

Chapter 16 - PEDDLERS, SOLICITORS AND VENDORS

FOOTNOTE(S):

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Editor's note—Ord. No. 2011-O-04C, § I, adopted May 3, 2011, repealed former Ch. 16, §§ 16-1—16-14, and enacted a new Ch. 16 as set out herein. Former Ch. 16 pertained to peddlers and vendors and derived from Ord. No. 83-O-5C, adopted May 17, 1983; Ord. No. 87-O-7E, adopted July 23, 1987; Ord. No. 95-O-8, adopted Aug. 8, 1995 and Ord. No. 98-O-7A, § 3, adopted July 28, 1998.

Sec. 16-1. - Definitions.

The following definitions shall apply to this chapter:

Interstate commerce: Soliciting, selling or taking orders for, or offering to take orders for any goods, wares, merchandise, photographs, magazines, or subscriptions to magazines, or things which, at the time the order is taken, are in any federal district or territory, any commonwealth, or in any state other than Texas and shipped or introduced into the city in fulfillment of such orders.

Merchandise: Merchandise is used in its broadest sense and shall include property of every kind.

Motor vehicle: Any vehicle used for displaying, storing, or transporting of articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles. The term is to include trailers, trucks and automobiles.

Peddler: Any individual, whether a resident of the city or not, traveling by foot, wagon, automobile, motor truck of any other type of conveyance, from place to place, from house to house, 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 future or immediate delivery, or for services to be performed immediately or in the future, whether or not such individual had, carries or exposes for sale a sample of the subject of such sale or not or whether he is collecting advance payments on such sales or not. The word "peddler" shall include the terms, "canvasser" and "solicitor". The word "peddler" shall not include individuals traveling to businesses, houses or places at the invitation of the resident or owner.

Public way: All areas legally open to public use, such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the interior and areas surrounding public buildings.

Services: Services is used in its broadest sense and shall include any work done for the benefit of another person.

Special event: Any occasion including, but not limited to, fairs, shows, exhibitions, city wide celebrations, festivals, etc., within a specifically defined area of the city for a period of time established by the city council.

Stand: Any newsstand, table, bench, booth, rack, handcart, pushcart, vehicle or any other fixture or device used for the display or storage of articles offered for sale by a vendor or peddler. Such stands must be located at least ten (10) feet away from all other property lines adjacent to a street. All stands must be removed from the property on which business is conducted each day.

Vendor: Any individual, 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 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 display or sell food, beverages, goods, merchandise, etc., outside.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-2. - Peddler/vendor permit—Required.

It shall be unlawful for any peddler or vendor to engage in the business of selling, displaying, offering for sale of any food, beverages, goods, services, or merchandise within the City of Marble Falls without first obtaining a permit from the city secretary as provided in this chapter.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-3. - Peddler/vendor permit—Exemptions.

The following are excluded from permitting provisions:

- (1) Newspaper distribution.
- (2) Farmers who sell agricultural products that were raised or grown by them, when located within a public way and at a time designated by the city council in advance.
- (3) Peddlers and vendors operating within a designated public way in connection with a special event approved by the city council and appropriate body organizing and implementing the special permit. Provided that, the appropriate organizing body first apply and receive a special permit anticipating and approving such vendor sales for the special event.
- (4) Any individual soliciting or peddling for a philanthropic, charitable, political or religious organization provided such activity is for the sole exclusive benefit of that organization and so long as the person engaging in such activity does not receive compensation in the form of a commission, salary, or other monies paid to him for such activity.
- (5) Anonymous political speech and political campaigns.
- (6) Any operation which is exempted by state or federal statute from this chapter, only to the extent of such applicable exemption.
- (7) 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.

Any person claiming to be legally exempt from the provisions of this chapter, including the payment of the permit fee shall make such a claim in writing to the city secretary.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-4. - Use of public ways—Prohibited.

It shall be unlawful for any peddler or vendor to engage in business within any public ways within the city.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-5. - Use of public ways—Exemptions.

Vendors may locate within a designated public way in connection with a special event approved by the city council and the appropriate body organizing and implementing the special event.

- (1) Farmers may sell agricultural products that were raised or grown by them within a public way and time designated by the city council.

- (2) Ice cream vendors may use the public ways, provided they do not remain in one (1) location for longer than fifteen (15) minutes.
- (3) Peddlers may utilize streets and roads to travel from house to house or place to place in pursuit of their business.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-6. - Sales and use tax permit—Required.

It shall be unlawful for any peddler or solicitor to engage in business within the city without having obtained and presented a sales and use tax permit issued by the State of Texas.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-7. - Sales and use tax permits—Exemptions.

The following are exempt from having to present a sales and use tax permit:

- (1) Any peddler or vendor engaged in interstate commerce.
- (2) Farmers who sell agricultural products that were raised or grown by them.
- (3) Nonprofit organizations.
- (4) Any other business or activity exempt by the Texas State Comptroller from collecting state sales tax.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-8. - Health license—Required.

