

ORDINANCE NO. 2008-05-27-001
(revision of 2008-03-25-003)

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, REGULATING GARAGE SALES AND CONTINUOUS SALES WITHIN THE CITY LIMITS OF KEMPNER; PROVIDING DEFINITIONS; PROVIDING FOR LICENSES AND PERMITS; REGULATING SIDEWALK, OUTDOOR SALES, AND ITINERANT VENDORS; PROVIDING FOR PENALTIES AND EXCEPTIONS; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, holding frequent garage sales or continuous sales within the City Limits of Kempner, as those terms are defined herein, is inconsistent with residential uses and occupancy, and creates unnecessary noise, traffic and disturbance to the neighborhood and the residents thereof,

WHEREAS, it is desirable to regulate such sales activity within the City Limits of Kempner so as to preserve the benefits of residential areas and protect the public health, safety and welfare.

WHEREAS, sidewalk sales and outdoor sales activities within the City Limits of Kempner occupied and used for retail and business, that involve the display of merchandise other than vehicles, implements, construction supplies and similar merchandise that is customarily stored and displayed outdoors, can detract from the attractiveness of business areas and impede pedestrian and vehicular traffic; and

WHEREAS, garage sales, continuous sales, sidewalk sales, outdoor sales and itinerant vendor sales should be reasonably regulated, subject to certain permitted exceptions, to protect the public health, safety and welfare.

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

Section 1. All of the above and foregoing recitals are found to be true and correct and made a part of this ordinance for all purposes.

Section 2. Definitions: As used in this ordinance, the following words and phrases have the meaning provided in this section.

“Building” means any structure designed or built for the support, enclosure, shelter, or protection of persons, animals, chattels or property of any kind.

“Garage Sale” means a sale that is conducted, or that is permitted or allowed to be conducted, by the owner or occupant of an apartment, duplex, house or other structure designed for human habitation and located in a residential area where any goods or merchandise is displayed outdoors and the public is invited by signs, advertising, or in any other manner to come for the purpose of purchasing goods, wares, or merchandise. Garage sale means and includes all sales entitled garage sale, lawn sale, attic sale, yard sale, rummage sale, or any similar casual sale of tangible personal property which is

advertised by any means whereby the public at large is or can be made aware of such sale.

“Itinerant vendor” shall include all peddlers, solicitors, or itinerant merchants, applicants and their agents, servants, employees and representatives who sell or offer to sell food, beverages, goods or merchandise, or provide entertainment or recreational services from a venue, stand, motor vehicle or from a person, for a period of more than fifteen (15) minutes. This term does not apply to businesses that operate from within a building or permanent structure within the city limits and display or sell food, beverages, goods, merchandise, etc., outside.

“Motor Vehicle” means any vehicle used for displaying, storing or transporting of articles for sale by an itinerant vendor which is required to be registered by the State. The term also includes trailers, trucks and automobiles.

“Outdoor or Flea Market Sales” means the sale of goods or merchandise outdoors, or outside of the permanent commercial building or structure, within the business district or any area used or occupied for retail or commercial use. A tent, vehicle, trailer or similar shelter shall not be considered a permanent building or structure for any flea market or other outdoor sales.

“Residential area” means any lot, tract or parcel of land within the City that: (i) was laid out and platted for a dwelling; (ii) has a dwelling located on the lot, tract or parcel; (iii) is occupied and used as a residence; or (iv) has not been used or occupied at anytime prior to the date of this ordinance for any retail, commercial or industrial use, and that has not been designated by the City as being within an industrial area.

“Retail use” means property used for the sale or rental of commonly used goods and merchandise for personal, business or household use. Typical uses may include department stores, furniture stores, or establishments providing the following products or services: home furnishings and appliances, household cleaning and maintenance products; drugs, cards, stationery, notions, books, tobacco products, cosmetics, or specialty items; apparel, jewelry, fabrics, and like items; cameras or photography services; household electronic equipment, records, sporting equipment, kitchen utensils, small home appliances, art supplies; bicycles, wallpaper, carpeting and floor-covering; hardware; food; feeds, seeds and fertilizer; or automotive parts and accessories (excluding service and installation).

“Right-of-Way” or “ROW” means a strip of land occupied or intended to be occupied by a publicly owned and maintained street, that is used, set aside, dedicated, reserved or platted as street or highway, including that part or portion between the travel lanes of the street and the property line of the abutting property. The usage of the term “right-of-way” or “ROW” shall mean every right-of-way within the City that is shown on an official map of the City of Kempner, Lampasas County, or the State of Texas, to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels.

“*Sidewalk sale*” means any sales activity conducted from or within a sidewalk area of any lot, tract or parcel of land within the City, or in any area adjacent thereto and abutting any City right-of-way, or any outdoor sale conducted from or within the right-of-way of any public street, alley or other public property.

