

## Chapter 20

### PEDDLERS, SOLICITORS, ETC.\*

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#### ARTICLE I. IN GENERAL

**Secs. 20-1--20-25. Reserved.**

#### ARTICLE II. ITINERANT PEDDLERS, MERCHANTS, ETC.

##### DIVISION 1. GENERALLY

**Sec. 20-26. Definition.**

For purposes of this article, the term “itinerant vendor, merchant, or peddler,” is defined as any person selling goods, wares or merchandise who does not have a fixed place of business in a permanent building in the city which is either owned by such vendor or under lease to such vendor for a period of at least one hundred eighty (180) days, and any vendor who conducts a business from any truck, trailer, mobile home, van or any other type of structure or vehicle capable of being transported on the streets and highways of the city or who goes from door to door or place to place selling or soliciting orders for goods, wares or merchandise. (Code 1963, Ch. 3, art. 2, § 1 [Ord. No. 82-26, § 1, 6-22-82]; (Ord. No. 01-21, § 1, 5-8-01)

**Cross reference(s)**--Definitions and rules of construction generally, § 1-2.

**Sec. 20-27. Compliance generally.**

It shall be unlawful for any itinerant vendor, merchant or peddler, or any person as agent, employee or servant of any such vendor, merchant or peddler, to sell, offer or exhibit for the purpose of taking orders for sale thereof, any goods, wares, merchandise or other personal property at any location in the city without having complied with the provisions of this article. (Code 1963, Ch. 3, art. 2, § 2 [Ord. No. 82-26, § 1, 6-22-82])

**Sec. 20-28. Exemptions from permit fee.**

The payment of the permit fee shall not be held to be applicable to the following; however, they are required to comply with all other provisions of this article:

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\***Cross reference**--Licenses, permits and miscellaneous business regulations, Ch. 15.

**State law references**--Authority to enforce ordinances necessary to protect and preserve health, property, good government and order, V.T.C.A., Local Government Code § 54.004; general authority to license, V.T.C.A., Local Government Code § 215.075.

- (1) Ordinary commercial travelers who sell or exhibit for sale goods, wares, merchandise, or other personal property to persons engaged in the business of buying, selling and dealing in the same.
  - (2) Vendors of farm produce, poultry, stock or agricultural products in their natural state if raised on land owned or leased by the vendor, or such products may be sold by any member of the owner's or lessee's household.
  - (3) Sales of goods, wares and merchandise donated by the owners thereof, the proceeds of which are to be used and applied to some charitable, religious or philanthropic purposes.
  - (4) Sales of goods, wares and merchandise by any bona fide charitable, religious or philanthropic organization.
  - (5) Persons engaged in interstate commerce.
- (Code 1963, Ch. 3, art. 2, § 14 [Ord. No. 82-26, § 1, 6-22-82]; (Ord. No. 01-21, § 1, 5-8-01)

### **Sec. 20-29. Penalty.**

Unless stated otherwise, violations of this article shall be punished as provided in section 1-8.

### **Sec. 20-30. Location.**

(a) *Use of streets.* No itinerant vendor, merchant or peddler shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location, nor shall they be permitted to operate in any congested areas where their operations might impede or inconvenience the public. For the purpose of this article the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

(b) *Right-of-way.* No itinerant vendor may locate in the public right-of-way or state highway department right-of-way.

(c) *Zoning and setbacks.* No itinerant vendor may locate in an area unless the zoning classification of the area permits the type of business or service to be performed or provided, and further unless the vendor complies with all setback and parking requirements.

(d) *State highways, streets, or roadways.* No itinerant vendor may locate on a property with at least one property line on the following streets or roadways:

- (1) FM 439.
- (2) State Highway 195/Fort Hood Street.
- (3) Business Highway 190.
- (4) Central Texas Expressway (Highway 190).
- (5) FM 2410.
- (6) Clear Creek.
- (7) Reese Creek.
- (8) Stan Schlueter (Loop 3470).
- (9) Twin Creek.
- (10) Roy Reynolds (from Business Highway 190 North to FM 439).
- (11) Elms Road.
- (12) Trimmier Road.
- (13) Lowe's Boulevard.

