

ORDINANCE NO 10062020-02

AN ORDINANCE REPEALING ORDINANCE NO. 368, ADOPTING AN ORDINANCE REGULATING THE SOLICITATION AND PEDDLING DOOR TO DOOR AND IN OTHER PUBLIC PLACES IN THE CITY OF POTEET, TEXAS, REQUIRING REGISTRATION FOR ISSUANCE OF A LICENSE OR PERMIT TO SOLICIT OR PEDDLE WITHIN THE CITY OF POTEET, ESTABLISHING PENALTIES, AND PROVIDING FOR REPEALER, SAVINGS, SEVERABILITY CLAUSE, PUBLICATION, AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Poteet, Texas, finds that it is in the best interests of health safety and welfare of the citizens to regulate peddlers, solicitors and vendors within the City; and

WHEREAS, peddling, soliciting and vending are time-honored activities which can be beneficial to the community and the citizens when conducted in a responsible manner; and

WHEREAS, the registration of persons who engage in peddling, soliciting and vending with the City is necessary to protect the interests of the public and also protects legitimate activities; and

WHEREAS, the regulations of the City governing those who engage in peddling, solicitation and vending should be amended to address health and safety issues with respect to the operation of mobile food establishments within the city limits.

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

Article 1 Definitions

- A. "Peddler" means any individual, whether a resident of the City of Poteet ("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 individual 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.
- B. "Solicitor" means any individual, 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;
 - 2. or for services to be performed in the future whether or not such individual is collecting advance payment on such sales or not; or
 - 3. a request, whether vocalized or not, for a donation other than in response to an inquiry from another person.
- C. "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.
- D. "Aggressive solicitation" means:
 - 1. Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
 - 2. following the person being solicited, if that conduct is:
 - i. intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - ii. intended to or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - 3. continuing to solicit a person within five feet of the person being solicited after the person has made a negative response;

4. intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation;
 5. using obscene or abusive language or gestures toward the person being solicited;
 6. approaching the person being solicited in a manner that:
 - i. is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - ii. is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- E. "Automated Teller Machine" means a device, linked to a bank's account records, which is able to carry out banking transactions.
- F. "Automated Teller Facility" means the area comprised of one or more automatic teller machines, and any adjacent space that is made available to banking customers.
- G. "Bank" includes a bank, savings bank, savings and loan association, credit union, trust company, or similar financial institution.
- H. "Bus" means a vehicle operated by a transit authority or shuttle bus operated by Alamo Regional Transit for public transportation.
- I. "Check Cashing Business" means a person in the business of cashing checks, drafts, or money orders for consideration.
- J. "Merchandise." Merchandise shall be used in its broadest sense and includes property of every kind.
- K. "Mobile Food Vehicle" is a vehicle mounted food establishment, designed to be readily transported, pushed, or drawn.
- L. "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.
- M. "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.
- N. "Services." Services shall be used in its broadest sense and includes any work done for the benefit of another person.
- O. "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.
- P. "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.
- Q. "Vendor" means 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 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.

Article 2 Aggressive Solicitation.

- A. A person commits an offense if the person solicits:
 - 1. In an aggressive manner in any public area;
 - 2. or private parking lot of any commercial business, non-profit organization, church or schools;
 - 3. In a bus, at a bus station or stop, or at a facility operated by a transportation authority or Alamo Regional transit for passengers;
 - 4. Within 25 feet of:
 - i. an automated teller facility;
 - ii. the entrance or exit of a bank;
 - iii. the entrance or exit of a check cashing business; or at a marked crosswalk.
 - iv. on either side of the street on a block where a school attended by minors or a child-care facility has an entrance or exit;
 - v. at a sidewalk café or the patio area of a bar or restaurant.
- B. A culpable mental state is not required, and need not be proved, for an offense under Subsection (A) (1), (2), (3), or (4) above.
- C. This section is not intended to proscribe a demand for payment for services rendered or goods delivered.

Article 3 Permit Required.

