

Ordinance 2021-001
Vendor and Peddler Sales Permits

AN ORDINANCE

OF JIM HOGG COUNTY, A MUNICIPAL CORPORATION, EXERCISING ITS "TYPE A" MUNICIPAL POWERS GRANTED TO IT PURSUANT TO SECTION 81.033 OF THE TEXAS LOCAL GOVERNMENT CODE, PROVIDING FOR THE CONTROL AND SUPERVISION OF VENDORS, PEDDLERS, AND OTHERS WHO ARE USING THE SURFACE RIGHT-OF-WAY ADJACENT TO THE STREETS AND ROADS AND THE SURFACE RIGHT-OF-WAY NEAR OR BY THE SIDEWALKS IN JIM HOGG COUNTY, TEXAS WHO MUST OBTAIN A PERMIT IN THEIR RIGHT TO BE WHERE THEY ARE FOR THE PURPOSE OF THEIR SALES AND SHALL REQUIRE THEM TO OBTAIN A PERMIT HEREIN PROVIDED FOR.

WHEREAS, various merchants, peddlers and their employees, from time to time have set up their place of business along the streets or roads Jim Hogg County ("County") or next to or a part of the sidewalks without a permit or any permission from the County;

WHEREAS, the manner in which vendors have sold their various goods, wares, and merchandise has become a nuisance;

WHEREAS, it has become vital that the County regulate these individuals, persons or corporations from conducting their business unrestricted and without registration;

WHEREAS, the regulation of merchants, peddlers, vendors, operating in the right of way near, by, or on sidewalks or roads within Jim Hogg County, is necessary for the welfare and good order of Jim Hogg County as a body politic; and

WHEREAS, it is in the public interest that the Commissioners Court of Jim Hogg County adopt and order into effect regulations regarding the usage of Rights-of-Way by street vendors, peddlers, and others using the County's Rights-of-Ways.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS' COURT of JIM HOGG COUNTY, TEXAS that:

SECTION I.
DEFINITIONS

Whenever used in this Ordinance, the following terms as well as their singular, plural, and possessive form, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise:

1. *"Amusement Services"* means any type of service that provides entertainment to a group of people for a temporary length of time, including traveling skating rink, carnival, circus,

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fair, mobile game room, mobile bookstore, etc.

2. "*Commissioner Court*" means the governing body of Jim Hogg, Texas.
3. "*County Judge*" means the County Judge of Jim Hogg County or his or her designee.
4. "*Edible Goods*" means items that are grown in earth, manufactured soil, animals raised for human consumption, vegetables, candy, breads, pizza, beef, poultry, pork, fish, herbs, etc. and items that can be used for home remedy medicinal purpose. This includes ingestible items that can be used for home ready medicinal purposes. This includes ingestible liquids including soft drinks, refreshments, snow cones, ice cream, etc.
5. "*Goods/Merchandise*" means personal property and wares of any nature, including but not limited to physical or edible items, jewelry, clothing, furniture, pottery, pictures, knives, piñatas, gift baskets, balloons, flower arrangements, plants, tickets for admission to athletic, sporting, or entertainment events or shows, landscaping merchandise, paintings, food and beverage goods, seasonal decorative items, posters, homewares, etc.
6. "*Jim Hogg*" means the County of Jim Hogg, a municipal corporation pursuant to Article II, Section 1 of the Texas Constitution and exercising "Type A" municipal powers pursuant to Section 81.033 of the Texas Local Government Code.
7. "*Peddler*" means an individual, a business, or group of individuals who engages in peddling as defined below.
8. "*Peddling*" means the act of going person to person, place to place, or house to house selling or offering to sale merchandise or goods in his/her possession. Excludes persons engaging in this activity in connection with their brick and mortgage business lawfully located within Jim Hogg County.
9. "*Person*" means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or associations, cooperative, utility, public utility, district, water supply corporation, political subdivision and other such entity.
10. "Public Rights-of-Way" or "Rights-of-Way" mean the area on, below, above or adjacent to public roadway, highway, street, public sidewalk, alley waterway, or utility easement, in which Jim Hogg has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.
11. "*Street Vending*" means the business of engaging in the temporary, itinerant, occasional, or transient selling, offering for sale, exhibiting of merchandise for sale or for donation, or taking orders for the purchase of merchandise or goods on, by, or adjacent to public

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sidewalks, roads, curbs, parks, or other public lands within Jim Hogg County. Excludes brick and mortgage business lawfully located within Jim Hogg County.

12. "*Street Vendor*" means an individual, business, or group of persons engaged in Street Vending, as defined above.
13. "*Sidewalk*" means a section placed on the side of a street above the curb line to provide protection for pedestrians to safely walk on or adjacent to public roads or walkways, beyond the coming and going of moving vehicles.

