

ORDINANCE No. 304-B

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 304-A; PROVIDING DEFINITIONS; REGULATING "PEDDLERS AND ITINERANT VENDORS"; REQUIRING PERMITS; DEFINING PERMIT APPLICATIONS; ESTABLISHING BOND REQUIREMENTS; DEFINING INTERSTATE COMMERCE AND RELATIONSHIP THERETO; SETTING PENALTY FOR VIOLATIONS; SETTING TIME RESTRICTIONS; ESTABLISHING THE EXERCISE OF POLICE POWER; ESTABLISHING A SEVERABILITY CLAUSE AND SETTING A DATE FOR PASSAGE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST ORANGE, TEXAS THAT:

Ordinance No. 304-A is hereby repealed and replaced in its entirety by Ordinance No. 304-B.

Section 1. Definitions.

As used in this ordinance, the following terms shall have the respective meanings ascribed to them:

- a) **City-Sponsored Event**. Any event or gathering that is approved by City Council or through a managing City Staff member.
- b) **Goods or merchandise**. The phrase "goods or merchandise" shall mean any personal property of any nature whatsoever including but not limited to tickets for admission to athletic, sporting or entertainment events or shows.
- c) **Interstate Commerce** means soliciting, selling or taking orders for or offering to take orders for any goods, wares, merchandise, photographs, newspapers or magazines, or subscriptions to newspapers or magazines which, at the time the order is taken, are in another state or will be produced in another state and shipped or introduced into the fulfillment of such orders.
- d) **Itinerant Vendor**. The term "itinerant vendor" shall mean all persons, as well as their agents and employees, who engage in the temporary or transient business in the City of West Orange for selling, or offering for sale, 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 on 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, other enclosure, vacant lot or any other property whatever in the city in, through or from which any goods or merchandise may be sold, offered for sale, exhibited for sale for the purpose of taking orders for the sale thereof, or who shall sell or offer for sale any goods or merchandise while upon the property of another, without the express written consent of the owner or occupant thereof. The term "itinerant vendor" shall not include or be construed to include anyone engaged in interstate commerce or anyone upon whom the provisions of this Ordinance would impose direct and unlawful burden on interstate commerce. "Itinerant vendor" shall also apply to any person(s) asking, persuading or advertising for money or services without the contributor receiving equivalent goods or services in return.

- e) **Mobile Vending Unit.** The term "mobile vending unit" shall mean any temporary unit, whether mobile or not, used for the sale and/or vending and/or distribution and/or preparation of any commodity including, but not limited to food.
- f) **Peddler.** The term "peddler" means any person desiring to go from house to house or from place to place in the City of West Orange, Texas, to sell or solicit orders for goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines.
- g) **Temporary.** The word "temporary," shall 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 such business is to be operated or conducted.
- h) **Transient.** The word "transient," shall mean any such business as may be operated or conducted by persons or by their agents or employees who reside away from this 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 move 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 the city before the expiration of one month, or who sell and offer for sale such goods or merchandise while upon the property of another, without the prior written consent of the owner or occupant thereof, or conduct such business away from their fixed places of business, if any, or who have no such fixed places of business.

Section 2. Restrictions

- a) It shall be unlawful for any "peddler" to go from house-to-house or from place-to-place in the City of West Orange, Texas soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, photographs, newspapers, magazines, or subscriptions to newspapers or magazines, without having first applied for, and obtaining a license to do so from the City Secretary of said City. It shall also hereafter be unlawful to sell or solicit in said city as aforesaid without displaying such license while engaged in soliciting selling.
- b) It shall be unlawful for any "itinerant 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 permit as herein provided. The City Secretary shall issue to any itinerant vendor a 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, wares, or merchandise, only after such itinerant vendor shall have fully complied with all provisions of this article and made payment of the sum of one hundred dollars (\$100.00) for such permit, which sum shall be compensation to the city for the services herein required of it and enable the city to partially defray the expenses of enforcing the provisions of this article.

Section 3. Permit Information

- a) That any person desiring to go from house-to-house or from place-to-place in the City of West Orange, Texas, to sell or solicit orders for goods, wares, merchandise, services, photographs, newspapers, magazines or subscriptions to newspapers or magazines, shall make written application to the City Secretary of said City for a license to do so, which applicant / agent shall show:
 - 1) The name and permanent home address of applicant / agent.