- (14) Wal-Mart Boulevard.
  - (15) W.S. Young.
  - (16) 10<sup>th</sup> Street.
  - (17) Westcliff Road.
  - (18) Lake Road from 38<sup>th</sup> Street to W.S. Young).
- (Code 1963, Ch. 3, art. 2, § 8 [Ord. No. 82-26, § 1, 6-22-82; Ord. No. 87-52, § 2, 8-11-87]; Ord. No. 88-56, § 1, 6-28-88; (Ord. No. 01-21, § 1, 5-8-01)

**Sec. 20-31. Sale of animals.**

Nothing in this chapter shall permit the sale of animals other than as prescribed in chapter 6, article III. (Ord. No. 94-61, § II, 9-13-94)

**Secs. 20-32--20-40. Reserved.**

DIVISION 2. PERMIT

**Sec. 20-41. Required.**

No person shall engage in business in the city as an itinerant vendor, merchant or peddler without a permit from the police department. (Code 1963, Ch. 3, art. 2, §§ 2, 3 [Ord. No. 82-26, § 1, 6-22-82])

**Sec. 20-42. Application.**

Applicants for permits under this division must file with the police department an application in writing on a form obtained from the department which shall contain the following information:

- (1) Name and description of the applicant.
  - (2) Address (legal and local).
  - (3) A brief description of the nature of the business and the goods to be sold.
  - (4) If the applicant is the employee or agent of a company, the name and address of the employer.
  - (5) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.
  - (6) The fingerprints of the applicant.
  - (7) Whether the business is conducted door to door or in a fixed location.
  - (8) If the applicant is to conduct his business from a fixed location, written authorization from the landowner showing that the applicant has permission to use such location.
  - (9) A photograph of the applicant.
  - (10) The number of the limited sales tax permit issued to the business by the state comptroller's office.
  - (11) Driver's license number.
- (Code 1963, Ch. 3, art. 2, § 3 [Ord. No. 82-26, § 1, 6-22-82])

### **Sec. 20-43. Fee.**

For each permit issued under this division, there shall be paid by the applicant therefor in cash in advance of the issuance thereof, to defray the actual expense of administration of this division, a fee of twenty-five dollars (\$25.00) per year. (Code 1963, Ch. 3, art. 2, § 7 [Ord. No. 82-26, § 1, 6-22-82]; Ord. No. 92-67, § III, 9-8-92)

### **Sec. 20-44. Denial.**

(a) The police department may deny to a person a permit under this division because of a person's conviction of a felony or misdemeanor if the crime directly relates to the conduct of a peddler's business.

(b) In determining whether a criminal conviction directly relates to an occupation, the police department shall consider:

- (1) The nature and seriousness of the crime;
- (2) The relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- (4) The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the permitted occupation;
- (5) The evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
- (6) Other evidence of the person's present fitness, including letters of recommendation from: Prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person; and
- (7) It shall be the responsibility of the applicant to the extent possible to secure and provide to the police department the recommendations of the prosecution, law enforcement and correctional authorities as required under this article; the applicant shall also furnish proof in such form as may be required by the permitting authority that he has maintained a record of steady employment and has supported his dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he has been convicted.

(Code 1963, Ch. 3, art. 2, § 10 [Ord. No. 82-26, § 1, 6-22-82])

**State law reference(s)**--Eligibility of persons with criminal backgrounds for licenses, permits, etc., V.A.C.S. art. 6252-13c.

### **Sec. 20-45. Issuance.**

Upon completion and presentation of the application, the police department shall issue a permit under this division to the applicant unless grounds for denial exist under section 20-44. Such permit shall contain the signature of the issuing officer and shall show the name, address and kind of goods to be sold thereunder, the date of issuance, the expiration date of such permit and shall have attached a photograph of permittee. The police department shall keep a permanent

record of all permits issued. (Code 1963, Ch. 3, art. 2, § 4 [Ord. No. 82-26, § 1, 6-22-82])

**Sec. 20-46. Transfer.**

No permit issued under the provisions of this division shall be transferred or assigned. (Code 1963, Ch. 3, art. 2, § 5 [Ord. No. 82-26, § 1, 6-22-82])

**Sec. 20-47. Expiration.**

All annual permits issued under the provisions of this division shall expire on the thirty-first day of December in the year when issued. (Code 1963, Ch. 3, art. 2, § 9 [Ord. No. 82-26, § 1, 6-22-82])

**Sec. 20-48. Exhibition.**

(a) It shall be unlawful for any itinerant vendor, merchant, or peddler to fail to conspicuously display on or about their person the permit issued by the city. "Conspicuously displayed" shall mean displayed to the front and visible to whomever the permit holder is conversing at all times they are engaged in a permitted activity.