SECTION II.
EXEMPTION FOR INTERSTATE COMMERCE.

The provisions of this article shall not be deemed applicable to persons engaged in interstate commerce or to any such person to whom application of the provisions of this article would impose a direct and unlawful burden on interstate commerce.

SECTION III.
PERMIT APPLICATION AND PERMIT FEE

A. Permit Required

It shall be unlawful for any person, business, group of persons, or entity to engage in the business of peddling, street vending, or operation of a mobile food or beverage unit within public rights-of-way, including on, next to, adjacent to, or by public sidewalks, roads, or curbs in Jim Hogg County unless they have first obtained a permit to engage in such business. This provision applies equally to all persons, business, corporations, or entities that engage in street vending, peddling, or otherwise desire to sell, bargain or trade goods, foods, wares and/or merchandise to the individuals on or passing along said public streets, sidewalks or roadways.

No permit shall be issued pursuant to this Ordinance except upon application and payment of the permit fee as established herein or as hereafter from time to time may be amended and adopted by the Commissioners Court of Jim Hogg County.

B. Contents of Application

Such person(s), business, or entities desiring a permit pursuant to this Ordinance shall make an application at the office of the County Judge, or designee, on a form prescribed by the County Judge, or his or her designee. Such application form shall require the applicant to provide, at a minimum, the following information:

1. The applicant's name, address, email address, telephone/mobile phone number, and driver's license number.
2. If the applicant is an individual operating under an assumed business name: the information

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listed in subsection (1), the assumed business name(s), and the first date the individual began operating under the assumed business name.

3. If the applicant is a business, corporation, partnership, or association: the name of the business, corporation, partnership or association, the address of the principal place of business, and the name, email, and telephone number of the primary point of contact for the business, corporation, partnership, or association.
4. The name, address and telephone number of any and all employees or contractors who will be working in the rights-of-way on behalf of the applicant.
5. If the person, business, or entity holds a Texas Sales and Use Tax Permit, a copy of the Sales and Use Tax Permit shall be attached to the application. Vendors shall comply with all laws and regulations set forth by law and the Texas Comptroller's Office pertaining to sales and use taxes.
6. The address of the place/space the applicant desires to occupy during the sale of the goods. If an exact street address is not available, applicant shall provide sufficient detail as to the location, including referencing streets, roadways, landmarks, and other identifying characteristics, so that the exact location where the applicant intends to engage in street vending or peddling can readily be ascertained. Applicant may also elect to attach a photo, drawing, or map of the location.
7. A description of the goods or merchandise the applicant intends to sell, display, vend, or peddle in the Jim Hogg County Rights-of-Way.
8. The number of days the applicant intends to sell, display, vend, or peddle in the Jim Hogg County Rights-of-Way during that calendar year.
9. The calendar dates in day/month/year format that the applicant intends to sell, display, vend, or peddle at each location set forth in subsection (5) above.
10. If the vendor or peddler also intends to street vend, peddle, solicit, or display at a location or space on private property adjacent to public roads, sidewalks, highways, or streets, the name and telephone number of the landowner.

When any information provided in the registration changes, the user shall inform the Jim Hogg County Judge or designee, of the change no more than thirty (30) days after the date the change is made.

C. Multiple Locations

An applicant shall submit a permit application for each separate location the applicant desires to occupy within Jim Hogg County during the sale of the goods.

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D. Permit Fee

1. The Permit Application shall be accompanied by a cashier's check or money order for the payment of the Permit Fee.
2. The Permit Fee is set at the amount of \$25.00 per day *or* for applicants seeking a permit for the year, \$600.00 per calendar year per permit application.

E. Permit Duration

1. Upon review of the Permit Application and considering the number of days identified by the applicant as per section III.B.8 herein, the County Judge or his designee shall prescribe the duration of the Permit, except that a Permit automatically expires one (1) year after its issuance.
2. Permit Applications and Permit Fees must be submitted and paid yearly.
3. Permit fees are non-refundable.

F. Permit

1. Within a reasonable time following the submission of an application for a permit and the payment of the permit fee required by this Ordinance, the County Judge or his or her designee shall grant or deny such application.
2. If a Permit Application is denied due to a deficiency in the Permit Application, including a lack of information, the County Judge may in his discretion, allow the applicant an opportunity to reform the application to include the missing information without the submission of an additional permit application fee.
3. The County Judge or his or her designee shall issue Permits.
4. Permits are non-assignable.
5. The permit issued shall be kept by the individual in a safe place near the place that the vendor are to sell their goods and such permit shall be subject to production and inspection by the County Judge, or designee, or local law enforcement to view the permit granting the vendor authority to sell the goods being sold at the place occupied.