- 2) The local phone number and local address of the applicant / agent.
 - 3) The name and address of the person(s), if any, that he / she represents.
 - 4) A brief description of the nature of the business and the goods offered for sale.
 - 5) Whether such applicant / agent upon any sale or order shall demand, accept or receive payment or deposit of any form of payment in advance of final delivery.
 - 6) The length of time for which the applicant / agent will be conducting business within the City of West Orange.
 - 7) If the applicant / agent's employer is a corporation, the state of that corporation; evidence that the corporation is authorized to conduct business in the State of Texas; evidence that the corporation has designated an agent in the City of West Orange upon which legal service may be made; and evidence that the corporation will be responsible for the acts of its employees in the City of West Orange.
 - 8) A statement as to whether or not the applicant and / or agent has been convicted of any felony, misdemeanor, or a violation of any municipal ordinance greater than a traffic ordinance / offense. The applicant / agent shall provide information on each such offense, including the nature of the offense, location of the offense, date of the offense and the penalty imposed for the offense.
 - 9) The names and location of the last three (3) municipalities where the applicant / agent conducted such business immediately preceding this application, and the address from which such business was conducted in these municipalities.
 - 10) A description of any motor vehicle to be used in conjunction with the applicant/agent's operation and their respective license plate number(s).
 - 11) A statement that the applicant / agent agrees to leave private property promptly when requested to do so by the owner, tenant, occupant, or person in the control of the property.
 - 12) A statement that the applicant / agent will not enter upon private property where a sign or any other means of notification is posted to indicate no solicitation allowed, no solicitors, do not disturb, no trespassing, or words of similar import of any phrases.
 - 13) Other pertinent information requested by the City Secretary or his / her designee; including but not limited to employer identification and sales tax permit information.
 - 14) Written proof of his identity which shall be in the form of a government issued driver's license, government issued identification card or United States passport. All above approved forms of identification must contain a photograph.
- b) In determining whether a license under this Chapter should be granted or denied, standards including but not limited to the following shall be taken into consideration:
- 1) Whether the proposed activity is likely to cause undue congestion of a public area.

- 2) The number and nature of past and present complaints against the applicant / agent for activities including but not limited to misrepresentation, fraud, selling defective merchandise, entering property posted or failure to promptly leave property when so requested.
 - 3) Whether the applicant / agent has been convicted of the violation of a similar ordinance within the last five (5) years.
 - 4) Whether the applicant / agent has been convicted of any felony, misdemeanor or greater, violation of any municipal ordinance other than a traffic offense, that would relate to the public health, welfare, safety and / or morals in the applicant / agent's conduct of business under this license.
- c) There will be up to a two (2) working days waiting period for results of criminal history checks for the applicant and all agents.

Section 4. Bond Required

The application for a license under this article shall be accompanied by a bond in the penal sum of two thousand five hundred dollars (\$2,500.00) signed by applicant/agent and signed, as surety, by a surety company authorized to do business in the state, conditioned upon final delivery of goods, wares, merchandise, services, photographs, magazines and newspapers in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for 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 which bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of the principal; provided that in case the applicant/agent is a person, he shall be required to enter into only one (1) bond, in the sum of two thousand five hundred dollars (\$2,500.00) as above required, which bond shall be to cover the activities of all its agents or employees.

Section 5. Fee Required

The permit fee for an agent or peddler shall be one hundred dollars (\$100.00). Provided, however, any person engaging in any activity mentioned in this article through one (1) or more agents or employees shall, in addition to such one hundred dollars (\$100.00), pay a license fee of fifty dollars (\$50) for each additional agent or employee so engaged, all of which licenses shall be valid for a period not to exceed one (1) year from the date of their issuance. The fees herein provided for shall be used for the purpose of defraying expenses incident to the issuing of such license(s). If license is revoked, suspended, temporarily suspended or expires, no fees or expenses will be refunded.

Section 6. Interstate Commerce

- (a) The provisions of this ordinance shall not apply to persons engaged in interstate commerce as that term is herein defined; provided, however, that it shall be unlawful for persons engaged in interstate commerce to go from house to house or place to place in the City of West Orange without having first registered with the City Secretary of said City, giving the following information:
 - 1) Name, home address and local address if any, or registrant.
 - 2) Names and address of the person, firm or corporation, if any, that he or she represents or for whom or through whom orders are to be solicited or cleared.
 - 3) Nature of articles or things which are to be sold or for which orders are to be solicited.

4) Whether registrant, upon any sale or order shall demand or receive or accept payment or deposit of money in advance of final delivery.

5) Period of time which registrant wishes to solicit or sell in said City.

(b) The registrant at the time of the registration, as herein provided for, shall submit for inspection of the city secretary or city secretary's designee, written proof of his identity which shall be in the form of a government issued driver's license, government issued identification card or United States passport. All above approved forms of identification must contain a photograph.