- A. 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 Administrator or his duly authorized representative as provided for in the chapter.

Article 4 Permit Exemptions. *The following are excluded from permitting provisions:*

- A. Newspaper carriers;
- B. Farmers who sell agricultural products that were raised or grown by them, when located within a public way;
- C. Non-profit organizations that maintain a principal office within Atascosa County, Texas;
- D. Religious proselytizing or distribution of religious literature;
- E. Political speech;
- F. Canvassers who attempt only to solicit political support or to determine opinions or sentiments;
- G. 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;
- H. 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;
- I. Individuals traveling to businesses or houses at the invitation of the resident or the owner; or
- J. Any operation which is exempted by state or federal statute from this chapter, only to the extent of such applicable exemption.

Article 5 Bond Required.

- A. Permit required in Article 3 hereof shall be accompanied by a bond in the penal sum of \$1,000 for applicant that is a corporation, firm, or partnership. The bond shall be signed by the applicant as principal, and signed by any surety company authorized to do business

in the State of Texas, as surety. Such bond shall be conditioned for the 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 said bond, at the time of delivery, and that may be discovered by such a purchaser or customer within thirty (30) days after delivery, and which bond shall be for the use and benefit of all persons, firms or corporations that may make any purchase or give any order to the principal on said bond, or to an agent or employee of the principal.

Article 6 Use of State Highways Prohibited.

- A. It shall be unlawful for any Peddler, Solicitor or Vendor to engage in business on any State Highway within the City. Furthermore, it shall be unlawful for any Mobile Food Vehicle to park on any State Highway within the City.

Article 7 Use of State Highways Exemptions.

- A. Peddlers, Solicitors or Vendors may engage in business or park on a State Highway in connection with a Special Event approved by the City Council and/or the appropriate body organizing and implementing the event.

Article 8 Use of City Streets Surrounding City Park.

- A. Peddler, Solicitor or Vendor may engage in business on city streets surrounding city parks between the hours of 8 a.m. and 5 a.m. Monday through Thursday and 8 a.m. and 8 p.m. on Friday. In order to accommodate reserved events in and around city parks, Peddlers, Solicitors and Vendors may apply to the City Administrator or his duly authorized representative for permission to operate on city streets surrounding city parks after 8 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 Administrator or his duly authorized representative 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 Administrator determines that it is the best interest of the City to withdraw permission.

Article 9 Use of City Parks Prohibited.

- A. A Peddler, Solicitor or Vendor may not engage in business in city parks without approval from the City Administrator or his duly authorized representative.

Article 10 Use of Private Property.

- A. Peddlers, Solicitors and Vendors may operate on private property where the property is properly zoned, the operator receives written permission from the property owner for the use.

Article 11 Restrictions applicable to all Peddlers, Solicitors and Vendors

- A. Stands and/or Mobile Food Vehicles shall not:
 - 1. Exceed ten (10) 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 a.m. and 12 a.m. unless otherwise stated herein. All Stands and Mobile Food Vehicles shall be removed during non-operation hours this includes those Mobile Food Vehicles that are participating in a reserved event associated at a city park. Mobile Food Vehicles are not allowed to remain on public right-of-way during overnight hours even if they are associated with a reserved event at a city park.
- 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 Ordinance.

Article 12 Permit; Written Application Required.

- A. 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 Administrator or his duly authorized representative which application shall give the following information:
- B. Applicant's name, telephone number, address, birth date, physical description, and either:
 - 1. Driver's license number and state, or
 - 2. Social security number and an official, government-issued picture identification card.
- C. 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.
- D. Full and complete list of goods or merchandise to be sold and/or Services to be delivered.
- E. For each individual 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. Driver's license number and state, or
 - 2. Social Security number and an official, government-issued picture identification card.
- F. 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.
- G. If the applicant or any involved individual does not have a telephone number and/or an address, the telephone number and/or address of a relative or third party that can contact the applicant or any involved individual.
- H. A statement that the applicant has not been convicted of any felonies of any nature or of any other crimes of moral turpitude in the State or any other State; and, if having been so convicted, a full statement as to the place of conviction and crime for which the applicant was convicted.
- I. A copy of the applicant'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.
- J. 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 State of Texas.
- K. Applicant must provide original identifying documents to the City Administrator or his duly authorized representative upon request.