G. No Exclusivity or Property Rights

No Street Vendor or Peddler shall have any exclusive right to any public location, streets, roads, or sidewalks, nor shall any peddler or street vendor construe the permit as providing a right or

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entitlement to the use of a County Rights-of-Way.

Neither permits nor licenses under this Ordinance create property rights and no grantee or licensee is entitled to compensation if the County revokes a permit or license.

H. Additional Requirements for Mobile Food Units, Roadside Food Vendors, Agricultural Sales, and Amusement Services

Each applicant for a permit to operate a mobile food unit, including a mobile unit for the sale of beverages or to engage in roadside food vending, shall comply with all food service permit requirements or health and safety requirements set forth by the county health department.

Agricultural Sales: All sales permits for goods that are grown from the earth, manufactured soils and/or horticultural feeding apparatuses, pottery, bags, boxes, plastic containers etc. must have their State Agricultural License to purchase a permit unless otherwise exempted by state law. A copy of this license must be attached to the permit copy and filed with the County Judge, or designee. If a vendor/peddler does not have this license they *will not* be allowed to obtain a permit from the County.

Amusement Services: In addition to the various goods, wares and merchandise that are covered in this ordinance, other services such as services that provides entertainment to a group of people for a temporary length of time. Example: Traveling Skating Rink, Carnival, Circus, Mobile Game room, Mobile Book Store etc. are included into the groups of people requiring a permit. The County Judge shall charge Amusement Services thirty-five (\$35.00) dollars per day or six-hundred (\$600.00) dollars per year for a permit.

During the time of a County festival, local non-profit organizations are not required to purchase a sales permit. However, all vendors that are not residents of Jim Hogg County or established to provide monetary contributions to local non-profit organizations within Jim Hogg County must purchase a vendor permit.

I. Location

1. If the vendor or peddler also intends to street vend, peddle, solicit, or display at a location on private property adjacent to public roads, sidewalks, highways, or streets, the vendor or peddler must have permission from the landowner of the place occupied to be allowed to set up on the premises of a business/commerce. The applicant must state the name, telephone number, and email of the landowner on the permit application. At the County Judge's or his or her designee's request, the applicant may be required to submit, as part of the permit application, a notarized consent from the landowner for the vendor to engage in selling on the landowner's private property.
2. The location of the place to be occupied must be noted on the permit.

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3. The vendor cannot set up on a street or highway at curbside. They must allow at least five feet between their signage, display of goods and the edge of the curb.
4. The vendor or peddler cannot set up within 20 feet of another peddler. This is to allow room for pedestrians to view the goods being sold, to provide access to remove the goods from the premises, and to not confuse one vendor's goods from another vendor's goods.
5. All vendors or peddlers are to be reported to the police officer on duty as soon as the permit is purchased.
6. Vendors/Peddler are not permitted to go from house to house to sell their goods without a permit. The permit must be available for immediate viewing at the residents' request.

J. Permit Denial and Revocation

Any Permit Application may be denied and a permit withheld or revoked for the following reasons:

1. Conducting business or establishing a physical stand, display, or signage in connection with the business prior to receiving a permit;
2. Omitting or submitting untruthful information within the permit application;
3. Engaging in illegal criminal activity, including selling paraphernalia or illegal items;
4. Endangering public health, safety, or welfare;
5. Violating or failing to comply with any provision of this Ordinance;

SECTION IV.
STRUCTURES

The County Judge or his or her designee may implement requirements and guidelines for any carts, stands, booths, kiosks, or displays in County Rights-of-Way.

Any carts, stands, booths, kiosks, or displays shall not encroach onto other public rights-of-way unless as set forth in the permit application and reflected in the permit issued by the County.

SECTION V.
PENALTIES

Failure to comply with this Ordinance shall subject the offender with a fine of twenty-five (\$25.00) dollars minimum and not to exceed a maximum fine of five hundred (\$500.00) dollars. Each failure to have a permit when due shall be a separate offense subjecting the offender to a fine of twenty-five (\$25.00) minimum and not to exceed a maximum to five hundred (\$500.00) dollars each time. This fine will be added to the cost of the purchase of the vendor/peddler's permit.

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SECTION VI.
SEVERABILITY

If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase word or provision of this ordinance, for it is the definite intent of this Commissioners' Court that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

SECTION VII.
REPEALING ALL ORDINANCES IN CONFLICT HEREWITH

All ordinances or parts of ordinances relating to street vendors or peddlers in conflict with this ordinance are repealed to the extent of such conflict only.

SECTION VIII.
EFFECTIVE DATE

This Ordinance shall take effect immediately from and after the date of passage.

SECTION IX.
PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was 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, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this 26th day of May, 2021 by a
4 to 0 vote of the Commissioner's Court of Jim Hogg
County, Texas.

COUNTY OF JIM HOGG

By: J. C. Guerra
County Judge

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