

ORDINANCE NO. O-2024-11-18-PED

AN ORDINANCE OF THE CITY OF NIXON, TEXAS, REGULATING PEDDLER ACTIVITIES IN THE CITY; REPEALING PRIOR ORDINANCES REGULATING PEDDLER ACTIVITIES; APPLICABILITY; PERMITTING; PENALTY; SEVERABILITY; EFFECTIVE DATE; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Nixon (the "City"), is by State law permitted to establish ordinances to protect the health, safety and general welfare of its residents pursuant to Chapter 51 of the Local Government Code;

WHEREAS, the City has a duty to protect private residents of the City from unwanted annoyance of solicitors or peddlers and protect the peace in the community;

WHEREAS, requiring solicitors and peddlers to register may deter inappropriate conduct;

WHEREAS, a Peddler Ordinance exists in the City of Nixon pursuant to Ordinance No. O-2011-04-11, but said Ordinance has been amended by the City Council on various occasions since its adoption in 2011 and said Ordinance should be repealed and replaced in order to consolidate said changes.

WHEREAS, the City has no desire to interfere with free speech, open dialogue and exchange of opinion;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIXON, TEXAS, THAT;

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact. The City Council hereby *repeals* Ordinance No. O-2011-04-11, and its amendments, previously enacted by the City that governs, controls or creates regulations with regards to Peddler/Food Truck activities within the City of Nixon, Texas.

SECTION 1 – GENERALLY

Section 1.1 - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Noncommercial purpose or cause means a purpose or cause not created, existing or espoused for the generation of profit or the remuneration of individuals, including, but not limited to, the religious or charitable solicitation of contributions, seeking political support or contributions, the promotion of civic causes, the promotion of conservation of resources or animals, advocating a philosophy or religion, or minors conducting fundraising activities, who represent an organization for the benefit of youths, including but not limited to Boy Scouts, Girl Scouts, little league groups, 4H and school groups.

Mobile Food Vendor/Food Truck Operator means a vendor who operates or sells food for human consumption, hot or cold, from a cart, enclosed trailer or enclosed kitchen mounted on a chassis, with an engine for propulsion or that can be connected to a vehicle with an engine for propulsion within the City of Nixon city limits or in the City's extraterritorial jurisdiction.

Peddler means any person, whether a resident of this City or not, traveling from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state; and shall also mean and include any person soliciting funds for the generation of profit or transacting a temporary business within the City. The word "peddler" shall include the terms "solicitor," "transient, itinerant merchant or vendor," or "transient or itinerant photographer." The word "peddler" shall also include persons engaging in door-to-door sales and individuals transacting business from a motor vehicle (with the exception of food trucks or any food sales from a mobile vehicle).

Private Food Vendor means a person or persons privately selling food for human consumption, hot or cold, from their mobile vehicle, residence, or moveable stand that is not classified as a "mobile food vendor".

Special event means an activity which makes a significant contribution to the cultural, economic, or social welfare of the City, is sponsored or organized by the City, an individual, corporation, or organization, is held at a particular time and location, and is for the purpose of the sale or distribution of services or goods on public property. Temporary business means selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state from a structure or vehicle that is not required to receive a certificate of occupancy that operates from one or more locations for less than six months including, but not limited to a, fair, carnival, circus, public exhibition, or other similar gathering.

Section 1.2 - Exceptions.

The provisions of this article shall not apply to the following:

- 1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business;
- 2) Sheriffs, Constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law or valid court order;
- 3) Bona fide residents of the state selling fruits, vegetables, or farm products which were produced on land within the state, owned or controlled by such vendor; and
- 4) Ordinary commercial travelers or salesmen, transacting business only at wholesale dealers or with dealers in such goods or in goods or services for use in manufacturing or for commercial purposes;
- 5) Events, solicitations, sales or distributions made for noncommercial purposes by local government, charitable, educational, or religious non-profit organizations shall not be required to obtain a permit.

