

ORDINANCE NO. 629

AN ORDINANCE REPLACING CHAPTER 11, ART IV. PEDDLERS, SOLICITORS AND VENDORS OF THE CITY OF KYLE MUNICIPAL CODE IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS:

SECTION 1: That CHAPTER 11, ART IV. PEDDLERS, SOLICITORS AND VENDORS is hereby amended in its entirety as follows:

ARTICLE IV. PEDDLERS, SOLICITORS AND VENDORS*

***State law references:** Authority to regulate any lawful business or occupation, V.T.C.A., Local Government Code § 215.075.

Sec. 11-162. 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:

Vendors means any itinerant merchant, itinerant vendor, temporary merchant, or temporary vendor and shall be held to be any person, firm, company, partnership, corporation, or association engaged in any activity mentioned in sections 11-165 and 11-166. (Ord. No. 239, § 5, 3-21-1989)

Mobile Food Vendor means a vendor who operates or sells food for human consumption, hot or cold, from a cart, trailer or kitchen mounted on chassis, with an engine for propulsion or that remains connected to a vehicle with an engine for propulsion.

Mobile Food Vendor- hot means a vendor who operates or sells hot food for human consumption from a cart, trailer or kitchen mounted on chassis, with an engine for propulsion or that remains connected to a vehicle with an engine for propulsion.

Mobile Food Vendor- cold means a vendor who operates or sells cold food for human consumption from a cart, trailer or kitchen mounted on chassis, with an engine propulsion or that remains connected to a vehicle with an engine for propulsion.

Temporary Food Vendor means a vendor who operates or sells food for human consumption, hot or cold, from a stationary stand, cart, trailer or kitchen mounted on chassis, without an engine for propulsion, that is not connected to a motorized vehicle, or that does not have a foundation or is otherwise a temporary structure.

Temporary Food Vendor- hot means a vendor who operates or sells hot food for human consumption from a stand, cart, trailer or kitchen mounted on chassis, without an engine for propulsion, that is not connected to a motorized vehicle, or that does not have a foundation or is otherwise a temporary structure.

Temporary Food Vendor- cold means a vendor who operates or sells cold food for human consumption from a stand, cart, trailer or kitchen mounted on chassis, without an engine for propulsion, that is not connected to a motorized vehicle, or that does not have a foundation or is otherwise a temporary structure

Sec. 11-163. Penalty.

Any person who shall pursue, follow, permit, or allow to continue any occupation, calling, or profession, or do any act regulated by ordinance of this city, without first obtaining licenses therefore, shall have committed an offense and shall be fined as provided in section 1-10. Each day that a person is found to be in violation of this article shall constitute a separate violation. A culpable mental state is not required for the commission of an offense under this article.

(Ord. No. 239, § 9, 3-21-1989)

Sec. 11-164. Purpose.

This entire article is and shall be deemed an exercise of the police power of the state, and the city for the public safety, convenience and protection of the city and the citizens of the city, and all of the provisions hereof shall be construed for the accomplishment of that purpose.

(Ord. No. 239, § 1, 3-21-1989)

Sec. 11-165. Itinerant vendors.

It shall hereafter be unlawful for a person to go from house to house or from place to place in the city soliciting, selling or taking orders for or offering for sale or take orders for any goods, wares, merchandise, services, photographs, magazines, or subscriptions to newspapers or magazines or go from house to house distributing handbills, circulars, or any other literature, without having first applied for and obtained a permit from the City Building Department. It shall also hereafter be unlawful to go from house to house for any of the purposes expressed in this section without carrying such permit which must be displayed upon request by the landowner or occupant of any such house or a peace officer. Upon the application for such a permit, the applicant shall make a written application to the City Building Department, which application shall show the name, address, proof of notification of the state comptroller's office (sales tax number) or driver's license number of the person, if any, that he represents, the nature of his business, and the period of time such applicant wishes to do business in the city; should a vehicle be used in sales, the applicant shall show proof of valid liability insurance provided for vehicle sales; applicants using vehicles to sell food or refreshments shall also show valid hazard insurance and a recent passing health inspection report from the agency or political subdivision enforcing food establishment regulations in the City for the vehicle. Permits shall not be transferred from one vehicle to another. The application shall be routed to the city police department for review and concurrence prior to the issuance of a permit by the City Building Department.

(Ord. No. 239, § 2, 3-21-1989)

Sec. 11-166. Temporary vendors.

