

ORDINANCE NO. O-97-24

**AN ORDINANCE AMENDING CITY CODE,
CHAPTER 26, ARTICLE 11 OF THE CITY
CODE; REGULATING PEDDLERS IN THE
CITY ESTABLISHING REQUIREMENTS FOR
OBTAINING A PERMIT, PROVIDING FOR
PENALTIES, REQUIRING PUBLICATION AND
ESTABLISHING AN EFFECTIVE DATE**

**BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY
OF PHARR, TEXAS, THAT:**

**ARTICLE I. CHAPTER 26, ARTICLE II OF THE CITY CODE IS AMENDED TO
READ AS FOLLOWS:**

DIVISION I. IN GENERAL

Sec. 26-26. Purpose of article.

- (a) This entire article is and shall be deemed an exercise of the police power of the state and of the city, for the purpose of establishing a reasonable method and system of inquiring into the history and background of transient and itinerant persons, and the business entities they may represent, engaged in selling any product or service in the city, for the purpose of determining the honesty and integrity of such persons or business entities, and whether or not they are engaged in fraudulently representing the product or services they sell, and whether or not they are engaged in the selling and receiving valuable consideration for a product or service which does not exist, all for the health, safety, protection and best interests of the citizens of the city, and all the provisions of this article shall be construed for the accomplishment of that purpose.

Sec. 26-27. Definitions. The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

- (a) “Peddler” means and includes and shall be construed to mean and include all persons, firms and corporations, as well as their agents and employees, who engage in the temporary or transient business in the city of exposing or offering to expose plates or films to make negatives for the making of pictures or photographs, or who engage in the temporary or transient business in the city of selling or offering for sale any goods or merchandise, or exhibiting for sale or exhibiting goods or merchandise for the purpose of taking orders for the sale thereof, or who for the purpose of carrying on such business or conducting such exhibits thereof, either 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 or exhibited for the purpose of taking orders for the sale thereof. The term “peddler,” as defined in this section, shall not include or be construed to include any person engaged in interstate commerce nor any person upon whom the provisions of this article would impose a direct and unlawful burden on interstate commerce. The word “peddler” shall include the terms “solicitor,” “transient or itinerant merchant or vendor,” or “transient or itinerant photographer.”

- (b) “Temporary” means and shall be construed to mean any business transacted or conducted in the city for which firm arrangements have not been made for the hire, rental or lease of premises in or upon which such business is to be operated or conducted for a period of at least 120 days.

- (c) “Transient” means any such business of any peddler as may be operated or conducted by persons, firms or corporations, or by their agents or employees, who reside away from the city or who have fixed places of business in places other than the city, or who move stocks of goods or merchandise or samples thereof into the city with the purpose or intention of removing them or the unsold portion thereof away from the city before the expiration of 120 days.

- (d) "Product or service" means any physical or material object or item, or any service of whatsoever nature, or any property right of any value represented by oral or written promise or contract.
- (e) "Selling" means selling, leasing or renting direct to the ultimate owner or user of such product or service, or to the agent or other representative of the ultimate owner or user of such product or service, whether such selling involves the delivery of the product or service at the time of the sale, or the taking of orders for future delivery, and whether such selling involves payment in advance, payment on delivery, by whatever means of delivery, or deferred payment after the delivery of the product or service sold.
- (f) "Ultimate owner or user" means the person who purchases the goods or services for their use or for the use of any family member.

Sec. 26-28. Exceptions. The provisions of this article shall not apply to the following:

- (a) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business.
- (b) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.
- (c) The selling of perishable agricultural products by the grower thereof.
- (d) Sales of goods or merchandise donated by the owners thereof, the proceeds which are to be applied to any charitable or philanthropic purpose.
- (e) The selling of products or services within the city by use of the United States mail exclusively, and where no personal contact by the seller, or agents of the seller or purchaser, is had.

- (f) The selling of products to be delivered to the purchaser directly from an out-of-state source in the original package.

Sec. 26-29. Prohibited activities.