Section 1.3 - Refusing to Leave/Restricted Entrance

It shall be unlawful for any peddler/food vendor to enter upon any private premises when such premises are posted with a sign stating "no peddlers allowed" or "no solicitations allowed" or other words to such effect. Any peddler/food vendor who enters upon premises owned, leased or rented by another and refuses to leave such premises, after having been notified by the owner or occupant of such premises, shall be deemed guilty of a Class C Misdemeanor to be prosecuted in Municipal Court for the City of Nixon, Texas.

Section 1.4 - Use of public and private places.

It shall be unlawful for any peddler/food vendor to sell or solicit or take orders for or offer to sell or take orders for or display any prepared foods, drinks, goods, wares, merchandise, services, photographs, animals, newspapers or magazines on or along any public square, park, street, road, highway, right-of-way, or alley within the limits of the City without having first obtained a permit or a special event permit as provided below.

Peddlers/food vendors utilizing private property are still required to obtain a permit but must also obtain the permission of the property owner, tenant or lessee in writing prior to conducting business. In addition, the person and/or entity granting such permission shall not allow peddlers/food vendors to transact their business, without first obtaining a permit or a special event permit as provided below, on behalf of peddler or ensuring the peddler obtained the proper permit. The person granting such permission, along with the peddler/food vendor, will be collectively and individually responsible for compliance with the adopted zoning codes as well as all other regulatory provisions of the City of Nixon, or the State of Texas.

Section 1.5 - Hours of operation.

It shall be unlawful for any peddler to engage in the business of peddling within the City between the hours of 6:00 p.m. and 8:00 a.m. the following morning, except by specific appointment with or invitation from the prospective customer, or by first obtaining a special even permit.

It shall be unlawful for any food vendor to engage in business of selling food or merchandise within the City between the hours of 12:00 a.m. and 5:00 a.m. except by first obtaining a special event permit. When operating at the Post Office Parking Lot or the Gladys Finch Pocket Park operating hours are from 2:00 p.m. to 12:00 a.m. daily and permit fees shall be waived by the City for said Post Office Parking Lot or the Gladys Finch Pocket Park operating hours.

Section 1.6 - Soliciting at intersections.

It shall be unlawful for any peddler/food vendor to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at or near any intersection or crossing of streets within the city limits.

Section 1.7 - Misrepresentation.

It shall be unlawful for any peddler/food vendor to make false, misleading or fraudulent statements concerning the quality or nature of his/her goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

Section 1.8 - Penalty.

See Section 5 below.

Section 1.9 - Food Handlers

As part of securing a City of Nixon permit, all food vendors shall comply with the State of Texas food handler's regulations. Official Certificates verifying Texas mandated food handling training shall be provided to the City of Nixon with its application for their Food Vendor permit for ALL individuals working within the establishment.

Section 1.10 - Collection of Sales Tax

- 1) All peddlers/food vendors requiring a permit or special event permit, are required under this ordinance to produce a current and valid sales tax certificate with their application for permit.
- 2) For previously established peddlers/food vendors in the City of Nixon, the receipt for payment of their sales taxes to the Texas Comptroller of Public Accounts must be provided for the previous month/quarter/year, whichever is applicable, to the City of Nixon's Code Compliance Officer as part of their permit application. All subsequent monthly/quarterly/yearly payment receipts to the Texas Comptroller, whichever applicable and as required by law for the payment of sales taxes, shall also be provided to the City Code Compliance Officer to maintain an issued permit in good standing.
- 3) For newly established peddler/food vendor in the City of Nixon with no prior sales tax payment history, the receipt for payment of their sales taxes to the Texas Comptroller of Public Accounts must be provided to the City Code Compliance Officer the month/quarter/year, whichever applicable, after the commencement of business in the City of Nixon. For newly established peddler/food vendor in the City of Nixon, all subsequent monthly/quarterly/yearly payment receipts to the Texas Comptroller, whichever applicable and as required by law for the payment of sales taxes, shall also be provided to the City Code Compliance Officer to maintain an issued permit in good standing.
- 4) A peddler/food vendor that does not comply with any and all laws regarding the proper and accurate payment of sales taxes to the State of Texas shall have their previously issued permit revoked and will be unable to transact business in the City of Nixon pursuant to this ordinance.

