

ORDINANCE NO. 1056-12-14

AN ORDINANCE AMENDING ARTICLE 4.04 "PEDDLERS, SOLICITORS AND HANDBILL DISTRIBUTORS" TO CHANGE THE TITLE TO "PEDDLERS, CANVASSERS, VENDORS AND SOLICITORS"; TO INCLUDE ADDITIONAL SECTIONS AND AMEND EXISTING SECTIONS TO REGULATE PEDDLERS, CANVASSERS, VENDORS AND SOLICITORS; TO ESTABLISH REGISTRATION REQUIREMENTS; TO ESTABLISH PROTECTIONS FOR HOMEOWNERS DESIRING TO AVOID PEDDLERS, CANVASSERS, VENDORS, AND SOLICITORS.

WHEREAS, the City of Hondo (the "City"), a home-rule city, is by State law and Charter permitted to establish ordinances to protect the health, safety and general welfare of its residents;

WHEREAS, the City Council of the City of Hondo finds that it is in the best interests of the citizens to regulate peddlers, canvassers, vendors, and solicitors within the City;

WHEREAS, protecting private residents of the City from unwanted annoyance of peddlers, canvassers, vendors, and solicitors protects the peace in the community;

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference;

WHEREAS, the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved;

WHEREAS, it is the responsibility of all units of government to balance these competing interests in a manner consistent with the Constitution of the United States and of Texas, while attempting to minimize fraud, prevent crime, and protect the privacy of our citizens;

WHEREAS, the City has no desire to interfere with free speech, open dialogue and exchange of opinion; and

WHEREAS, the Hondo City Council finds that for the preservation of the public health, safety and welfare of the citizens of the City amendments to Article 4.04 are necessary.

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

Section 1. Article 4.04 "Peddlers, Solicitors and Handbill Distributors" is hereby amended as follows:

ARTICLE 4.04 PEDDLERS, CANVASSERS, VENDORS AND SOLICITORS

Division 1. Generally

Sec. 4.04.001

Definitions

Canvasser is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a handbill or flyer advertising a non-commercial event or service.

Mobile food vehicle is a vehicle mounted food establishment, designed to be readily transported, pushed, or drawn.

Park or parking when prohibited, means to stand an occupied or unoccupied vehicle, including a mobile food vehicle other than temporarily while loading or unloading merchandise or passengers.

Peddler means any person, whether a resident of the City of Hondo ("city") or not, traveling by foot, wagon, automobile, motor truck or any other means of conveyance, from place to place, house to house, business to business, or from street to street for the sale of, as well as the selling, offering for sale or taking or attempting to take orders for the sale of goods, wares and merchandise, personal property of any nature whatsoever for immediate delivery or for services to be performed immediately, whether or not such person has, carries or exposes for sale a sample of the subject of such sale or not or whether he is collecting advance payment on such sales or not.

Person. Includes the singular and the plural, and shall also mean and include any person, firm, corporation, association, club, co-partnership or society, or any other organization.

Public area means all areas to which the public has access and includes, but is not limited to, a sidewalk, street, highway, park, parking lot, alleyway, pedestrian way, or the common area of a school, hospital, apartment house, office building, transport facility, or shop.

Right-of-way or public right-of-way means the surface of, and the space above and below, any street, road, roadway, state highway, U.S. highway, freeway, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, or easement held by the city or over which the city exercises any rights of management or control.

Services. Services shall be used in its broadest sense and includes any work done for the benefit of another person.

Solicit means to request, by the spoken, written, or printed word, or by other means of communication, an immediate donation or transfer of money or another thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, and regardless of whether consideration is offered.