The application of any vendor engaged in the sale or distribution of food or beverages shall be required to submit a copy of the vendor's current mobile food vendor license or roadside vendor license issued by the State of Texas Department of Health Services.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-9. - Health license—Exemptions.

The following are exempt from having to submit a copy of their State of Texas Mobile Food Vendor License or roadside food vendor license:

- (1) Farmers who sell agricultural products that were raised or grown by them.
- (2) Nonprofit organizations.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-10. - Application.

Every person desiring to engage in the business of a peddler or vendor within the city must file a written application for a permit with the city secretary. The application must include the following information:

- (1) Applicants name, telephone number, address, date of birth and either:
 - a. Driver's license number and state; or
 - b. Social Security number and an official, government issued picture identification card number.
- (2) If the applicant is peddling or making solicitations for any commercial, charitable or political organization, the name, telephone number and address of such organization;
- (3) Full and complete list of goods to be sold and/or services delivered;
- (4) For each individual involved as a peddler or vendor: name, telephone number, address, date of birth, and either:
 - a. Driver's license number and state; or
 - b. Social Security number and an official, government issued picture identification card number.
- (5) Description (year, make and model) and license plate number and state of all motor vehicles to be used in soliciting and peddling and a copy of the vehicle's current proof of liability insurance.
- (6) A statement that the applicant has not been convicted of any felonies of any nature of any other crimes of moral turpitude in this state or any other state; and if having been so convicted, a full statement as to the place of conviction and crime for which applicant was convicted.
- (7) Specific location where applicant will peddle or solicit and a written statement from the property owner consenting to the applicant's use of his/her property for the sales activities indicated in the permit application.
- (8) A site plan of the subject property indicating where the vendor will be located in relation to the adjacent right-of-way, adjacent buildings, and the location of two (2) nine (9) by eighteen (18) foot on-site parking spaces with a twenty-foot backup lane. (Vendors should note that the location of their business will not be allowed if it results in a reduction in the number of parking spaces serving an existing business below that required by city ordinances).
- (9) A copy of the vendor's current State of Texas Sales and Use Tax Permit together with written documentation from the state comptroller that all sales tax that may be due and owing by the vendor has been paid in full.
- (10) Vendors 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 food vendor license issued by the State of Texas Department of Health Services.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-11. - Restrictions applicable to all vendors, peddlers and solicitors.

- (1) Stands. Vendor stands and/or motor vehicles shall not:
 - a. Exceed twenty-five (25) feet in total length, ten (10) feet in width or thirteen (13) feet in height;
 - b. Impede access to the entrance or driveway of an adjacent building.
- (2) Hours of operation. Vendors shall be allowed to engage in the business of vending only between the hours of 7:00 a.m. and 7:00 p.m. or as approved by the city manager or his/her designee. All stands and other vending operations must be removed during nonoperating hours.
- (3) Handicapped areas. No vendor shall conduct business within twenty (20) feet of any handicapped parking space or access ramp.
- (4) Prohibited areas. A vending permit issued pursuant to this chapter is not valid in public ways or in public places of the City of Marble Falls. Vendor stands and motor vehicles are prohibited within

twenty (20) feet of a fire hydrant, fire escape, loading zone or driveway of a fire station, police station or hospital.

- (5) Removal of trash. All trash or debris accumulating within fifty (50) feet of any vending stand shall be collected by the vendor and deposited in an authorized trash container. All vendors selling food or beverages must provide at least one (1) trash receptacle adjacent to or as a part of their stand.
- (6) Noise. No vendor may sound any device, which produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio sound amplifier, or similar device to attract public attention.
- (7) Quarterly sales and use tax reports. All vendors shall provide a copy of their quarterly report of sales and use tax receipts to the city secretary within thirty (30) days of completing such reports.
- (8) Motor vehicles. No vendor vending from a motor vehicle shall:
 - a. Stop, stand or park within twenty (20) feet of any intersection;
 - b. Conduct business in such a way as would increase traffic congestion or delay, constitute a hazard to life or property, interfere with an abutting property owner or obstruct access to emergency vehicles.