(b) Each itinerant vendor, merchant, or peddler shall collect all trash or debris accumulating within fifteen (15) feet of any vending location and shall deposit such trash or debris in a trash container.

(Code 1963, Ch. 3, art. 2, § 6 [Ord. No. 82-26, § 1, 6-22-82]; (Ord. No. 01-21, § 1, 5-8-01)

**Sec. 20-49. Revocation.**

(a) Permits issued under the provisions of this division may be revoked by the police department after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for permit.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on his business as peddler.
- (3) Any violation of this article.
- (4) Conviction of any misdemeanor or any felony if the crime directly relates to the conduct of a peddler's business.
- (5) Conducting the business of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety and general welfare of the public.

(b) Notice of hearing for the revocation of a permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his address given in the application for permit at least five (5) days prior to the date set for hearing. A revocation for the reason enumerated in (a)(4) above shall be under the same guidelines mentioned in section 20-44.

(Code 1963, Ch. 3, art. 2, § 12 [Ord. No. 82-26, § 1, 6-22-82])

**Sec. 20-50. Appeal.**

Any person aggrieved by the action of the police department with reference to the revocation of a permit under this division shall have the right to appeal to the city manager or his designee. Such appeal shall be taken by filing with the city manager or his designee, within fourteen (14) days after notice of the action complained of has been mailed to such person’s address given in the application, a written statement setting forth fully the grounds for the appeal. The city manager or his designee shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in section 20-49 for notice of hearing on revocation. The decision and order of the city manager on such appeal shall be final and conclusive. (Code 1963, Ch. 3, art. 2, § 13 [Ord. No. 82-26, § 1, 6-22-82]; (Ord. No. 01-21, § 1, 5-8-01)

**Secs. 20-51—20-74. Reserved.**

**ARTICLE III. SOLICITATION FROM PUBLIC RIGHTS-OF-WAY**

**DIVISION 1. GENERALLY**

**Sec. 20-75. Definitions.**

The following words and phrases, when used in this article, shall have the meanings ascribed to them by this section:

*Business day* means any calendar day except Saturday, Sunday or any city, state or national holiday.

*Public right-of-way* shall mean the traveled portion of the road including any public property within ten (10) feet of the curb line, and in the absence of a curb, the public property within ten (10) feet of the outside edge of the road or highway. Right-of-way includes all medians within the public right-of-way.

*Solicitation, soliciting, solicited* or any other form of the word *solicit* means the act of asking, begging, pleading or communicating in any other such manner, whether orally, by written and/or printed material including but not limited to handbills or leaflets, hand signing or by any other method, direct or implied, by an individual or group of individuals for the purpose of educating, promoting, receiving or obtaining money, alms, gifts or items of value, real or intrinsic for said individual or group of individuals, or for-profit organization, a non-profit organization, joint venture, joint stock company, partnership, club, company, corporation, business trust, establishment, religious institution or religion, association, or any other organization or affiliate thereof.

*Solicitor* means the person soliciting.  
(Ord. No. 01-20, § 1, 5-8-01)

**Sec. 20-76. Compliance generally**

A. No person shall be or go upon any public right-of-way for the purpose of soliciting from the occupant of any vehicle, except that a person in possession of a permit from the city may

solicit on the designated intersections of public rights-of-way beginning on the first Monday through the following Sunday of the months of May, July, September and December, each year.

B. It shall be unlawful for any person to solicit within the city of Killeen without first obtaining a permit from the city secretary’s office.

C. It shall be unlawful to solicit in the public right-of-way other than between dawn and dusk.

D. It shall be unlawful for a person younger than eighteen (18) years to solicit under this Article.

E. It shall be unlawful for any person to cause a child ten (10) years of age or younger to solicit in public rights-of-way or sidewalks. For purposes of this section, the term “cause” shall mean to aid, direct, hire, encourage, permit or allow.