- (a) **Entering premises without invitation.** It shall be unlawful for any solicitors of orders for goods, wares, or merchandise, peddlers, itinerant merchants, or transient vendors of goods, wares, or merchandise, to go in or upon any private premises situated within the corporate limits of the city for the purpose of soliciting orders for the sale of goods, wares, or merchandise, or for the purpose of selling or disposing of or peddling the same, without having first been requested or invited to go in or upon such premises by the owner or occupant thereof for such purpose or purposes.
- (b) **Selling on city-owned property generally.** No selling activities as described herein shall be allowed upon or within any municipally owned and operated premises within the city, regardless of the status of the person or business entity so selling, whether itinerant, transient, permanent, locally domiciled, or otherwise, unless such person or other business entity obtains a written permit from the city secretary under the terms and conditions and consideration to be determined by the city. This section shall not apply to streets, sidewalks and alleys, and no permit shall be issued which would authorize the violation of this section.
- (c) **Refusing to leave premises.** Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, shall be deemed guilty of a misdemeanor and fined as set out herein.
- (d) **Entrance to premises restricted.** It shall be unlawful for any peddler to enter upon any private premises when the same are posted with a sign stating "No Peddlers Allowed" or "No Solicitations Allowed" or other words to such effect.

(e) **Misrepresentation.** It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

(f) **Selling on streets, sidewalks, alleys, or open and unimproved lots.**

(1) No person, partnership, firm, association, corporation, or other form of business entity directly or by or through its agents and employees regardless of the nature, itinerant, transient, permanently, locally or otherwise, shall engage in any type of selling activity described in this chapter, on any public street, right-of-way easement, sidewalk, or alley in the city.

(2) Any person, partnership, firm, association, corporation, or any other form of business entity who wishes to sell items of value on any open and or unimproved lot shall first obtain a permit from the City Secretary to conduct such activity. The City Secretary shall, upon application for such a permit, investigate as to whether the person requesting the permit has the permission of the owner of the property to conduct such business on the property. The City Secretary shall also require that such sale of any item of value on any open and or unimproved lot shall provide for a twenty-foot setback from any public street, alley, or right-of-way. A permit from the City Secretary will not allow a person, partnership, firm, association, or other form of business entity the right and authority to any type of selling activity as described in this chapter from public streets, right-of-way easements, sidewalks, and alleys. The permits shall not allow for the parking of motor vehicles, pushcarts, pickup trucks, vans, horse-drawn carriages, or any other vehicle propelled by use of human, animal, or mechanical power or any combination thereof in city streets, sidewalks, alleys, or right-of-way easements in order to engage in a selling activity as described in this Chapter. All permits will be issued by the City Secretary pursuant to this section only if the applicable provisions of this Chapter are met and the applicants shall have filed proof with the City Secretary of compliance with city health codes, if applicable. If the selling activity involves the use or operation of a motor vehicle, the applicant shall also file with the City Secretary proof that such business entity has, in force, a policy of liability insurance

issued by an insurance company licensed to do business in Texas, with minimum policy limits as follows: One hundred thousand dollars (\$100,000.00) per person; three hundred thousand dollars (\$300,000.00) for any single occurrence for bodily injury or death, one hundred thousand dollars (\$100,000.00) for any single occurrence for injury to or destruction of property.

- (g) **Hours of operation.** It shall be unlawful for any peddler to engage in the business of peddling within the city between the hours of one-half hour before sunset and 8:00 a.m. the following morning except by specific appointment with or invitation from the prospective customer.

Sec. 26-30 - 26-45. Reserved.

DIVISION II. PERMIT

Sec. 26-46. Required. Each itinerant or transient vendor, prior to engaging in the selling of any product or service within the city, shall first apply for a permit with the City Secretary at the office of such secretary in the City Hall, on forms provided for that purpose. No such person shall sell any product or service until the permit provided for in this article has been issued.

Sec. 26-47. Application. Any person desiring a permit required by this article shall file a written application, verified by affidavit as to the truthfulness of its contents, with the City Secretary at least (10) ten days prior to the beginning date of the contemplated sale or exhibit to be held in the city. Such application shall contain the following information:

- (a) The full name, address and location of the principal office or place of business of the applicant and, if the applicant is a partnership, firm or joint adventure, the full names and addresses of all members thereof, and if a corporation, the state or county chartering it and the names and addresses of its officers.