- (9) Signage. All signage utilized by a permitted peddler/vendor shall be subject to the following standards:

Peddler/vendors shall be allowed a single temporary detached sign to advertise the business, subject to the following standards:

- a) A peddler/vendor may have a maximum of two (2) signs upon the vehicle or peddler/vendor structure. A third sign is allowed upon the vehicle/structure; however the third sign shall constitute the allowed single detached sign. If two (2) signs or less are utilized on the vehicle structure, then the peddler/vendor shall be allowed the single temporary detached sign subject to standards, b)—h) below.
 - b) The sign must remain temporary and no permanent installation shall be allowed unless permitted under the City of Marble Falls Sign Ordinance. The sign should be anchored or stabilized to prevent wind damage.
 - c) Height of the sign shall not exceed six (6) feet from the surface of the ground.
 - d) Overall sign dimensions shall not exceed twenty-four (24) square feet. Sign may be dual sided.
 - e) Sign must be a minimum of five (5) feet from the property line or curb, whichever is greater.
 - f) Signs may not:
 - Block a sidewalk or other pedestrian path.
 - Impede access to/from a mail box.
 - Block a driveway or be located in the turning radius of a driveway.
 - Be set up in an area where the visual triangle of a driveway would be affected.
 - Be within ten (10) feet of a fire hydrant.
 - g) All peddler/vendor signs may not be electronic or have any flashing component(s) upon the sign surface. Battery operated internally lighted signs are allowed.
 - h) All signs must be constructed of weatherproof materials and shall not be constructed of any of the following: Paper, canvas, cloth, cardboard, Styrofoam, or sheet metal.
- (10) Vending, peddling or soliciting at any residence or building which has posted a "No Peddlers" or "No Solicitors" sign is prohibited.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-12. - Permit fees.

All peddlers and vendors, not exempted by section 16-13, shall pay the following permit fees, which shall be valid for the calendar year in which the permit is issued:

One person\$50.00

Two (2) or more persons100.00

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-13. - Permit fees—Exemptions.

The following are exempt from the permit fee:

- (1) Any individual soliciting or peddling for a philanthropic, charitable, political or religious organization provided such activity is for the sole exclusive benefit of that organization and so long as the person engaging in such activity does not receive compensation in the form of a commission, salary, or other monies paid to him for such activity.
- (2) Sales made under authority of state statute and by order of any court.
- (3) Sheriff constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling wares and merchandise according to law.
- (4) The sale of personal property goods which occurs on a person's own private property by the owner thereof at his/her private residence or business.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-14. - Permit issuance; investigation.

A copy of the application for permit will be referred to the chief of police who will undertake an investigation of the applicant's record and background such as shall be reasonably necessary to protect the public. An applicant for permit under this chapter may be reasonably denied if he or she is currently wanted on warrant for arrest, or if the applicant had been convicted of a felony involving theft, fraud, bribery, or perjury.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-15. - Procedures for permit issuance.

The city secretary shall review all information relevant to the issuance of a peddler/vendor permit and make the determination whether said permit is granted or denied. Before any permit is denied the city secretary shall consult the city manager. Said determination shall be made within five (5) working days of the filing of an application. Application is not complete until all items outlined in section 16-6 are submitted.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-16. - Permit ID card.

All peddlers, solicitors and vendors and their associates will be issued a permit ID card by the city secretary showing the individual's name, the address wherein the vending business is to be conducted,

the individual's driver's license number and the effective period of the permit and shall display the permit ID card on their person at all times.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-17. - Authority to enforce.

The chief of police or designated representative shall have authority to enforce the provisions of this chapter and to enlist the assistance of all appropriate agencies in the enforcement effort.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-18. - Denial, suspension or revocation of permit.

Any permit issued under this ordinance may be denied, suspended or revoked for any of the following reasons:

- (1) Fraud or misrepresentation in the application;
- (2) Fraud or misrepresentation in the course of conducting the business of vending;
- (3) Conducting the business of vending in any way contrary to the provisions of this chapter;
- (4) Conducting the business of vending in such a manner as to create a public nuisance or constitute a danger to the public health, safety or welfare;
- (5) Conviction of any felony offense or any misdemeanor offense involving moral turpitude while holding a vendor/peddler permit from the City of Marble Falls;
- (6) Suspension or cancellation of any license issued by the Texas Department of Health Services;
- (7) Arrears (ninety (90) days or more) of sales and use tax due the state comptroller;
- (8) Failure to submit quarterly sales tax report to the city secretary pursuant to subsection 16-11(7) above.
- (9) Violation of any city ordinance or law of the state in connection with any soliciting or selling by the vendor/peddler.

(Ord. No. 2011-O-04C, § I, 5-3-2011)

Sec. 16-19. - Appeals.

Any person who is denied a permit or whose permit has been suspended or revoked may appeal same by filing a written notice of appeal to the Marble Falls City Council. All appeals must be filed with the city secretary within ten (10) days after notice of denial, suspension or revocation of a permit. The appeal shall be heard by the Marble Falls City Council within thirty (30) days after receipt. At least five (5) days' notice of the date of the hearing shall be given to the applicant, permit holder. Based on the hearing of the appeal and facts relative thereto, the city council will either sustain or reverse the decision to deny, suspend or revoke the permit. The decision of the city council shall be final.

(Ord. No. 2011-O-04C, § I, 5-3-2011)