

ORDINANCE 2011- 02  
PEDDLERS AND ITINERANT VENDORS  
AND GARAGE SALES

AN ORDINANCE AMENDING ORDINANCE 2004-02 REGULATING  
PEDDLERS, ITINERANT VENDORS AND GARAGE SALES, FOR PROVIDING  
DEFINITIONS, SETTING FORTH EXEMPTIONS, PROVIDING FOR  
ENFORCEMENT, REQUIRING A LICENSE, SETTING FORTH AN  
APPLICATION PROCESS, REQUIRING A BOND, AND SETTING FORTH THE  
TERMS OF THE LICENSE.

Article II. Itinerant Vendors

Division I. Generally

**Section 1. Definition**

- (a) *Itinerant Vendor.* The term "itinerant vendor" as used in this article, means and includes and shall be construed to mean and include all person, firms and corporations, as well as their agents and employees who:
- i) Engage in temporary or transient business in the City of Penitas selling or offering for sale, any goods or merchandise.
  - ii) Exhibit the same of sale or exhibit the same for the purpose of taking orders for the sale thereof.
  - iii) For the purpose of carrying on such business or conducting such exhibits hereof, either hire, rent, lease or occupy any room or space in any building, structure, other enclosure, vacant lot or any other property whatever in the City of Penitas, in, through, or form which any goods merchandise may be sold, offered for sale, exhibited for sale or exhibited for the purpose of taking order for the sale thereof.

The term "itinerant vendor" as defined herein, shall not include or be construed to include any person engaged in interstate commerce nor any person upon whom the provisions of this article would impose a direct and unlawful burden on interstate commerce.

- (b) *Temporary.* The word "temporary," as used in subsection (a) means and shall be construed to mean any such business transacted or conducted in the City of Penitas for which firm arrangements have been made for the hire, rental or lease of premises in or upon which such business is to be operated or conducted for a period of at least ninety (90) days.
- (c) *Transient.* The word "transient," as used in subsection (a), means and shall be construed to mean any such business of any itinerant vendor as may be operated or conducted by persons, firms, or corporations, or by their agents or employees, who reside away from the City of Penitas or who have fixed places of business in places other than the City, or who move stocks of goods or merchandise or samples thereof into the city with the purpose or intention of removing them or the unsold portion thereof away from the city before the expiration of ninety (90) days.

- (d) *Garage Sale.* The word "garage sale" as used in this ordinance, means and shall be construed to mean the sale of second-hand goods from a residential garage, driveway, or yard. Furthermore, the person or persons conducting such sale must be the owner or tenant of the residence, and such sales may not exceed a period of three consecutive days in any six month period.

**Section 2. Exemption from Article.**

This article is not and shall not be held to be applicable to:

- i) Ordinary commercial travelers who sell or exhibit for sale goods or merchandise to parties engaged in the business of buying and selling and dealing in goods or merchandise.
- ii) Sales of goods or merchandise donated by the owners thereof, the proceeds whereof to be applied to any charitable or philanthropic purpose. However, any person or organization conducting a sale of goods or merchandise for charitable or philanthropic purposes shall apply for a garage sale license as set forth in Section II of this Ordinance. This license shall be at no cost to the person or organization conducting the sale upon adequate proof of the charitable or philanthropic purpose of the sale.
- iii) Garage Sales as defined in Section I(d)

**Section 3. Area**

No peddler or itinerant vendors shall operate within two hundred (200) feet from the center line either on the north, south, east, or west side of the intersection US 83 and Highway 1427 and US 83 and Tom Gill Road. And no permit shall be issued to a peddler or an itinerant vendor to operate on commercial property on which an existing business is operating or which is out-of-business.

**Section 4. Enforcement of Article.**

The duly considered authorities of the City of Penitas, including the Police Department, City Secretary, Inspection Department and others having the duty of enforcing the ordinances of the City of Penitas, shall enforce the provisions of this article and allow to itinerant vendor to conduct his business without full compliance herewith.

**Section 5. License required for Itinerant Vendor or Peddler.**

It shall be unlawful for any itinerant vendor, or for any person as agent, employee, or servant of any itinerant vendor, to sell, or offer or exhibit for the purpose of taking orders for the sale thereof, any goods, wares, merchandise, or other personal property in the city, without having an unexpired license issued pursuant to this provision.