SECTION 2 - ORDINANCE APPLICABILITY.

This ordinance shall apply to any and all RV Parks located within the City limits, within the City's Extra-Territorial Jurisdiction (ETJ). This ordinance shall apply to any RV Park not within the City limits or in the ETJ but utilizing City utilities.

SECTION 3 – PERMITS

Section 3.1 - Required information needed prior to issuance

It shall be unlawful to engage in business as a peddler/food vendor within the City of Nixon without first obtaining a permit to do so. Such permit shall be obtained by registering with the City Code Compliance Officer and providing information under oath. Prior to the issuance of the permit to the peddler/food vendor, the City Code Compliance Officer shall obtain all of the following information and any other information deemed pertinent and necessary or as required by this Ordinance. The information to be obtained shall be as follows:

- 1) The name, local and permanent address of the applicant and the number of the driver's license or other government issued identification of the applicant; in the absence of such identification the date of birth and social security number of the applicant may be provided.
- 2) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the date of the offense; the nature of the offense; the punishment or penalty assessed therefore; if previously convicted; and the place of conviction. In lieu of providing this information under oath, an applicant can sign an authorization granting the City permission to obtain the applicant's criminal history from the Nixon Police Department or a private criminal history search service.
- 3) Whether the applicant, upon any sale or order, shall demand, accept, or receive payment or deposit of money in advance of final delivery.
- 4) The exact dates the applicant wishes to engage in business within the City (days of the week is acceptable).
- 5) The local and permanent address and the name of the person, company, or corporation, if any, that the applicant represents; and the applicant's Federal tax identification number, if any.
- 6) A detailed list of all goods, wares, merchandise, or services in which the applicant wishes to engage in such business within the City.
- 7) The last five (5) cities or towns wherein the applicant has worked before coming to the City of Nixon, if applicable.
- 8) All required certificates and receipts listed in the "Collection of Sales Tax" provisions above.
- 9) Proof of General Liability/Casualty Insurance coverage in the amount of no less than \$50,000.00 for the vendor/peddler's business and operations to potentially cover any loss, damage, or injury to patrons/clients and/or private property owner(s).

Section 3.2 - Operational Requirements

Any food vendor engaging in mobile food vending shall comply with the following requirements:

- 1) Provide appropriate waste receptacles at the stationary mobile food vending site and remove all litter, debris, and other waste attributable to the vendor on a daily basis.

- 2) Shall not be parked, situated, or operated in a manner that restricts or blocks emergency vehicle/apparatus access.
- 3) Shall not be parked, situated, or operated in a manner that restricts or blocks fire hydrants, fire lanes, or other fire protection equipment or access.
- 4) Not use any flashing or blinking lights or strobe lights by stationary vendor. For non-stationary vendors, flashing or blinking lights or strobe lights shall be allowed for cautionary and/or traffic safety purposes only.
- 5) Stationary vendors shall not use loud music, amplification devices, or “crying out” or any other audible methods to gain attention which causes a disruption or safety hazard as determined by the City of Nixon Code Compliance Official.
- 6) Comply with the City’s Noise Ordinance, Sign Ordinance and any other applicable ordinances.
- 7) Comply with all applicable federal, state, and county regulations.
- 8) Not represent that the granting of a permit under this Ordinance as an endorsement by the City of Nixon.
- 9) Cooking operations in which grease laden vapors are or can be created, shall be provided with a Type I hood and fire suppression system.
- 10) Fire suppression system shall be inspected by a licensed company every six months - and provided to the Code Compliance Officer.
- 11) A minimum of one (1) K-Class fire extinguisher shall be on site.
- 12) A minimum of one (1) 2A-10BC fire extinguisher shall be on site.
- 13) Propane cylinders shall be secured to the vehicle and installed in accordance with NFPA 58 (Liquefied Petroleum Gas Code).
- 14) Mobile Food Vendors utilizing a portable generator, shall have a 3A-40BC portable fire extinguisher in addition to the other fire extinguishers listed above.