Article 13 Permit Fees.

- A. Permit fees shall be accompanied with the permit application. All Peddlers, Vendors and Solicitors not exempted by Article 4 shall be required to pay the permit fee as set out in the City of Poteet's Fee Ordinance.
 - 1. A Peddlers License is a non-refundable \$30.00 fee for each applicant which is a corporation, firm, partnership or association.
 - 2. A \$10.00 fee for each employee who will work under the applicant's license.

3. The permit fees may be reduced or may be waived if the City Administrator or his duly authorized representative determines that the applicant is indigent.
4. An applicant requesting a waiver of the permit fees shall submit an affidavit of indigency with the application materials.
5. For purposes of this section, an applicant is indigent if the applicant's income is not more than 100 percent of the applicable income level established by the federal poverty guidelines.

Article 14 Permit Denial.

- A. A copy of the application for permit will be referred to the Police Department who will undertake an investigation of the applicant's record and background, such as shall be reasonably necessary to protect the public. An application for permit under this chapter may be denied where:
 1. Required application information is incomplete or incorrect;
 2. Applicant is currently wanted on warrant for arrest;
 3. A permit fee has not been paid and affidavit of indigence has not been filed;
 4. Fraudulent statements or omissions on permit application;
 5. More than one prior conviction for violation of the prohibition against aggressive solicitation within any consecutive twelve months; or
 6. Prior felony convictions or convictions for other crimes of moral turpitude.
- B. If the Police Department denies a permit, the applicant may appeal the decision in writing to the Chief of Police within ten (10) business days of the denial. The Chief of Police may affirm, modify or reverse the decision of the Police Department.

Article 15 Permit Issuance, Duration.

- A. If the City Administrator or his duly authorized representative finds that the application is completed in conformance with Articles 10 and Article 11, the application will be forwarded to the Police Department for review. Once the Police department as completed the review a permit shall be issued within five business days. The permit shall be the original application with an official stamp indicating approval. Each permit will be valid for 30 days from date of issue.
- B. The permittee is required to notify the Police Department before any Peddling, Vending or Soliciting under the issued permit is conducted. At this time, the permittee will update any information required under Article 11 that has changed.
- C. The City Administrator or his duly authorized representative will retain one copy of the approved permit for official records. The permit may not be represented as an endorsement or approval by the City of the purposes of a solicitation or a product offered by the permittee.
- D. Only those Peddlers, Vendors or Solicitors whose names are listed on the approved application may conduct business under the issued permit. If any new Peddlers, Vendors or Solicitors join the campaign after the original permit is issued, they must supply the City Administrator or his duly authorized representative with the information required in Article 11.
- E. It shall be unlawful for any Peddler, Vendor or Solicitor to intimidate or aggressively solicit or beg a person into giving money, goods or services.
- F. **Peddlers Permit will not be issued or valid during the Poteet Strawberry Festival. Those Peddlers, Vendors, or Solicitors wish to operate during the Poteet Strawberry Festival, or any other festival will need to obtain a permit under Ordinance 12052017-2.**

Article 16 Permit Display.

- A. Each Peddler, Vendor or Solicitor will carry his or her permit at all times while engaging in business in the City. Upon request or demand, the Peddler, Vendor or Solicitor will exhibit the permit to indicate compliance with all of the relevant requirements of this chapter.

Article 17 Permit Non-Transferability.

- A. Permits issued under the provisions of this chapter are not transferable in any situation and will be clearly marked "Not transferable."

Article 18 Permit Suspension.