Solicitor means any person, whether a resident of the city or not, traveling by foot, wagon, automobile, motor truck or any other means of conveyance, from place to place, house to house

or street to street for the sale of, as well as the selling, offering for sale or taking or attempting to take orders for:

- (1) Sale of goods, wares and merchandise, personal property of any nature whatsoever, for future delivery whether or not such individual has, carries or exposes for sale a sample of the subject of such sale; or
- (2) For services to be performed in the future whether or not such individual is collecting advance payment on such sales or not;
- (3) A request, whether vocalized or not, for a donation other than in response to an inquiry from another person; or
- (4) Distributing a handbill or flyer advertising a commercial event or service.

Special event means any occasion including, but not limited to, fairs, shows, exhibitions, city wide celebrations, festivals, market days, etc., within a specifically defined area for the city for a period established and/or approved by the city council (or their duly authorized representatives) and/or the appropriate organizing body.

Stand means any newsstand, table bench, booth, rack, handcart, pushcart, vehicle, or any other fixture or device used for display or storage of articles offered for sale by a vendor or peddler.

Vendor means any person, whether a resident of this city or not, who offers for sale food, beverages, goods, merchandise, delivery, or for services to be performed immediately or in the future, from a certain location, for a period of more than fifteen (15) minutes, that is not within a building or a 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 and also displays or sells food, beverages, goods, merchandise, etc., directly outside the building or structure which the business operates

Sec. 4.04.002 Permit Required

It is unlawful for any peddler, solicitor or vendor to engage in the business of selling, displaying, offering for sale of any food, beverages, goods, merchandise or services of any kind within the city without first obtaining a permit from the City Secretary or his/her duly authorized representative. A canvasser is not required to have a permit, but any canvasser wanting a permit to the purpose of reassuring city residents of the canvasser's good faith shall be issued one upon request.

Sec. 4.04.003. Use of Private Property; Hours of Operation

- (a) No peddler, solicitor or canvasser shall enter upon any private property where the property has clearly posted in the front yard a sign visible from the right of way (public or private) indicating a prohibition against peddling, soliciting and/or canvassing.
- (b) No peddler, solicitor or canvasser shall remain upon any private property where a notice in the form of a sign or sticker is placed upon any door or entrance way leading into the residence or dwelling at which guests would normally enter, which sign contains the words "no soliciting" or "no solicitors" and which is clearly visible to the peddler, solicitor or canvasser.

- (c) No peddler, solicitor or canvasser shall use or attempt to use any entrance other than the front or main entrance to the dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.
- (d) No peddler, solicitor, canvasser or vendor shall enter upon the property of another between the hours of 8:00 p.m. and 8:00 a.m. Except that the prohibitions in this section shall not apply when:
 - (1) Canvassers have an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon the property.
 - (2) Peddlers, solicitors, and vendors may operate on private property where the property is properly zoned, only if the operator receives written permission from the property owner for the use of the property, and the written permission is submitted with the permit application.

Sec. 4.04.004 Use of Public Property

No peddler, solicitor, or vendor shall peddle, solicit or cause or permit to be peddled or solicited any tangible property or services on city owned property with the exception of the following:

- (a) Streets surrounding city parks as provided herein.
- (b) Public right-of-ways to include sidewalks as provided herein.
- (c) Persons and their agents who have contracted for services within the city for sales on the grounds of city-owned property.

This article is not to be construed as prohibiting or limiting the distribution or sale of religious publications, newspapers, handbills or other written or printed matter sold or distributed for the purpose of disseminating information or news on sidewalks or in any public place.

Sec. 4.04.005 Use of Public Right-of-Way; Hours of Operation.

- (a) A person may solicit for charitable or political contributions in or upon a public right-of-way, except those areas prohibited in this article, if the person has obtained a permit or who is a member of an organization that has obtained a permit.
- (b) A person may conduct commercial solicitation in or upon the public right-of-way, except those areas prohibited in this article, if the solicitor, peddler or vendor has obtained a permit or who is a member of an organization that has obtained a permit.
- (c) Solicitation for any purpose in the public right-of-way shall be conducted only during the hours of daylight, specifically one-half (1/2) hour after sunrise and one half (1/2) hour before sunset.

