



## **CITY OF TOM BEAN**

### **ORDINANCE 2009-02**

AN ORDINANCE DEFINING MOBILE OR ROADSIDE VENDORS WITHIN THE TOM BEAN CITY LIMITS AND BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOM BEAN, TEXAS AS FOLLOWS:

**Section 1: The short title of this ordinance shall be called Mobile or Roadside Vendors ordinance.**

#### **Section 2: Definitions:**

For the purpose of this Ordinance, certain terms, words and phrases shall have the meaning described in this Section.

- A. **MERCHANDISE:** Shall include, but is not limited to, any articles or subjects of trade or commerce, goods, commodities, products, wares, crafts, food, beverages, fish or any personal property to be sold, exhibited, or offered for sale.
- B. **MOBILE OR ROADSIDE VENDOR:** Means any person who engages in a business in the city of selling, exhibiting, or offering for sale any merchandise not otherwise exempt, and who engages in such business upon or from a truck or other vehicle within the limits of the city; or who hires, rents, leases, or occupies any open or unsecured area, vacant lot, or any other similar open or unsecured space in the city, on, from or through which any merchandise may be sold, offered, or exhibited for sale.

#### **Section 3: Areas prohibited:**

No person, unless exempted from the provisions of this article, shall conduct mobile or roadside vending operations upon property owned or controlled by any public or governmental agency or on property dedicated for public purposes, including streets, ways, roads, highways, or parkways adjacent thereto, whether improved or unimproved, or upon property used or reserved for use as railroad right-of-way or right-of-way and easements for any public utility. A nonprofit or charitable organization, or any person participating in an exhibition or event sponsored by a nonprofit or charitable organization, shall be exempt from the application of this section.

#### **Section 4: Consent of property owner required:**

Every person, before engaging in the business of mobile or roadside vending on private property within the city shall obtain written acknowledgement and permission from the owner of the property to be used for the display of merchandise and transactions of mobile or roadside vending operations.

#### **Section 5: Limited sales and use tax:**

No person shall conduct mobile or roadside vending operations within the city involving the display or sale of merchandise requiring payment of state and local sales and use tax without displaying a sales and use tax permit and without reporting all taxable transactions resulting from the vending sales within the city to state comptroller of public accounts as having been transacted in the city.

#### **Section 6: License required:**

No person shall engage in, transact, or conduct the business or occupation of a mobile or roadside vendor either as principal or as agent, servant, or employee of any other person, without having first obtained a license unless such person is exempt under conditions section 3.

#### **Section 7: Application:**

As a prerequisite to obtaining the license herein required, every person engaging in the business of mobile or roadside vending shall make application upon blank forms to be furnished by the city clerk, wherein the applicant shall give the following information:

- (1) Name, residence and business addresses, and length of occupancy of each person involved;
- (2) Description of the nature of the business and the character of merchandise to be offered for sale;
- (3) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (4) The entire length of time for which the right do to business is desired;
- (5) Applicant's last business occupation, last place of residence, and license number and place of issuance or license of motor vehicle, if any, used in applicant's business;
- (6) Acceptable personal identification, such as a driver's license, birth certificate, or passport;
- (7) Proof that the applicant has received a state limited sales and use tax permit;
- (8) Description of property from which merchandise is to be displayed, including street name and address number, legal description or designation of the property as shown on the current tax records of the county tax appraisal district, with the name and tax billing address of the owner of the property.
- (9) Description of the portion of the property to be used for the display of merchandise and transaction of mobile or roadside vending operations including area which may be used by customers for the purpose of off-street parking;

- (10) A statement signed by the owner of the property acknowledging that said owner has reviewed the completed application forms and has granted permission to the applicant for the use of the property for the purpose set forth and for the time duration stated;
- (11) Date or dates and approximate hours that merchandise will be displayed during the period the license shall be in force and effect;
- (12) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any provision of this code, the nature of the offense and the punishment or penalty assessed therefore;
- (13) Where the peddler or solicitor makes delivery and actually handles food products in the course of his work, a statement by a reputable physician of the city, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of contagious, infectious or communicable diseases;
- (14) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time such application is filed, and the proposed method of delivery;
- (15) Two (2) photographs of the applicant, taken within sixty (60) days immediately prior to the date of the filing of the application, which pictures shall be two (2) inches by two (2) inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.

