit to be held in the city which application shall be in the form of an affidavit stating the full name and address of the itinerate vendor, the location of its principal office and place of business, the names and addresses of its officers, if it is a corporation, and the partnership name and names and addresses of all partners, if such itinerate vendor is a firm. The application must be accompanied by:

(a) A statement showing the kind and character of the goods or merchandise to be sold or offered for sale or exhibit.

(b) A certified letter of character if the itinerate vendor is a corporation incorporated under the laws of the State of Texas.

(c) A certified copy of its permit to do business in Texas if the itinerate vendor is a corporation incorporated under the laws of some state other than Texas.

(d) A bond in the sum of not less than \$1,000.00, executed by the itinerate vendor as principal and two or more good and sufficient sureties satisfactory to the City Secretary, which bond shall be payable to the mayor and successors in office for the use and benefit of any person entitled thereto, and conditioned that the principal and surety will pay all damages to persons caused by, arising from or growing out of the wrongful, fraudulent or illegal conduct of such itinerant vendor while conducting the sale in the city. The bond shall remain in full force and effect for the entire duration of the license permit as provided herein and for two years thereafter.

SECTION FOUR: ISSUANCE AND FEE. The City Secretary shall issue to any itinerant vendor a license permit authorizing such itinerant vendor to sell, exhibit for sale, offer for sale or exhibit for the purpose of taking orders for the sale thereof, in the city, his goods or merchandise only after such itinerant vendor has fully complied with all provisions of this article and made payment of \$25.00 for such permit or license.

SECTION FIVE: LICENSE NOT TRANSFERRABLE AND AUTHORITY TO CONDUCT BUSINESS EXTENDS TO ONLY ONE PERSON. The license or permit provided for in this article shall not be transferrable nor give authority to more than one person to conduct a business as an itinerate vendor, but any person having obtained such license may have the assistance of one or more persons in conducting such business.

SECTION SIX: DURATION AND DISPLAY. The license provided for by this article shall continue for so long as such sale or exhibit is continually held in the city but in no event shall it continue for more than forty (40) days from date of its issuance. Such license permit shall be prominently displayed in a conspicuous on the premises where such sale or exhibit is being conducted and shall remain so displayed so long as any goods or merchandise are being sold or exhibited.

SECTION SEVEN: PENALTY. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any amount not more than \$200.00. Each sale, offer for sale, exhibition for purpose of sale, or exhibition for the purpose of taking orders for the sale thereof in violation of this ordinance shall be a separate offense.

SECTION EIGHT: EXEMPTIONS. This article shall not apply to the following:

(a) Ordinary commercial travelers who sell or exhibit for sale goods or merchandise to parties engaged in business of buying and selling and dealing in goods or merchandise;

(b) Vendors of farm produce, poultry, stock or agriculture products in their natural state;

(c) Sales of goods or merchandise donated by the owners thereof, the proceeds thereof are to be applied to any charitable or philanthropic purpose.

SECTION NINE: GOING ON PRIVATE PROPERTY WITHOUT INVITATION. Notwithstanding the granting of a license under this ordinance, the practice of going in and upon private resident's property in the city by solicitors, peddlers, hawkers, itinerate merchants or transient or itinerate vendors of merchandise not having been requested or invited to do so by the owner or occupant of the private residence for the purpose of soliciting orders for the sale of goods, wares and merchandise or disposing of or peddling or hawking the same between the hours of 7:00 p.m. to 9:00 a.m. is declared to be a violation of this article and is punishable as a misdemeanor.

SECTION TEN: REFUSING TO LEAVE UPON REQUEST. Notwithstanding the granting of a license under this ordinance, it is declared to be a violation of this ordinance and punishable as a misdemeanor if an itinerant vendor enters or remains on private property or in a building of another without effective consent and had notice that entry was forbidden or received notice to depart but failed to do so. For the purpose of this ordinance "entry" means the intrusion of the entire body; and "notice" means oral or written communication by the owner or someone with apparent authority, fencing obviously designed to exclude intruders or signs posted to be reasonably likely to come to the attention of intruders.

SECTION ELEVEN: DECLARING AN EMERGENCY. Whereas, an emergency is apparent for the immediate preservation of order, health, safety, and general welfare of the citizens of the City of Orchard that requires this ordinance to become effective immediately; therefore, this ordinance shall be effective from and after the date of its passage and approval.

PASSED AND APPROVED, this the 10 day of September, 19 80.

ATTEST:

Aimee Bollem  
CITY SECRETARY

APPROVED:

Eugene S. Penny  
MAYOR