- (b) A detailed description of the product or service to be offered for sale and sold by such person within the city, including display of samples, if any, at the time of applying for the permit.
- (c) In cases where such business is not to be conducted by the applicant in person, the name and legal relationship to the applicant of the person who is to be present in the city in charge and control of such business.
- (d) The location and description of the premises or space in or upon which such transient or temporary business is proposed to be conducted, the ownership of such premises, and the terms of any arrangements that may have been made for the use of such premises. If a written lease of such premises has been made, the application shall so state and a copy of such written lease, verified by affidavit as to the truth of its contents, shall be filed with the application.
- (e) If the applicant is a corporation, it shall file with its application a certified copy of its charter, and if it is not incorporated under the laws of this state, a certified copy of its present permit to do business in the state shall accompany the application.
- (f) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed therefor, if previously convicted; and the place of conviction.
- (g) A written certificate of a practicing physician in the county, dated not more than five (5) days prior to the date of filing the application, certifying that the physician has examined the applicant and has found the applicant to be free of infectious, contagious or communicable diseases.
- (h) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.
- (I) The period of time the applicant wishes to engage in business within this city.

- (j) The names (including state and county) of the last preceding cities or towns in which the applicant conducted selling operations, up to but not exceeding the last five (5) such towns or cities immediately preceding the application in Pharr.
- (k) If a motor vehicle is to be used in such business, the following information must be provided: Description of vehicle, certificate of insurance in the amounts required herein the name of the driver(s) of such vehicles and a copy of all drivers' current drivers license.
- (l) The names and addresses of references, if any, including banks and inspection and approval agencies.
- (m) A statement by the applicant, under oath, as to whether he has ever been sued in a civil or criminal proceeding in a duly constituted court of law for any form of fraud, theft, or embezzlement; and whether or not the person, partnership, firm, association, corporation or other business entity he may represent, his ever been, to the registrant's knowledge, convicted in a duly constituted court of law for any from of fraud, theft or embezzlement.
- (n) Such other relevant information as may be required for the investigation of the applicant.

Sec. 26-48. Bond required of applicant. Each applicant for a permit under this article shall furnish and deliver to the City Secretary, prior to issuance of the permit, a bond in the amount of \$2,000.00, with the peddler in whose behalf such application is made as principal and two or more good and sufficient individual sureties satisfactory to the City Secretary, such sureties to be residents of this county, or one corporate surety which shall have authorized agents in this county. Such bond

shall be payable at Pharr, Hidalgo County, Texas, to the City Secretary of the city, and her successors in office for the benefit or any person legally entitled to recover thereon, and conditioned that the parties thereto will pay all damages to any person caused by or arising from or growing out of any fraudulent or wrongful or illegal act of such peddler in the conduct of such business in the city. Such bond shall provide that any person for whose benefit the bond is made may sue thereon in his own right without joining the City Secretary or the city, but successive recoveries may be had thereon to the full extent of the amount therein named and prescribed in this section, and that it shall remain in full force and effect for the entire duration of the permit to secure which it is furnished, plus any renewals thereof, and for two years thereafter.

Sec. 26-49. Fee. The fee for a permit required by this article shall be \$50.00. The fee shall be paid prior to issuance of the permit. Such fee shall be compensation to the city for the services required of it in connection with such permit and to enable the city to partially defray the expense of enforcing the provisions of this article. The City Secretary shall require that all evidence of sales activity be removed each and every day and that no structure be erected unless and until a building permit is first obtained.

Sec. 26-50. Investigation of applicant and his principal. The City Secretary shall, upon each application under this article, forthwith deliver a copy thereof to the Police Department of the city, which shall thereupon conduct an inquiry of the reputation and background of the person so applying and the person, partnership, firm, association, corporation or other business

entity, if any, that such registrant represents. Such investigation shall not exceed seven (7) days in time.

Sec. 26-51. Issuance or denial of permit; contents of permit.