F. It shall be unlawful for a solicitor to fail to wear a traffic safety vest while soliciting in public rights-of-way.

G. It shall be unlawful for a person to solicit in the public right-of-way, except at the following designated intersections:

- 1. Central Texas Expressway (Highway 190) and State Highway 195,
- 2. W. S. Young and Business Highway 190,
- 3. W. S. Young and Central Texas Expressway (Highway 190),
- 4. Trimmier and Central Texas Expressway (Highway 190),
- 5. Stan Schlueter (Loop 3470) and Central Texas Expressway (Highway 190),
- 6. Business Highway 190 and State Highway 195, and
- 7. 10<sup>th</sup> Street and Rancier.

(Ord. No. 01-20, § 1, 5-8-01)

**Secs. 20-77—20-79. Reserved.**

**DIVISION 2. PERMIT FOR SOLICITATION IN PUBLIC RIGHTS-OF-WAY**

**Sec. 20-80. Permit application deadline.**

A. Permits for solicitation will be issued on a first-come, first-serve basis. There will be a separate registration period for each quarter’s solicitation week. The city secretary will begin accepting permit applications on the following dates:

- The first Monday in April for the May solicitation week;
- The first Monday in June for the July solicitation week;
- The first Monday in August for the September solicitation week; and
- The first Monday in November for the December solicitation week.

B. Only one cause or organization will be allowed at a designated intersection, but the cause or organization is not restricted to one designated intersection. When the permits for solicitation have been issued for all designated intersections of public rights-of-way, no more permits will be

issued for that specific week for that quarter.  
(Ord. No. 01-20, § 1, 5-8-01)

### **Sec. 20-81. Required fee.**

It shall be unlawful for any person to solicit within the city of Killeen without first obtaining a permit from the city secretary's office. A person's or organization's first permit application of the calendar year shall be accompanied by a fifty-dollar (\$50.00) registration fee. Additionally, a ten-dollar (\$10.00) fee for each individual solicitor is required each time a person or organization submits a permit application. The purpose of the ten-dollar fee is to defray the cost of providing the individual permits that are required to be worn on each individual solicitor's person. No application will be processed until the required fees are tendered to the city secretary. Permit fees are nonrefundable and shall not be prorated. (Ord. No. 01-20, § 1, 5-8-01)

### **Sec. 20-82. Application for permit.**

A. A person or organization seeking a solicitation permit shall file an application with the city secretary's office. Such application shall, at a minimum, contain the following information:

1. full name, street address and telephone number of the person or organization for whom solicitations are made;
2. full name, street address, date of birth and telephone number of each solicitor working under this permit (copy of each solicitor's driver's license/photo identification required); and
3. location where, and days on which, solicitation will occur, if approved.
4. The full name, street address and telephone number of each individual who will be directly in charge or control of the solicitation;
5. A statement to the effect that if the permit is granted, such permit will not be used as, or be represented to be, an endorsement by the city or any of its officers or employees; and
6. Any other information that the city deems necessary for the administration of this article.

B. The application must be signed by the applicant, if the person applying is an individual; if the applicant is a partnership, by the partner charged with disbursing funds solicited; if the applicant is a corporation or an association, by its officer charged with dispersing the funds solicited. The person signing the application shall sign the application and swear before an officer authorized to administer oaths that he has carefully read the application and that all the information contained therein is true and correct.

C. Information provided by applicant is subject to verification by the police department.

D. Such application shall also show satisfactory written proof of the individual's authority to represent the company, association or partnership, when applicable.

E. The application shall be accompanied by all applicable fees, as established in sec. 20-11. No permit provided for by this division shall be issued until such fees have been paid by applicant.



F. The application shall be accompanied by an executed copy of a waiver of liability in favor of the city on a form provided by the city.

G. The application shall be accompanied by an insurance policy evidenced by a certificate of insurance signed by an agent authorized to bind coverage indicating that the applicant has obtained, at his sole expense, insurance coverage (1) that is written by an insurance company with an A- or better rating by AM Best and that is admitted and licensed to do business in the State of Texas; (2) that is in full force and effect for the duration of the permit period; (3) that provides at least one million dollars (\$1,000,000.00) of liability coverage per person and five million dollars (\$5,000,000.00) per occurrence, and one hundred thousand dollars (\$100,000.00) for property damage and with no deductible; (4) that insures the applicant and all persons who will be soliciting; (5) that names the city of Killeen, its officers, employees, and elected representatives as additional insureds; (6) that provides that any insurance or self-insurance maintained by the city shall apply in excess of and not contribute with it; (7) that is written on an occurrence basis; and (8) that is otherwise acceptable to and approved by the city attorney of the city of Killeen.