#### **Section 8: License fees; duration; exemptions:**

Every person, unless otherwise exempt, and before engaging in the business of mobile or roadside vending in the city, shall pay, in advance, to the city clerk, a city license fee of fifty dollars (\$50.00). This license fee shall not apply to nonprofit or charitable organizations nor to anyone engaged in interstate commerce, or whose operations form an integral part of interstate commerce and upon whom the license fee would impose a direct and unlawful burden with respect to such operations.

Licenses issued under this paragraph shall expire three (3) months following the date of issuance. This licensing procedure, application, and fee shall not apply to:

- (1) The distribution or sale of newspapers, handbills, or other written or printed matter sold or distributed for the purpose of disseminating news, information or religious materials;
- (2) Any nonprofit or charitable organization; or any person participating in an exhibition or event sponsored by a nonprofit or charitable organization;
- (3) The sale of vegetables, fruits or other cultivated produce;
- (4) A salesman, distributor, or wholesale dealer who, at the business location of a wholesaler or retailer, sells or exhibits for sale, merchandise to such wholesaler or retailer engaged in the business of buying and selling or dealing in such merchandise within the city;
- (5) Any person residing in the city who does not regularly engage in the business of vending and who, on five (5) or fewer days during the course of any calendar year transacts sales of used merchandise which had previously been obtained for domestic or personal use, provided that such person, upon the request of a responsible official of the city, shall sign a statement verifying that:
  - a. Such person is not in the business of vending; and
  - b. Such person has not and will not transact sales under this section on more than five (5) days during the course of the current calendar year; and

- (6) Any person selling, displaying, or exhibiting for sale merchandise from property adjacent and contiguous to an established, permanent building or structure, from which the same or similar merchandise is or would be sold, displayed, or exhibited;
- (7) Any person selling any frozen dessert that is wrapped in a paper or foil covering which may be dispensed from a mobile food unit on the streets or avenues as permitted by these ordinances, who otherwise has obtained a permit authorizing such operation under the provisions of article II of this chapter.

### **Section 9: Approval by Chief of Police:**

With respect to mobile or roadside vendors, the city clerk shall refer the application to the chief of police. The chief of police may require periodic reports from an applicant of his whereabouts and activities to the extent the chief of police deems it necessary to protect the public from any abuse of the privileges granted under this article. The applicant shall indicate, by signature on a certificate to be attached to the application form, that the applicant, or the applicant's agents, either have or will have lawful possession of the merchandise to be displayed or sold and that the display and sale of such merchandise in the manner and from the locations set forth shall not create traffic hazards or congestion nor decrease sight distances or visibility of other motorists, cyclists, or pedestrians for using any adjacent intersection, public road, street, way, or thoroughfare. The chief of police may refuse to indicate his approval if the applicant fails to submit reasonable and satisfactory proof that such conditions have been or will be complied with.

### **Section 10: Approval by Health Official:**

With respect to mobile or roadside vendors displaying or selling merchandise classified as food otherwise not exempt from this chapter, beverages, fish, poultry, or stock, in their natural or processed state, the city clerk shall refer the application to the chief of police for the purposes and approval set forth in the preceding paragraph and shall also refer the application to the county health department, its agent or officer. The health department, its agent or officer, shall indicate by signature on a certificate to be attached to the application form, after review of methods of operation and equipment to be used by the applicant, that to the best of the health official's knowledge and belief, the merchandise to be displayed or sold will be maintained and delivered to purchasers in such a manner as to comply with chapter 9 and to comply with all applicable rules and regulations related to food, beverages, meat, poultry, fish, or farm and agricultural products promulgated and enforceable by either the state department of health or the city. The health official may refuse to indicate such approval if the applicant fails to submit reasonable and satisfactory proof that such conditions have been or will be complied with.