It shall hereafter be unlawful for person to set up a temporary stand or location on a public street or right-of-way, or on private property without written consent of the property owner, as applicable, for the purpose of displaying, selling, soliciting, taking orders for sale, or

offering for sale of goods, wares, merchandise, services, photographs, magazines, or subscriptions to newspapers or magazines, or for distributing handbills, circulars, or any other literature, without having first applied for and obtained a permit from the City Building Department . It shall also hereafter be unlawful to operate such stand or location without carrying such permit which must be displayed upon request by any person or peace officer. Upon the application for such a permit, the applicant shall make a written application to the City Building Department, which application shall show the name, address, proof of notification of the state comptroller's office (sales tax number) or driver's license number of the person, firm or corporation, if any, that he represents, the nature of his business, and the period of time such applicant wishes to do business in the city; should a vehicle be used in sales, applicant shall show proof of valid liability insurance provided for vehicle sales; applicants using vehicles to sell food or refreshments shall also show valid hazard insurance and a recent passing health inspection report from the agency or political subdivision enforcing food establishment regulations in the City for the vehicle. Permits shall not be transferred from one vehicle to another. The application shall be routed to the city police department for review and a concurrence prior to the issuance of a permit by the City Building Department.

(Ord. No. 239, § 3, 3-21-1989)

Sec. 11-167. Additional requirements.

Any person desiring to go from house to house or from place to place, or to own, operate, or control a temporary location or stand on a public street or right-of-way in the city, to sell or solicit orders for goods, wares, merchandise, services, photographs, newspaper, magazines, or subscriptions to magazines, shall in addition to securing a permit as provided for in sections 11-165 and 11-166, make application to the City Building Department for a license to do so, which application shall show the name and address of the person, if any, that he represents and the kind of goods offered for sale, and whether such applicant upon such sale or order shall demand, accept or receive payment or deposit or money in advance of final delivery, and the period of time such applicant wishes to sell or solicit in the city.

(Ord. No. 239, § 4, 3-21-1989)

Sec. 11-168. Fees.

The license and permit fees for an itinerant merchant, itinerant vendor, temporary merchant, or temporary vendor shall be as provided in appendix A to this Code and payable in advance.

(Ord. No. 239, § 6, 3-21-1989)

Sec. 11-169. Exemptions.

The provisions of this article shall not apply to unless otherwise stated:

- (1) Sales made under authority of a state statute and by order of any court;
- (2) Sheriff constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law;
- (3) Newspaper carriers and newspaper vending machines;
- (4) The sale of personal property goods which occurs on a person's own private property by the owner thereof at his private residence or business;
- (5) The sale of goods which occurs during organized community and special events held by the authority of agreements or special permits issued by the city council or held upon public

premises or in or upon public parks under the auspices or sponsorship or within the regular administration of the parks and recreation department of the city; or

(6) The sale of goods or services for noncommercial purposes or causes, whether community service, charitable, civic, religious or educational, which shall not be required to obtain a permit or license.

(Ord. No. 239, § 7, 3-21-1989)

Sec. 11-170. Request for waiver.

The city manager or designated representative shall have the authority to waive the license, permit or fee requirements of this article. Persons or organizations which wish to be considered for waivers of this article, or any part thereof, must make written request for waiver, in addition to the regular application for permit and license. Each request shall be considered individually, and a response to each request shall be determined within three working days. Should the request for waiver be denied, the person or organization may appeal such denial to the city council. The council shall have final authority to make determinations on all appeals, by any person or organization, to any or all provisions of this article.

(Ord. No. 239, § 8, 3-21-1989)

Sec. 11-171. Dismissal of prosecution.

Any person prosecuted under the provisions of section 11-163 shall have the right at any time before conviction to have such prosecution dismissed upon payment of said fees and all costs of prosecution; and no prosecution shall be commenced against any person after the payment of said fees, notwithstanding he may have followed such occupation, calling, or profession before paying fees, provided said license shall cover the time said person has actually followed said occupation, calling or profession.

(Ord. No. 239, § 10, 3-21-1989)

Sec. 11-172. Authority to enforce.

The chief of police, or designated representative, shall have authority to enforce the provisions of this article, and to enlist the assistance of all appropriate agencies in the enforcement effort.

(Ord. No. 239, § 11, 3-21-1989)

Sec. 11-173. Permit and license revocation.

Nothing in this article shall prevent the chief of police, or designee, from immediately revoking a peddler's, vendor's or itinerant vendor's license and permit should such peddler or vendor be in violation of this or any other city code or ordinance.