**Section 6. Application.**

Any person desiring a license required by this division shall file a written application, verification by affidavit as to the truthfulness of its contents, with the City Secretary at least ten (10) days prior to the

beginning date of the contemplated sale or exhibit to be held in the city. Such application shall contain the following information:

- i) The full name, address and location of the principal office or place of business of the applicant and, if the applicant is a partnership, firm or joint adventure, the fully names and addresses of all members thereof, and if a corporation, the state or county chartering it and the names and addresses of its officers:
- ii) The kinds and character of goods, wares, merchandise or other personal property to be sold or offered or exhibited for sale or exhibited for the purpose of taking order for sale in the city.
- iii) In cases where such business is not to be conducted by the applicant in person, the name and legal relationship to the applicant of the person who is to be present in the city in charge and control of such business.
- iv) The location and description of the premises or space in or upon which such transient or temporary business is proposed to be conducted, the ownership of such premises and the terms of any parole arrangement that may have been made for the use of the same. If a written lease of such premises has been made, the application shall so state and a copy of such written lease, verified by affidavit as to the truth of its contents, shall be filed with the application.
- v) If the applicant is a corporation, it shall file with its application a certified copy of its charter, and if it is not incorporated under the laws of the State of Texas, a certified copy of its present permit to do business in the state shall accompany the application.

**Section 7. Bond Required of Applicant.**

Each applicant for a license as an itinerant vendor shall furnish and deliver to the city secretary, prior to the issuance of a license, a cash bond in the amount of two thousand dollars (\$2,000.00). This bond shall be returned to the applicant upon proof of termination of business activities within the City of Penitas, Texas. The cash bond shall be placed in an interest bearing account, and any interest accumulated while in the trust of the City of Penitas shall be deemed an additional fee for the license accumulated while in the trust of the City of Penitas. Any fine assessed against a licensed itinerant vendor shall be assessed first against the cash bond after an affirmative finding of guilt or liability by the Municipal Court of the City of Penitas under the penalty provisions contained herein.

**Section 8. Fee**

The fee for a license required by this division shall be seventy five dollars (\$75.00), which fee shall be paid prior to issuance of the license. Such fee shall be compensated to the City for the services required of it in connection with such license and to enable the city to partially defray the expense of enforcing the provisions of this article.

**Section 9. Issuance**

The City Secretary shall issue to any itinerant vendor applying therefore, who has complied with all the requirements of this division, a license authorizing such applicant, as an itinerant vendor, to sell, offer for sale, or exhibit for the purpose of taking orders for the sale thereof, in the city, his goods or merchandise. The license shall be effective for period of one (1) year from the date of issuance.

**Section 10. Not Transferable: Authorizes only One Person to Conduct Business.**

The licensed provided for in this division shall not be transferable nor give authority to more than one person to conduct a business as an itinerant vendor, but any person having obtained such licenses may have the assistance of one or more person in conducting such business.

**Section 11. Term**

A license issued under this division shall continue in force so long as the sale or exhibit authorized thereby is continuously held in the city, or until the expiration date thereof, but in no event shall it continue more than (90) days from its issuance.

**Section 12. Compliance with other Regulations and Ordinances.**

Nothing in this ordinance shall relieve an itinerant vendor from any obligation required under any statute, code, regulation, or ordinance of the State of Texas, the City of Penitas, or any other governmental entity or agency with valid jurisdiction.

**Section 13. License required for Garage Sale.**

It shall be unlawful for any person to conduct a Garage Sale under the provisions of this Ordinance without having unexpired license issued pursuant to this provision. Any person desiring a license for a Garage Sale shall file a written application containing the full name of the person conducting such garage sale and the address where the garage sale is to be conducted. The fee for a license for a Garage Sale shall be ten dollars (\$10.00).

**Section 14. Display**

A license issued under any provision of this ordinance shall be prominently displayed in a conspicuous place on the premises where the sale or exhibit authorized thereby is being conducted and shall remain so displayed so long as any goods or merchandise are being sold or exhibited.

**Section 15. Fines**

Any person, firm or corporation violating provision of this Ordinance shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200.00) and each day that such violation continues shall constitute a separate offense.

**Section 16. Conflict with Other Ordinances**

This Ordinance shall be cumulative of all other ordinance or regulations of the City of Penitas, unless in conflict with the terms of said ordinances and regulations, in which case the terms of this Ordinance shall apply.

**READ AND APPROVED AT A SPECIAL CALLED MEETING OF THE CITY OF PENITAS BOARD OF ALDERMEN ON THIS THE \_\_\_\_ DAY OF FEBRUARY, 2011 AT WHICH A QUORUM WAS PRESENT.**

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Mayor Marcos Ochoa

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City Secretary Dina Garcia