- (d) It shall be unlawful for a person younger than eighteen (18) years of age to solicit in the public right-of-way.
- (e) It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the public right-of-way so that their presence impedes the flow of traffic.
- (f) It shall be unlawful for a person to solicit in the public right-of-way that is within one thousand (1,000) feet of any public or private elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when such school is in session. The measurement of the distance shall be made from the nearest property line of the public or private elementary or secondary school.

Sec. 4.04.006 Use of City Streets Surrounding City Park; Hours of Operation.

A peddler, solicitor or vendor may engage in business on city streets surrounding city parks between the hours of 7:00 a.m. and 2:00 a.m. Monday through Thursday and 7:00 a.m. and 2:00 p.m. on Friday. In order to accommodate reserved events in and around city parks, peddlers, solicitors and vendors shall apply to the City Secretary for permission to operate on city streets surrounding city parks after 2:00 p.m. Friday and anytime on Saturday and Sunday. Such application shall be made on a monthly basis. Preference will be given to reserved events occurring in and around city parks. If the City Secretary has given permission for a peddler, solicitor or vendor to operate on a city street surrounding a city park and subsequent to that time the park is reserved for an event the peddler, solicitor or vendor shall maintain their right to conduct business regardless of the scheduled event unless the City Manager determines that it is the best interest of the city to withdraw permission.

Sec. 4.04.007 Use of City Parks Prohibited.

A peddler, solicitor or vendor shall not engage in business in city parks without approval from the City Secretary.

Sec. 4.04.008 Use of State and U.S. Highways.

Peddlers, solicitors or vendors who seek to engage in business on any state or U.S. highway within the city, must first obtain written authorization from the respective governmental agency.

Sec. 4.04.009 Restrictions Applicable To All Peddlers, Solicitors and Vendors Utilizing Stands and/or Mobile Food Vehicles; Hours of Operation.

- (a) Stands and/or mobile food vehicles shall not:
 - (1) Exceed twenty-five (25) feet in total length, fifteen (15) feet in width or thirteen (13) feet in height;
 - (2) Impede access to the entrance or driveway of an adjacent building.
- (b) *Hours of operation.* Hours of operation shall be between the hours of 7:00 a.m. and 2:00 a.m. unless otherwise stated herein. All stands and mobile food vehicles shall be removed during non-operation hours except those stands and mobile food vehicles that are participating in a reserved event associated at a city park or a multiple day event within the city limits and shall be allowed to set up the day before the event and be removed the day

after the event. Stands and Mobile food vehicles are not allowed to remain on public right-of-way during overnight hours unless they are participating in a reserved event associated at a city park or a multiple day event within the city limits.

- (c) *Removal of trash.* All vendors selling food or beverages must provide at least one (1) trash receptacle adjacent to or as part of their operations if said receptacle is placed on a sidewalk adjacent to a city park, there shall be a minimum of 4 feet of clearance maintained between the park side of the sidewalk and the trash receptacle this action shall not be deemed "use of the park."
- (d) *Signage.* All signage must comply with the city sign ordinance.
- (e) *Tables and chairs.* Peddlers, solicitors and vendors are prohibited from placing tables and chairs around or near the vending stand unless operating upon private property pursuant to this article.

Sec. 4.04.010 Distribution of Handbills and Commercial Flyers.

In addition to the other regulations contained herein, a peddler, vendor, solicitor or canvasser leaving handbills or commercial flyers about the community shall observe the following regulations:

- (a) No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way. The police are authorized to remove any handbill or flyer found within the right-of-way.
- (b) No handbill or flyer shall be left at, or attached to any privately owned property in a manner that causes damage to such privately owned property.
- (c) No handbill or flyer shall be left at, or attached to any of the property having a "no solicitor" sign.
- (d) Any person observed distributing handbills or flyers shall be required to identify himself/herself to the police (either by producing a permit, badge or other form of identification). This is for the purpose of knowing the likely identity of the perpetrator if the city receives a complaint of damage caused to private property during the distribution of handbills or flyers.