- (a) Upon completion of the investigation provided for in section 26-50, if no evidence of fraud, theft or embezzlement in the selling operations of the registrant, or of the person, partnership, firm, association, corporation or other business entity, if any, that the applicant represents, is discovered or determined, the City Secretary shall issue to such applicant a permit bearing the name of such applicant, the name of the person, partnership, firm, association, corporation, or other business entity, if any, that the applicant represents, a statement the effect that such applicant has been approved by the city for selling within the city the product or service he is selling, and bearing the signature of the City Secretary.
- (b) In the event evidence of fraud, theft, or embezzlement by the applicant or the entity he represents is developed and discovered in such investigation, the applicant shall be denied a permit to operate in the city.

Sec. 26-52. Issuance. The City Secretary shall issue to any peddler applying therefor, who has complied with all the requirements of this ordinance a permit authorizing such applicant, as peddler to sell, offer for sale, or exhibit for the purposes of taking orders for the sale thereof, in the city their goods or merchandise.

Sec. 26-53. Not transferable; authorizes only one person to conduct business. The permit provided for in this ordinance shall not be transferable nor give authority to more than one

person to conduct a business as peddler, but any person having obtained such permit may have the assistance of one or more persons in conducting such business.

Sec. 26-54. Term. A permit issued under this ordinance shall continue in force so long as the sale or exhibit authorized thereby is continuously held in the city, or until the expiration date thereof, but in no event shall it continue more than 120 days from its issuance.

Sec. 26-55. Display. A permit issued under this ordinance shall be prominently displayed in a conspicuous place on the premises where the sale or exhibit authorized thereby is being conducted and shall remain so displayed so long as any goods or merchandise are being so sold or exhibited. If a motor vehicle is used in such business, the permit shall be prominently displayed in such motor vehicle.

Sec. 26-56. False information. It shall be unlawful for any person to give any false or misleading information in connection with the application for a permit required by this ordinance.

Sec. 26-57. Fingerprints, photographs. At the time of making application for a permit required by this ordinance, the applicant shall submit to fingerprinting and photographing by the chief of police.

DIVISION III. ENFORCEMENT

Sec. 26-58. Responsibility for enforcement. The duly constituted authorities of the city, including the City Manager, police department, City Secretary and others having the duty of enforcing the ordinances of the city, shall enforce the provisions of this ordinance and allow no peddler to conduct a business without full compliance with the terms of this article.

Sec. 26-59. Revocation of permit. Any and all permit issued under the provisions of this ordinance may be revoked for the violation by the permittee of any applicable provision of this Code, state law or city ordinance. Upon such revocation, such permit shall immediately be surrendered to the City Secretary and failure to do so shall be a misdemeanor subject to a fine as set out herein.

Sec. 26-60. Fine, penalty. Any person violating any provision of this article shall be guilty of a misdemeanor and shall be fined not less than \$500.00 and not more than \$1,000.00. Each day that a violation occurs shall constitute a special offense.

Sec. 26-61 - 26-75. Reserved.

ARTICLE II. SEVERABILITY

If any section, part or provision of this ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then, in that event, it is expressly provided, and it is the intention of the Board of Commissioners in passing this Ordinance that its parts shall be severable, and all other parts of this Ordinance shall not be affected thereby and shall remain in full force and effect.

ARTICLE III. PROVIDING FOR PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE.

This ordinance shall be published in the City's official newspaper after its passage and shall take effect and be in force from and after ten (10) days following such publication.

PASSED AND APPROVED ON FIRST READING THIS THE 20TH DAY OF MAY, 1997.

CITY OF PHARR



VICTOR GARCIA, MAYOR

ATTEST:



DORA H. GARZA, CITY CLERK

PASSED AND APPROVED ON SECOND READING THIS THE 3RD DAY
OF JUNE, 1997.

CITY OF PHARR



VICTOR GARCIA, MAYOR

ATTEST:



DORA H. GARZA, CITY CLERK

PASSED AND APPROVED ON THIRD READING THIS THE 17TH DAY
OF JUNE, 1997.

CITY OF PHARR



VICTOR GARCIA, MAYOR

ATTEST:



DORA H. GARZA, CITY CLERK