Section 7. Restrictions

a) No person shall solicit within the city on a door to door basis except during the hours of 11:00 a.m. to 4:00 p.m. on Monday through Friday. No soliciting on Saturdays, Sundays, federal or state recognized holidays, each person that does solicit must have a license issued by the City of West Orange.

b) No licensee/agent under this Chapter shall refuse to leave private property when requested to do so by the owner, tenant, occupant or person in control of the property. No licensee/agent under this Chapter, shall enter upon private property and/or contact the owner, tenant, occupant or person in control of the property, when the private property has posted thereon a sign indicating no solicitation allowed, no trespassing, no solicitors, do not disturb, or words of similar import of any of these phrases.

Section 8. Mobile Vending Units

Mobile Vending Units are prohibited from operating within the city limits of the City of West Orange unless participating in a City of West Orange-sponsored event. As Mobile Vending Units participating in City-sponsored activities must be registered with appropriate City department, they are not required to obtain a license/permit as defined under this Ordinance. All other regulations including, but not limited to, health and safety requirements must be followed.

Any mobile vending unit in operation prior to October 1, 2021 shall be grandfathered and allowed to operate until the current permit holder ceases continuous operation.

Section 9. Not Transferable

A permit granted under this ordinance shall not be transferable nor give authority to more than one person to conduct a business as a peddler, but any person having obtained such permit as an itinerant vendor may have the assistance of one or more persons in conducting such business.

Section 10. Length of Permit

The permit provided for by this ordinance shall continue so long as such sale or exhibit is held in the city but in no event shall continue for more than one (1) year, and shall be prominently displayed in a conspicuous place on the premises where such sale or exhibit is being conducted and shall remain so displayed so long as any goods, wares or merchandise are being so sold or exhibited.

Section 11. Violations/Penalties.

a) Any person violating any provisions of this article or failing to observe any provisions hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined in accordance with State Statutes. Each day or fraction of a day

during which this article, or any part thereof, shall be violated shall be deemed a separate offense and punishable as such.

- b) A license under this Chapter may be temporarily suspended by the Police Chief or Code Enforcement Official, when the following occur:
 - 1) The licensee/permittee has made fraudulent, false or incorrect statements in the application or in the conduct of the licensee's business.
 - 2) The licensee/permittee has violated this Chapter or has otherwise conducted the licensed business or activity in an unlawful manner or contrary to the provisions of this Ordinance.
 - 3) The licensee/permittee has conducted business in a manner endangering the public welfare, health, safety, or morals.

Section 12. Revocation/Cancellation of License/Permit

The Police Chief or Code Enforcement Official shall have the power and authority to revoke/cancel the license/permit of any person licensed/permited under the terms of this Ordinance who defaults in, fails, or neglects to comply with any of the provisions and regulations set forth in this Ordinance of any other laws and/or regulations of the City, County or State, or who may violate any of the same. Any such person whose license/permit is so revoked/cancelled shall not be eligible to procure another or new license/permit under this Ordinance until and after the expiration of one (1) year after such license/permit has been so revoked/cancelled.

Notice of revocation/cancellation shall be served to licensee/permittee. The notice shall state the reason(s) for revocation/cancellation and shall state that the licensee/permittee has the right to appeal the revocation/cancellation to the City Council by filing an appeal with the City Secretary within five (5) calendar days of the delivery of the notice. The licensee/permittee or any agents shall not conduct any activity permitted by the license/permit prior to the appeal being heard before City Council.

Revocation/cancellation of license/permit shall not interfere with any prosecution of any violation(s) under this ordinance.

Section 13. Exercise of Police Power.

This entire chapter is and shall be deemed an exercise in police powers of the state and of the city for the public safety, convenience, comfort and protection of the city, its citizens and visitors. The provisions listed below will constitute a viable and legal exemption to the requirement of this ordinance.

- (a) Any local governmental agency;
- (b) Vendors of farm produce, poultry, stock or agricultural products in their natural state and who actually produce such products on their own premises, whether within or without the city;
- (c) Any not-for-profit church, congregation, religious society, group, or order; or
- (d) The delivery or receipt of goods and/or services solicited by recipient

Section 14. Severability Clause

It is expressly ordained that if any section or subsection, clause, sentence or paragraph of this ordinance shall be found to be illegal, invalid or void by any court of competent jurisdiction, then such findings shall not affect the remaining portions of this ordinance, but the same shall be valid and in effect, it being the expressed intention of the City

Council of the City of West Orange, Texas, to pass each and every sentence, clause, paragraph, section or exhibit individually.

READ, PASSED and APPROVED this 11th of October, 2021.



Randy Branch, Mayor

ATTEST:



Theresa Van Meter, City Secretary

APPROVED


Chris Leavins, City Attorney