### **Section 11. Approval by Zoning Official:**

With respect to mobile or roadside vendors, the city clerk shall refer the application to the zoning official of the city. The zoning official shall indicate, by signature on a certificate to be attached to the application, that the property or portion of property described on the application is then properly zoned for the intended use and is privately owned and controlled property, not dedicated for public purposes or for use as a railroad right-of-way and/or easement purposes of a public utility. The zoning official shall further indicate, by signature on the application, based upon a review of the

description of the property to be used for the display of merchandise and transaction of mobile or roadside vending operations, including the area which may be used by customers for the purpose of off-street parking, that said property and area is then in compliance with regulations set forth in the then-current city zoning regulations as to general parking requirements, improvement standards, area layout, and loading requirements, and that the transaction of all mobile or roadside vending operations and parking of customers' vehicles will be conducted outside of public rights-of-way, including parkways, whether improved or unimproved. The zoning official may refuse to indicate such approval if the applicant fails to submit reasonable and satisfactory proof that such conditions have been or will be complied with.

### **Section 12. Rejection or Refusal to Approve License:**

The city clerk shall withhold issuance of mobile or roadside vendor's license until the application is returned with proper signatures of the chief of police, zoning official, and, if required, the county health department or its representative. If the application is not returned with required signatures within seventy-two (72) hours, excluding weekends and holidays, the application shall be considered to be denied, and the applicant shall have the right to appeal as provided in section 14, as in the case of suspensions. The fee paid in accordance with this article shall be due and payable at the time a completed application form is submitted to the city clerk and prior to referral of said application to the officials for review and signatures. In the event one (1) or more of the officials is unable to execute the application for approval, the city clerk shall notify the applicant of its rejection. No portion of the license fee shall be refunded, as it shall have been considered an application fee required to defray a portion of the expense of the city in ascertaining whether or not the applicant and location for the proposed activity qualify for the privileges granted under this article.

### **Section 13. Issuance, Contents, Display, Nontransferability of License:**

Upon payment of the license fee as herein provided, and following approvals of officials set forth above, the city clerk shall issue and deliver to such mobile or roadside vendor a license which shall show the date of issuance, the name, occupation, place of residence of licensee and fee paid therefore, and the licensee shall carry his license with him and exhibit the same whenever requested by any inspector, police officer, or other officer authorized by law to make inspections. No license issued hereunder shall be transferable.

### **Section 14. Suspension of License; Appeal; Revocation:**

In the event that a duly licensed mobile or roadside vendor is found to be at variance with the operational location or use of property as set forth in the approved application, an inspector, police officer, or other official authorized to make inspections for the city shall notify the licensee in person or by written notice of the nature of the variance. If the variance is not corrected within one (1) hour of notification, the license may be suspended by the city clerk, upon the advice of the authorized inspector or police officer. In the event of suspension of the license, the mobile or roadside vendor shall immediately cease all operations and remove all merchandise, equipment, vehicles, and related items from the location for which the license had been granted. Within seventy-two (72) hours from the time of suspension of the license, the vendor may appeal the suspension to the Mayor, who shall have the authority to reinstate or revoke the license. Upon receiving notice of appeal, the Mayor shall set a date for hearing the appeal, such date to be within seven (7) days of receipt of notice of appeal. In the event there is no appeal within seventy-two (72) hours from the time of suspension of the license, the license shall be revoked.

**THIS ORDINANCE SHALL BE IN EFFECT UPON ITS READING AND PASSAGE BY THE CITY COUNCIL OF THE CITY OF TOM BEAN.**

**Duly passed and approved by the City Council of Tom Bean, Texas on this 12<sup>th</sup> day of October, 2009.**

---

**Mayor, Sherry Howard**

**Attest:**

---

**City Secretary, Cathy Pugh**