- A. The Chief of Police or the Chief's designee may, upon documented complaint or violation of law, suspend and confiscate a permit issued under this chapter.
- B. Peddlers, Vendors and Solicitors whose licenses are suspended have three business days during which to request an administrative review of the suspension. If request for administrative review is not made within three business days, the permit is revoked.

Article 19 Permit Revocation.

- A. Upon permittee's request, made within three business days of the revocation, the Police Department shall provide the permittee with written notice containing particulars of any and all complaints against him or her, and the time, date and place for an administrative review of the suspension.
- B. The City Administrator or his duly authorized representative will conduct an administrative review to determine whether the permit shall be restored or revoked.
- C. After notice and review, the City Administrator may revoke any permit issued under this chapter for the following reasons:
 - 1. Fraudulent statements, omissions on permit application or in conduct of permitted business;
 - 2. Any violation of federal or state statute, or city ordinance;
 - 3. Endangerment of public welfare, health or safety.
 - 4. More than one conviction for violation of the prohibition against aggressive solicitation within any consecutive twelve months.
- D. If the City Administrator revokes a permit, applicant may appeal this decision in writing to the City Council, which may affirm, modify, or reverse the decision of the City Administrator.
- E. Revocation of any permit shall bar the permittee from eligibility for any person under this chapter for a period of one year from the date of revocation.

Article 20 Hours of Operation. (Article 7 & Article 10)

- A. Hours of Operation. No peddler or solicitor may conduct activities defined in Article 1 except between the hours of 8 a.m. and 5 pm Monday thru Thursday, and 8 a.m. and 8 p.m. Friday unless in conjunction with a Special Event unless otherwise noted in the ordinance.

Article 21 No Solicitor Signs.

- A. Any peddler or solicitor who conducts or attempts to conduct business at a place where a sign clearly indicates that solicitors or peddlers are unwelcome is in violation of this chapter.

Article 22 Violation / Penalty.

- A. Any person violating the provisions of this chapter is guilty of a Class C misdemeanor and upon conviction shall be subject to a penalty not to exceed five hundred dollars (\$500.00). Each and every act constituting a violation hereof and each failure or refusal to comply with any provision shall be a separate offense and shall be punished as such.

Article 23 Savings Clause.

If any section, subsection, sentence, clause or phrase of this Ordinance is held for any reason to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Poteet, Texas hereby declares that it would have passed and adopted this ordinance and each section, subsection, sentence clause, or phrase hereof

irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Article 24 Cumulative Repealer Clause.

This ordinance shall be cumulative of all other ordinances of the City, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this ordinance; provided, however, that any complaint, action, claim or lawsuit that has been initiated or has arisen under or pursuant to any of the ordinances or sections thereof that have been specifically repealed on the date of adoption of this ordinance shall continue to be governed by the provisions of such ordinance or sections thereof and for that purpose the ordinance or sections thereof shall remain in full force and effect.

Article 25 Severability Clause.

It is hereby declared to be the intention of the City Council the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

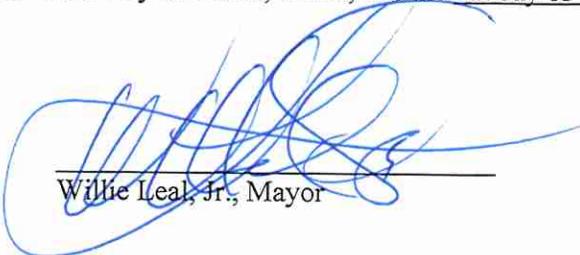
Article 26 Publication.

The City Secretary is hereby directed to publish the caption, penalty clause, and the effective date clause in the official City newspaper one time as authorized by Section 52.011 of the Texas Local Government Code.

Article 27 Effective Date.

This ordinance shall be in full force and effect from and after its passage and publication, and it is so ordained.

PASSED AND APPROVED by the City Council of the City of Poteet, Texas, this the 6th day of October, 2020.



Willie Leal, Jr., Mayor

ATTEST:



Abigayle Frautschi, City Secretary