Secs. 4.04.011 - 4.04.030 Reserved

Division 2. Permit, Written Application Required.

Sec. 4.04.031 Application

Any person desiring to engage in activities as a peddler, solicitor or vendor within the city must complete and file a written application for permit with the City Secretary or his/her duly authorized representative:

(a) Applicant's name, telephone number, address, birth date, physical description, and either:

- (1) Copy of driver's license number and state; or
- (2) Copy of 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 full legal name, telephone number and address of such organization.
- (c) Full and complete list of goods or merchandise to be sold and/or services to be delivered.
- (d) For each person involved in the peddling, vending or solicitation campaign: full legal name, telephone number, address, birth date, physical description of the stand and/or mobile food vehicle, if any, and either:
 - (1) Copy of driver's license number and state; or
 - (2) Copy of government-issued picture identification card.
- (e) Description (year, make, type) and license plate number and state of registration of all vehicles to be used in Soliciting, Vending and Peddling and a copy of the vehicle's current proof of liability insurance.
- (f) A copy of the applicant's valid State of Texas Sales and Use Tax Permit.
- (g) Applicants engaged in the sale or distribution of food or beverages must submit a copy of the vendor's current mobile food vendor license or roadside vendor license issued by the Medina County Health Office.
- (h) Applicant must provide original identifying documents to the City Secretary upon request.

Sec. 4.04.032 Investigation and Issuance

Upon receipt of such application, the original shall be referred to the Chief of Police, who shall investigate the applicant's record; background; and the truth and accuracy of the information contained in the application for the protection of the public good, and promptly report thereon to the City Manager with his/her recommendation.

Sec. 4.04.033 Fee

- (a) Prior to issuance of a permit as required herein, the applicant shall pay a fee as provided for in the fee schedule found in Appendix A of this code, said fee to be used to offset administrative costs involved in administering this article.
If the applicant shall have additional agents to be working in the city, an additional fee, in accordance with the fee schedule found in Appendix A of this code, per agent shall be required.
- (b) Should a vendor lose his or her permit, a replacement shall be issued for the remainder of the term of the original permit only upon payment of an additional fee as provided for in the fee schedule found in Appendix A of this code, said fee to offset the administrative costs involved.

(c) Persons duly engaging in interstate commerce are specifically exempted from the fee requirements herein, but shall comply with all other registration and licensing requirements.

Sec. 4.04.033.01 Permit Exemption.

(a) The following are excluded from permitting provisions:

- (1) Newspaper carriers;
- (2) Religious proselytizing or distribution of religious literature;
- (3) Political speech;
- (4) Canvassers;
- (5) Peddlers, solicitors and/or vendors operating within a designated public area in connection with a special event pre-approved by the city council and/or appropriate body organizing and implementing the special event. The appropriate body organizing the special event must first apply and receive a special event permit anticipating and approving such vendor sales for the special event;
- (6) Sales made to established businesses by commercial travelers or sales agents in the usual course of business, or to sales made under authority and by order of law;
- (7) Persons traveling to businesses or houses at the invitation of the resident or the owner;
- (8) Any operation which is exempted by state or federal statute from this chapter, only to the extent of such applicable exemption; or
- (9) A federal, state or local government employee or a public utility employee in the performance of his/her duty for his/her employer.

(b) It shall be an affirmative defense to prosecution for any offense under this article that the activity of the defendant is listed in subsection (a).

Sec. 4.04.034 Badges

The City Manager shall issue to each licensee, at the time of delivery of his/her permit, a badge which shall contain the words "LICENSED, CITY OF HONDO," and the period for which the permit is issued and the number of the permit, in letters and figures easily discernible.

Such badge shall, during the time such licensee is engaged in soliciting, vending or peddling, be worn constantly by the licensee in front of his/her outer garment in such a way as to be conspicuous.