“*Structure*” means any building or structure constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, telecommunications towers, and sheds that are the primary use of a parcel.

Section 3. Garage Sales Restricted. Except as provided in Section 4 below, during any twelve (12) calendar month period, it shall be unlawful for the owner or occupant of any property used or occupied as a residence, acting alone or in combination with any other person, to have, or to permit another to have, more than **two** garage sales on any lot, tract or parcel of land that is within a residential area within the City Limits of Kempner.

Section 4. Garage Sale Permit. An application for a garage sale permit shall be made to the City Secretary before the sale date and a permit fee of \$5.00 must accompany the application. A person obtaining a permit for a garage sale shall comply with all applicable laws, and the sale shall not last longer than three consecutive days. A garage sale shall not begin before 8:00 a.m. nor last beyond 8:00 p.m. on any day.

Section 5. Prohibited Outdoor Sales Actions. It shall be unlawful for the owner or occupant of any property in the City, acting alone or in combination with any other person, to violate any of the following provisions:

- (a) It shall be unlawful to display goods and merchandise outdoors:
 - (i) nearer than five feet (5’) to the motor vehicle travel portion of any highway, street or road;
 - (ii) on a sidewalk, except during a festival or other special event sponsored or permitted by the City; or
 - (iii) during a festival or special event, to display goods on a sidewalk that are not stacked, well ordered and contained within an area so obstructed for use by pedestrians;
- (b) It shall be unlawful to display goods and merchandise outdoors and open to the public prior to 7 AM or after 10 PM. Goods and merchandise must be secured by moving indoors or by securing behind wood, metal, or masonry fencing (no barb wire or razor wire) designed and constructed to prevent public access during non-business hours.
- (c) It shall be unlawful to deposit, display or store any merchandise, food or economic goods upon any portion of a sidewalk or public right-of-way, or therein to construct, erect, install or place any case, stand, table or other type or receptacle, structure or fixture whatsoever for any such purpose, without first obtaining a permit authorized by this ordinance.

- (d) It shall be unlawful for any person storing or displaying goods or merchandise outdoors to fail to comply with the following:
 - i. No merchandising, nor storage or stacking of such merchandise may exceed four feet in height (except Christmas trees displayed in vertical position).
 - ii. A three-foot (3') wide unobstructed walkway must be provided between the curb, fire lane, maneuvering aisle or parking space and any stored and/or displayed merchandise.
 - iii. No stored merchandise, goods or products may be situated such that visibility of any motor vehicle traffic lane is obstructed.
 - iv. No area used for the outside storage or display of merchandise shall be located within 25 feet of the rear or side lot line of any residentially occupied property, unless the area used for display is enclosed by a solid fence at least six feet (6') in height and constructed of wood or masonry.
 - v. Store or display goods or merchandise (except Christmas trees) on any area designated for off-street parking.
 - vi. All city fire, building and other codes shall be strictly complied with.

Section 6. Sidewalk Sales and Outdoor Sales. Sidewalk and outdoor sales are regulated and controlled for the purpose of protecting pedestrian and motor vehicle traffic, creating a cleaner and more attractive environment, promoting the economic welfare of the community, and providing for the public health, safety and welfare. To assist with the accomplishment of those purposes, sidewalk and outdoor sales are regulated as provided in this Ordinance.

Section 7. Sidewalk or Outdoor Sale License. On showing compliance with the requirements of this ordinance, the owner or occupant of a commercial or business property abutting US Hwy 190, FM 2808 or FM 2313, may obtain, as applicable, an annual license for the display of goods and merchandise outdoors.

- (a) *License Requirements.* The license shall not be issued unless the applicant establishes:
 - (i) the specific area in which the display will be made;
 - (ii) a limited list of goods or merchandise that will be displayed;
 - (iii) the display will not result in any increased hazard, safety risk or inconvenience to pedestrian or motor vehicle traffic;

- (iv) the display will not be inconsistent with establishing or maintaining a business and shopping area that is attractive to the shopping public; and
 - (v) the goods or merchandise are of a type and material that will not decay, rust, or deteriorate during the time it is displayed outdoors.
- (b) The application for any license pursuant to this section shall also establish that the sale will be maintained and conducted in full compliance with each of the terms, provisions and conditions set forth in Section 6 above. Any license or permit issued pursuant to this Section may be suspended or revoked by the City Council if the licensee fails to remain in compliance with the requirements of this ordinance, including but not limited to the requirements of (a) and Section 6 above.
- (c) *License Fee.* An application for a license shall be made to the City Secretary annually and a license fee of \$250.00 must accompany the application. A person obtaining a license shall comply with all applicable laws.
- (d) *Appeal.* Any person making application for a license under this Section, upon the license being denied, may make a written appeal to the City Council. The City Council shall hear and decide any such appeal within thirty (30) days. The decision of the City Council shall be final and not eligible for appeal.

