

ORDINANCE NO. 1344

AN ORDINANCE REGULATING THE OPERATION OF PEDDLERS, ITINERANT MERCHANTS OR STREET VENDORS SELLING THEIR GOODS, WARES AND MERCHANDISE WITHIN, ALONGSIDE OR ADJACENT TO THE STREETS AND ALLEYWAYS, INCLUDING THE LOCATION OF SMALL MOVE-IN STANDS, HUTS, BOOTHS, MOBILE TRAILERS, ETC.; PROVIDING THAT VENDORS OPERATING MORE THAN THREE TIMES PER YEAR BE SUBJECT TO A TEMPORARY USE PERMIT; REPEALING ORDINANCE NOS. 1006 AND 1207; PROVIDING A PENALTY CLAUSE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council finds that the reasonable regulation of transient vendors operating within the City of Andrews is in the best interest of the public health, safety and welfare; and

WHEREAS, the City Council finds that solicitations for rides, contributions, employment, signatures or business including the sale of goods, services and publications, to occupants of vehicles on public roadways distracts drivers, obstructs and impedes the orderly flow of traffic and creates traffic and safety hazards; and

WHEREAS, the City Council finds that existing regulations or ordinances of the City of Andrews are insufficient to provide for the protection of the public.

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

Section 1. Definitions:

An "Itinerant Merchant" or "Street Vendor" is defined as an individual or business, including mobile food vendors, who desires to do business from a fixed location without traveling from place to place, house to house, or street to street.

A "Peddler" is defined as any person, itinerant merchant or vendor who shall go from house-to-house or from place-to-place in the city soliciting, selling or taking orders for or offering to sell or take orders for any goods, wares, merchandise, services, money, photographs, newspapers or magazines.

Other ordinances of the City of Andrews, Texas have heretofore defined certain terms used herein. Such definitions shall apply to any such words contained herein.

Section 2. That any and all itinerant merchants or street vendors who desire to sell their goods, wares and merchandise *a maximum of three (3) times per calendar year* within, alongside or adjacent to the streets and alleyways in the City of Andrews, Texas shall register with the Police Department *prior to* any sale of such goods, wares or merchandise.

Registration by an itinerant merchant or street vendor shall include the following information:

- Complete description of business activity
- Dates/Hours of operation
- Location of the business activity
- Written authorization from the property owner
- Texas Sales Tax Permit Number
- Copy of Health License, if applicable
- List of other cities in which the merchant or vendor has operated

In no event shall the operation of an itinerant merchant or street vendor be allowed for more than three (3) consecutive days nor more than one (1) occurrence per month by registration. For purposes of this Section, an "occurrence" shall be defined as a set-up by an itinerant merchant or street vendor at a location for any period of time. A registration fee of \$50.00 per occurrence shall apply. Said Registration shall be on display by the Merchant/Vendor and visible to the public.

Section 3. That any and all itinerant merchant or street vendors who desire to sell their goods, wares and merchandise *more than three (3) times per calendar year OR more than three (3) consecutive days OR more than 1 occurrence per month* within, alongside or adjacent to the streets and alleyways in the City of Andrews, Texas shall apply for a Temporary Use Permit through the Board of Adjustments. For purposes of this Section, an "occurrence" shall be defined as a set-up by an itinerant merchant or street vendor at a location for any period of time.

In addition to those requirements set forth in the above Registration process, an itinerant merchant or street vendor subject to a Temporary Use Permit shall comply with the following criteria:

- Maximum size of 120 sq. ft. (exterior dimensions), with a maximum height of 10 feet
- A setback of 10 feet from side and rear property lines shall apply. The structure must also be located a minimum of 10 feet from any other structure. At the sole discretion of the Board of Adjustments, the location may be determined by other considerations to account for the health, safety and welfare of the public.
- Compliance with National Electrical Code (including electrical wires placed in conduit)
- Compliance with applicable Health & Safety Codes, including an inspection by the Health Department prior to operation.
- Temporary structures must be property tied down using Mobile Home tie down guidelines.
- Regular maintenance of the physical appearance of any small move-in stand, hut, booth, or mobile trailer and the grounds upon which it is sited is required.

Mobile food vendors at a fixed location shall be self-contained for all utilities unless prior approval is obtained from the Building Inspector. The mobile food vendor structure shall be mounted on wheels, located on an all-weather surface, and shall be anchored to the ground if left unattended. Mobile food vendors shall not sell alcoholic beverages.

A Temporary Use Permit shall be valid for a maximum period of one (1) year, subject to renewal. The application must be made by both the business owner and property owner. The permit is *not transferable* to another business owner nor to another location. An annual Temporary Use Permit fee of \$175.00 shall apply. Said Temporary Use Permit shall be on display by the Merchant/Vendor and visible to the public.

Section 4. That Itinerant Merchants or Street Vendors shall locate in the Local Retail or General Commercial zoning districts only. Location in the Central Business or Residential zoning districts is expressly prohibited.

Section 5. That non-profit School, Community or Civic Groups who operate no more than five (5) consecutive days and no more than fifteen (15) days annually are not subject to the Temporary Use Permit requirements. Said groups shall register with the Building Inspector and are subject to public health and safety regulations. Further, these provisions do not apply to non-profit groups selling food at recreational sporting events.

Section 6. That no peddler, itinerant merchant or street vendor shall have any exclusive right to any location in the public streets, nor shall any peddler be permitted a stationery location within, alongside or adjacent to the public streets or alleyway nor shall said individual or business be permitted to operate in any congested area where said operations might impede or inconvenience the public. For the purpose of this Section, the judgment of a peace officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

Section 7. That this Ordinance, in its entirety, is and shall be deemed an exercise of the police power of the State of Texas and of the City of Andrews, Texas, for the public safety, health, welfare, comfort, convenience and protection of the citizens of said city, and the provisions contained herein shall be construed for the accomplishment of said purpose.

Section 8. That a person violating a provision of this Ordinance, upon conviction, is punishable by a fine or penalty not to exceed Five Hundred Dollars (\$500.00).

Section 9. Repealer.

Ordinance Nos. 1006 and 1207 are expressly repealed.

Section 10. Cumulative.

The provisions of this ordinance are to be cumulative of all other ordinances, or parts thereof, governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

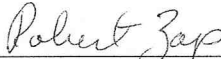
Section 11. Savings and Severability.

If any section, sub-section, sentence, clause or phrase of this ordinance is, for any reason, held 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 Andrews hereby declares that it would have passed this ordinance and each section, sub-section, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 12. BE IT FURTHER ORDAINED that this Ordinance shall take effect and be in force on May 1, 2005.


PASSED AND APPROVED ON 1ST READING THIS 21th DAY OF February, 2005.

PASSED AND APPROVED ON 2ND READING THIS 14th DAY OF April, 2005.



Robert Zap, Mayor

ATTEST:



Kitty Bristow, City Secretary