Sec. 4.04.035 Exhibition

Solicitors, vendors and peddlers are required to exhibit their badge and/or permit at the request or demand of any citizen.

Sec. 4.04.036 Enforcement

It shall be the duty of any police officer of the city to require any person seen soliciting, vending or peddling, and who is not known by such officer to be duly licensed, or who is not wearing the required badge, to produce his solicitor's, vendor's or peddler's permit, and to enforce the provisions of this article against any person found to be violating the same.

Sec. 4.04.037 Record of violations

The Chief of Police shall report to the City Manager all convictions for violations of this article. The City Manager shall maintain a record for each permit issued and record the reports of violations therein. (1995 Code, sec. 4.309)

Sec. 4.04.038 Revocation

(a) Permits issued under provisions of this article may be revoked by the city council after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation, or false statement contained in the application for permit;
- (2) Fraud, misrepresentation, or false statement made in the course of carrying on his/her business as a solicitor, vendor, or peddler;
- (3) Any violation of this article;
- (4) Conviction of any crime or misdemeanor involving moral turpitude; and
- (5) Conducting the business of soliciting, vending, or peddling in any unlawful manner, or in such a manner as to constitute a breach of the peace, or to constitute a menace to the health, safety, or general welfare of the public.

(b) Notice of the hearing for revocation of a permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his/her last known address at least five (5) days prior to the date set for hearing.

Sec. 4.04.039 Appeals

Any person aggrieved by the action of the Chief of Police or the City Manager in the denial of a permit or license, or the action of the City Manager in assessing a fee, shall have the right of appeal to the City Council. Such appeal shall be taken by filing with the City Council, within ten (10) days after the action complained of, a written statement setting forth fully the grounds for the appeal.

The City Council shall set a time and place for hearing of such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in section 4.04.038 of this article for the notice of hearing of revocation. The decision and order of the City Council on such appeal shall be final and conclusive. (1995 Code, sec. 4.311)

Sec. 4.04.040 Expiration

All permits issued under the provisions of this article shall expire either on the 30th, 60th, 90th and 365th day after the initial date of issuance. Other permits shall expire on the date specified on the permit.

Section 2. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. EFFECTIVE DATE

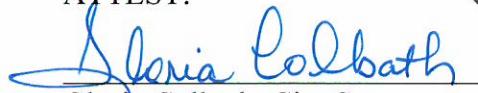
This ordinance shall take effect on January 9, 2015.





JAMES W. DANNER, SR., MAYOR

ATTEST:



Gloria Colbath, City Secretary

APPROVED AS TO FORM:

Adolfo Ruiz, City Attorney

ARTICLE A4.000 BUSINESS REGULATIONS

Sec. A4.002 Peddler, Vendor and Solicitor Permit

(a) Peddler, Vender and Solicitor permit fees are as follows:

(1) 30 day permit = Twenty Five Dollars (\$25.00)

(2) 60 day permit = Fifty Dollars (\$50.00)

(3) 180 day permit = Sixty Five Dollars (\$65.00)

(4) One year (12 months) permit = One Hundred Dollars (\$100.00)

(5) Each additional agent(s) to be working in the city, an additional fee of twenty five dollars (\$25.00) per agent shall be required.

Said fees are to be used to offset administrative costs involved in administering [article 4.04](#) of the Code of Ordinances.

(b) Should a peddler, vendor or solicitor lose his or her permit, a replacement shall be issued for the remainder of the term of the original permit only upon payment of an additional fee of fifteen dollars (\$15.00), said fee to offset the administrative costs involved.

(c) Persons duly engaging in interstate commerce are specifically exempted from the fee requirements herein, but shall comply with all other registration and permitting requirements.

(d) There is no fee for a canvasser requesting a permit or a replacement permit.

(e) Permit Exemptions: Article 4.04, Sec. 4.04.033.01 (a) (1-9).