Section 8. Exceptions and Exemptions for Sidewalk and Outdoor Sales.

- (a) The provisions of Sections 5 and 7 above shall not apply to or affect the following persons or sales:
- (i) Persons selling goods pursuant to an order or process of a court of competent jurisdiction;
 - (ii) Persons acting in accordance with their powers, authority and duty as a public employee or official;
 - (iii) Persons and businesses participating in a special program or festival that is sponsored or permitted by the City for a period of not more than ten (10) consecutive days during the term of the special program or festival, for the purpose of promoting the local economy or community;
 - (iv) Sales of operable vehicle and automobiles, farming implements, trailers, farming and construction equipment, construction supplies, feed, seed, hay and similar goods and merchandise that is customarily stored and displayed outdoors for lengthy periods of time. The following items and similarly packaged items may be

displayed and/or stored outside the main building subject to the conditions contained in this ordinance: bagged grass seed; bagged fertilizer; bagged mulch; bagged bark chips; bagged play sand and similar seasonal bagged products that can be stored outdoors, rock and soil; firewood stacked not more than four feet high; Christmas trees, and a maximum of ten portable boxes, bins or other such containers, not to exceed 96 gallon capacity each, for the purpose of collecting aluminum cans, glass, grocery bags or plastic bottles; and

- (v) The goods or merchandise are of a type and material that will not decay, rust, or deteriorate during the time it is displayed outdoors.
- (b) The prohibitions in this ordinance shall not apply to the actual movement of merchandise or economic goods over or across sidewalks when such movement is made or accomplished as one continuous transaction of temporary duration to or from buildings and/or vehicles in a sale, storage or other transfer for a lawful purpose.
- (c) The prohibitions in this ordinance shall not prohibit the display of merchandise normally placed on gasoline pumps and/or gasoline pump islands.
- (d) The prohibitions in this ordinance shall not be construed to apply to merchandise dispensing units, e.g. soft drink machines, newspaper racks, pay telephones, ATM's, places adjacent to and outside of a business building, where at least three feet (3') of sidewalk remains unobstructed for pedestrian use.

Section 9. Itinerant Vendor Sales and Permitting

- (a) Every person desiring to conduct sales activity in the city Limits as an itinerant vendor shall have a permit issued by the City Secretary. It is unlawful for an itinerant vendor to conduct sales activity in the City Limits without a permit.
- (b) Every person desiring a permit to conduct sales activity in the City Limits as an itinerant vendor shall make a written application to the City Secretary. (Exhibit A).
- (c) Upon application for permit being made by the applicant, the City Secretary shall deliver the application to the Chief of Police, who shall investigate and verify the correctness of the application and report the findings to the City Secretary by the close of business on the second business day.
- (d) Upon approval of the permit and payment of the fee, a Vendor Permit will be issued by the City Secretary.
- (e) All Permitted Vendors and solicitors must clearly display identification and Vendor Permit at all times in the course of sales activity within the City Limits. It shall be

unlawful for a vendor or solicitor to fail or refuse to show or display such identification upon the request of any person.

(f) Permit Fee: \$10 per day; \$25 per week; \$50 per month, and is payable upon approval of permit.

(g) Except as specifically permitted by State law, it shall be unlawful for any vendor or solicitor to engage in business with the City Limits without having obtained and presented a sales tax permit issued by the State of Texas.

(h) Vendors must have written permission from property owner(s) for use of their property on which the vendor wishes to conduct business. (Exhibit B)

Section 10. Penalty. It shall be unlawful for any person in a residential area within the City Limits of Kempner to hold a continuous garage sale, sidewalk sale or outdoor sale without first obtaining a license/permit for such sale or to violate any of the restrictions on such sale specified herein. Any person violating any of the provisions of this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and subject to a fine not to exceed Five Hundred Dollars (\$500.00). Each day in violation of any provision of this ordinance shall be deemed a separate offense.

Section 11. Effective Date. This ordinance shall be in full force and effect ten (10) days after publication in a manner authorized by the Tex. Local Gov't. Code.

Section 12. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Tex. Gov't Code.

PASSED AND APPROVED this the 27th day of May, 2008.