Section 3.3 Inspections

Inspection of the peddler/food vendor facility shall be conducted by the City Manager/ City Administrator, or any City Official/Inspector/Compliance Officer/Fire Marshal after the City receives a permit application. The vendor shall coordinate and schedule said inspection with the City Code Compliance Officer or other designee to verify all statements and requirements for the granting of a permit pursuant to this Ordinance. Peddlers/Food Vendors shall be inspected randomly thereafter by the City Manager/Administrator/Code Compliance Officer or anyone he/she may designate. In addition, an inspection shall occur any time the vendor is required to renew their permit to transact business.

Section 3.4 False Information

It shall be unlawful, and punishable under the Penalty paragraph in this Ordinance, for any person to give any false or misleading information in connection with his/her application for a permit required by this article. If later it is discovered that any information provided by the peddler/food vendor to the Code Compliance Officer or other designee to obtain a permit was false, the City Administrator/Manager/Code Compliance Officer or any City employee he/she designates, shall have the authority to revoke the previously issued permit.

Section 3.5 Bond Required

The application for a permit required by the provisions of this Ordinance by a vendor who cannot provide satisfactory proof of reputable dealings with the public, has a history of prior complaints, civil, or criminal charges and arrests shall be accompanied by a bond for the penal sum of \$1,000.00 signed by the applicant and signed, as surety, by a surety company authorized to do business in the state, conditioned for the final delivery of goods, wares, merchandise or services 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 such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 10 days after delivery, and which bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of such principal.

Section 3.6 Permit Fees

Non-Food Peddler Permits

Per Day - \$15.00

Per Week - \$50.00

Per Month - \$125.00

Food Vendor Permits

Per Day - \$30.00

Per Week - \$100.00

Per Month - \$225.00

Quarterly - \$600.00

Bi-Annually - \$1,200.00

2pm – Midnight – daily to include weekends, free at Post Office Parking Lot or Pocket Park across from Police Department. Permit shall still be required, but no permit fee shall be assessed by the City under this specific provision.

All permit Fees stated in this Ordinance, may be adjusted upwards or downwards by action of the City Council at any time and as adopted in the City's Official Permit/Fee Schedule on file with the City Secretary.

Section 3.7 Issuance

No permit shall be issued under the provisions of this article until the applicant complies with all the provisions and requirements of this Ordinance.

Section 3.8 Issuance to Individuals Only

No peddler's permit shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the City shall be required to have a permit, whether acting for themselves or as an agent or representative of another. All persons engaged in the activity of peddling, whether assisting or observing shall be considered a peddler and require a permit. The only exception to this provision is as described in the section above entitled **"Use of Public and Private Places"**.

Section 3.9 Contents

Each permit issued under the provisions of this Ordinance shall be signed by the City Administrator/Manager; shall be dated as of the date of its issuance; and shall state the duration or term of such permit on the face thereof. Any permit not dated and signed as provided in this section, or which was issued in violation of this section, shall be void.

Section 3.10 Duration

Every permit issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit or permits be issued for a period of time in excess of six months.