(Ord. No. 01-20, § 1, 5-8-01)

#### **Sec. 20-83. Exemption from application fee.**

A. Application fee shall not be required of duly authorized, nonprofit charitable organizations. (Registered as such with the secretary of state for the state of Texas.)

B. A person may be exempt from the payment of the fee by filing an affidavit with the city secretary that avers that the person is incapable of paying the fee, and sets forth the person's financial condition.

(Ord. No. 01-20, § 1, 5-8-01)

#### **Sec. 20-84. Permit issuance, duration and form.**

A. A permit applied for under this division shall be issued in the order in which the completed application was received by the city secretary within fifteen (15) business days after the application is completed and filed, unless it is determined that the applicant has provided false or incomplete information on its application.

B. A permit requested under this division shall be issued for the length of time requested, not to exceed three (3) days per calendar year, and shall be issued in increments of one (1) day periods.

C. The city shall establish the form of the permit. Each permit shall be printed in black ink except the following shall be printed prominently thereon in red: "The issuance of this permit is not an endorsement by the city of Killeen or any of its officers or employees." Each permit shall bear a permit number, which is the same as the number of the file containing the application filed by the same applicant.

(Ord. No. 01-20, § 1, 5-8-01)

#### **Sec. 20-85. Denial or revocation of permit to solicit.**

A permit may be revoked and the solicitor may be prohibited from reapplying for the

remainder of that quarter and for the next three quarters, or an application to solicit may be denied, when it has been determined that:

1. An applicant has given false or misleading information on an application; or
  2. A solicitor is charged with and subsequently convicted of theft, fraud or a violation of any city, state, or federal law, in connection with said solicitation; or
  3. A solicitor or the entity has made, or caused to be made, false statements or misrepresentations to any member of the public with regard to the solicitation; or
  4. A solicitor or the entity violates any part of any provision of this Article; or
  5. A solicitor creates a traffic or safety hazard to themselves or the users of the roadway.
- (Ord. No. 01-20, § 1, 5-8-01)

**Sec. 20-86. Appeal from denial or revocation of permit to solicit.**

Should an applicant or registrant be denied a permit or have a permit revoked, he may appeal that action to the city manager or his designee by submitting a letter to the city secretary within ten (10) business days of the action complained of. A hearing on the denial or revocation will be held within fifteen business (15) days. The city manager or his designee shall render a decision on the appeal within five (5) business days of the date of the hearing. The decision of the city manager or his designee shall be final. (Ord. No. 01-20, § 1, 5-8-01)

**Sec. 20-87. Display of identification to solicit.**

A person in charge of conducting the solicitation shall provide all solicitors involved in the solicitation with an identification permit issued by the city secretary. It must be clearly displayed on the person of every solicitor at all times while soliciting, must be recognizable to any person, and must identify both the solicitor and the person or entity for whom the solicitor is soliciting. It shall be unlawful for any solicitor to fail or refuse to show or display such identification. (Ord. No. 01-20, § 1, 5-8-01)

**Sec. 20-88. Display of permit to solicit.**

The person(s) in charge of conducting the solicitation shall provide each solicitor with a copy of the permit issued by the city in accordance with this article. It shall be unlawful for any solicitor to engage in solicitation without having a copy of the permit conspicuously displayed on their person or to fail or refuse to show or display such permit upon the request of any person. (Ord. No. 01-20, § 1, 5-8-01)

**Sec. 20-89. Solicitation for purposes not set out in application.**

It shall be unlawful for any person(s) to solicit for a purpose other than that set out in the application upon which the permit is issued. (Ord. No. 01-20, § 1, 5-8-01)

**Sec. 20-90. Penalty for violation.**

Any person, firm, partnership, corporation, association, agent or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not less than \$50.00 nor more than \$500.00 for each offense. Each and every hour that such violation shall continue shall be deemed to

constitute a separate offense. (Ord. No. 01-20, § 1, 5-8-01)