ATTEST:

APPROVED:

Frances Spinney, City Secretary

Gene Isenhour, Mayor

(EXHIBIT A)

City of Kempner

APPLICATION FOR ITINERANT VENDOR PERMIT
City Secretary, City of Kempner, 298 Pecan Street, Kempner, TX 76539.
Phone: 512-932-2180 – FAX: 512-932-3124

I. APPLICANT: (Permit will be issued in this name)

NAME: _____

ADDRESS: _____

CITY, STATE, ZIP CODE _____

DRIVER'S LICENSE NO. _____

PHONE NO. _____

IS APPLICANT: CORPORATION PARTNERSHIP PROPRIETORSHIP

LEGAL NAME OF BUSINESS: _____

ADDRESS: _____

CITY, STATE, ZIP CODE _____

PHONE NO. _____

II. TYPE AND CHARACTER OF SOLICITATION AND/OR GOODS

Method of Solicitation _____

Type of Goods _____

State Sales Tax Number _____

III. PERIOD OF SOLICITATION:

FROM: _____ **TO:** _____

IV. LOCATION OF SALES:

If from a stationary location please attach written consent of the owner of the property.

V. STATE THE NAME OF EACH EMPLOYEE, AGENT AND/OR REPRESENTATIVE WHO WILL SELL, OFFER, EXHIBIT OR SOLICIT ORDERS FOR GOODS OR ANY TYPE OF SOLICITATION IN THE CITY OF KEMPNER:

_____	_____
_____	_____
_____	_____
_____	_____

VI. HAS APPLICANT, OR ANY REPRESENTATIVE, WHO WILL CONDUCT SOLICITATION AND/OR SALES IN THE CITY OF KEMPNER BEEN CONVICTED OF ANY FELONY, MISDEMEANOR, AND/OR VIOLATION OF THE CITY OF KEMPNER ITINERANT VENDOR ORDINANCE?

YES / NO

If yes, list the name of the person, the offense charged, the location of the offense charged, the disposition, court of conviction, and any penalty imposed. You must list all persons who will make any solicitation or sales in the City of Kempner. Please complete on an additional sheet, if necessary.

VII. LIST THE NAME, ADDRESS AND TELPHONE NUMBER OF TWO CHARACTER REFERENCES WHICH MAY BE CONTACTED WITHIN FORTY-EIGHT HOURS:

1)

NAME: _____

ADDRESS: _____

CITY, STATE, ZIP CODE _____

PHONE NO. _____

2)

NAME: _____

ADDRESS: _____

CITY, STATE, ZIP CODE _____

PHONE NO. _____

VIII. PLEASE LIST ALL CITIES IN WHICH YOU HAVE CONDUCTED ITINERANT SALES OR SOLICITATION WITHIN THE PAST SIX MONTHS.

IX. ARE YOU FAMILIAR WITH THE TERMS AND CONDITIONS OF THE CITY OF KEMPNER’S ORDINANCE PERTAINING TO ITINERANT VENDORS?

YES / NO

I DO SWEAR OR AFFIRM THAT THE STATEMENTS CONTAINED IN THIS APPLICATION FOR ITINERANT VENDOR’S PERMIT IS CORRECT.

APPLICANT SIGNATURE

DATE

Return completed application to the City Secretary, 298 Pecan Street, Kempner, TX 76539.

Upon approval of permit and payment of the fee, a Vendor Permit will be issued by the City Secretary.

All Permitted Vendors and solicitors must clearly display identification and Vendor Permit at all times in the course of its sales activity within the City. It shall be unlawful for any solicitor to fail or refuse to show or display such identification upon the request of any person.

Permit fee: \$10 per day; \$25 per week; \$50 per month, and is payable upon approval of permit.

For City Use Only:

APPLICANT NAME: _____

Application received by City Secretary

Date **Signature**

Permit Approved / Disapproved

Date **Signature**

EXHIBIT B

[Private Property Consent Form]

AGREEMENT TO GRANT PERMISSION FOR USE OF PRIVATE PROPERTY AND ACKNOWLEDGEMENT OF ACCEPTANCE OF PERSONAL LIABILITY FOR VENDING ACTIVITIES

I, _____ [name], am the owner of property located at _____ [address], Kempner, Texas (Property Owner).

As Property Owner, I understand that Vendor has applied to the City for a Permit to conduct these activities, and that my written permission is required for the City to issue the necessary permit, as per City Ordinance.

I have granted permission for _____ [name of Permit applicant] (Vendor) to conduct vending/peddling/soliciting activities on my property on the following dates, and during the following hours:

Date: _____ Time: _____
Date: _____ Time: _____
Date: _____ Time: _____

Further, I agree and acknowledge that I, as Property Owner, shall be **jointly and severally responsible and liable**, along with the Vendor(s), for full compliance with all requirements of the City's Ordinance concerning Itinerant Vendors, and, further, that **I shall be subject to penalty, and fines for violations**, as noted in the Ordinance, for any violation by Vendor(s) of the City's Ordinance or Permit.

Printed Name Property Owner and Signature Date