Section 3.11 Revocation

1) Any permit or special events permit issued under the provisions of this Ordinance may be revoked by the City Administrator/Manager for the violation by the permittee of any provisions of this Ordinance, state law or other City Ordinance that directly relates to the duties and responsibilities of the permitted occupation, drunkenness or disorderly conduct. Upon such revocation, such permit shall be immediately surrendered to the Chief of Police, or their designee and failure to do so shall be deemed a misdemeanor punishable as described in the **"Penalty"** paragraph in this Ordinance. Any person aggrieved by the revocation may appeal the City Administrators/Managers revocation within five (5) business days of surrender of the permit by written appeal rendered to the City Secretary. A timely filed appeal shall suspend the revocation pending administrative reconsideration by the City Council. The City Council may uphold, revise or overturn the City Administrator's/Manager's revocation. The decision of the City Council shall be final.

- 2) A previous revocation may constitute grounds for not authorizing subsequent permit applications from the same individual at the discretion of the City Administrator/Manager.
- 3) Revocation will not result in reimbursement of any fees paid.

Section 3.12 Denial

Any person denied a permit or special events permit may appeal the denial within five (5) business days of the denial by filing with the City Secretary a written notice of appeal. The City Council may uphold, revise or overturn the denial. The decision of the City Council shall be final.

SECTION 4 – SPECIAL EVENT PERMIT

- 1) **For sale or distribution of services or goods on public property.** Notwithstanding other provisions of this Code, the City Administrator/Manager or a representative he/she designates, may be issue a special event permit to enable the holder and assisting persons to sell or distribute services or goods on public property during special events.
- 2) **Issued for specific time and location.** A special event permit shall be issued for each event. The time and location for which permit is in effect shall be transcribed on the permit.
- 3) **Application.** An applicant for a special event permit shall file with the City Secretary, a written application upon a form provided for that purpose. Where an event hosts space for vendors, organizers may apply for and receive a single special event permit in the event's name for a sponsored event providing the applicant accepts responsibility for and oversees the activities of participating vendors. Organizer must have a list of participating vendors available for examination during the event.
- 4) **Fee.** An applicant for, or the holder of, a special event permit shall pay as a fee for the permit the sum of \$25.00 per event, except when a special event is held at a City owned facility, the Catholic Activity Center or the Nixon Showbarn and a fee has been paid for use of the facility, the special event permit fee shall be waived.
- 5) **Inspection or investigation; approval or denial.** After inspection or investigation, the City Administrator/Manager shall approve or deny an application for a special event permit. If such application is approved, a special event permit will be issued which shall state on its face the name of the person to whom it is granted and the expiration date. It shall be designated on such permit, the location in which the special event permit holder is allowed to do business.
- 6) **Compliance of permit holder with article provisions.** Except for the permitting requirements, hours of operation, bonding requirement and fee requirement, the applicant for a special event permit and/or the holder of a special event permit shall comply with all of the sections of this article.

SECTION 5 - PENALTY

Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a Class C Misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed \$500.00. Each separate day or any portion thereof, during which any violation of

this ordinance occurs or continues, shall be deemed to constitute a separate offense. Any peddler/food vendor is subject to denial of an operating permit if found guilty for not less than 3 months.

SECTION 6 - SEVERABILITY

If any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

SECTION 7 – EFFECTIVE DATE

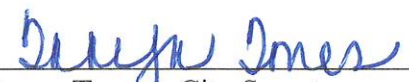
This Ordinances shall be in full force and effective from and after the date of its passage, and after publication as required by law.

PASSED and APPROVED on this the 18 day of November 2024.

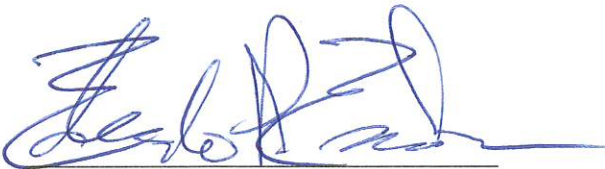
CITY OF NIXON, TEXAS


Ellie Dominguez, Mayor

ATTEST:


Tanya Torres, City Secretary
City of Nixon, Texas

APPROVED AS TO FORM:


Eduardo "Eddie" Xavier Escobar
City Attorney/General Counsel