(Ord. No. 239, § 12, 3-21-1989)

Sec. 11-174. All codes and ordinances effective.

In addition to the provisions of this article, all other applicable city codes and ordinances shall apply to the operation of any itinerant and/or temporary vendor, and shall be in full force and effect. This policy shall be effective even if the vendor has applied for and obtained a valid license and permit to operate, should the violations occur either prior or subsequent to obtaining such permit.

(Ord. No. 239, § 13, 3-21-1989)

Sec. 11-175. Mobile Food Vendors.

It shall be unlawful for Mobile Food Vendors to operate within the city limits of the City of Kyle, without having first applied for and obtained a permit from the City Building Department as provided for in this section. It shall be unlawful for a mobile food vendor permit holder to fail to comply with any condition of such permit.

(A) Permit Requirements. To receive and hold a permit for a Mobile Food Vendor operation, the applicant/permittee must meet each of following minimum requirements:

- (1) Meet all requirements set forth by Section 11-165 of this code.
- (2) Meet all state and local laws and regulations applicable to Mobile Food Vendors and food establishments, including but not limited to 25 Texas Administrative Code 229, Subchapter K, as amended (the "Food Establishment Rules" or the "Rules").
- (3) In addition where not in conflict with the Food Establishment Rules, comply with the following:
 - (a) All foods must be from an approved source and bear a label demonstrating that they are from an approved source.
 - (b) Mobile units must operate from an approved commissary. *A residential home commissary is not allowed.* The commissary shall comply with all Food Establishment Rules, and hold a current licenses and permits as required by the Rules. The mobile unit shall return to that commissary for weekly replenishing of supplies, and servicing of the mobile unit. If the commissary is located outside the City of Kyle, valid copies of the commissary's current licenses and permits issued under the Food Establishment Rules and most recent health inspection report must be kept on file with the City.
 - (c) Only single service/use items are allowed (i.e. styrofoam, plastic or paper).
 - (d) Plumbing - Mobile Food Vendors may not connect to the City water or wastewater system except at an approved commissary or other facility approved by the City for such purposes.
 - (e) The Mobile Food Vendor must operate out of a clean and enclosed unit or vehicle.
 - (f) The Mobile Food Vendors unit or vehicle must be equipped with the following:
 1. Self-contained pressurized (by pump) hot and cold potable water system.
 2. A hand washing sink (equipped with soap and paper towels).
 3. A three compartment ware wash sink (must have capacity for largest piece of ware/equipment).

4. A permanently installed wastewater holding tank (15% greater in size than potable water capacity).
 5. Covered trash receptacles.
 6. Thermometers (cold hold, hot hold and stem type for cooked food).
 7. Smooth, easily cleanable, & nonabsorbent surfaces
- (g) Mobile Food Vendors shall properly sanitize all food contact surfaces.
 - (h) All employees must have a valid Food Handler's Training Certificate
 - (i) All Mobile Food Vendors must provide the City with a copy of Texas sales tax certificate.
 - (j) If a Mobile Food Vendor unit or vehicle is not commercially designed, then a plan or drawing showing the layout of the mobile unit must be submitted to the City Building Department for review with the application for permit.
 - (k) Mobile Food Vendors must complete a commissary certification letter.
 - (l) All Mobile Food Vendors may only operate from 6:00am to 30 minutes past dusk and may not remain longer than 60 minutes at any one location. For the purposes of defining a location – a location is considered to be the same parcel of property.
- (4) Display the City of Kyle Permit Number on the top left rear of the vehicle in vinyl, or other temporary lettering no less than 2" in height before vehicle is put into operation under any permit.
- (5) Make a deposit of funds as provided for in Appendix A of this code which shall be returned in full when the permittee chooses to non-renew their mobile food vendor permit in writing, except when forfeited as provided below.
- (a) The deposit shall be forfeited for the following reasons:
 1. Any violation of this code.
 2. Any violation of Food Establish Rules or an applicable regulation of the Texas Health and Human Services Commission, or successor agency, or any other State laws, rules, or regulations dealing with food, beverage, or health and human services.
 3. Operating as a Mobile Food Vendor with an expired permit.
 - (b) Should the deposit be forfeited for any reason, a new deposit and any permit fees will be required before any new application for permit under this section will be considered.
- (B) Permit Revocation.

- (1) Compliance with Subsection (A) shall be a condition of the mobile food vendor permit. If the permittee fails to comply with a Subsection (A), then the mobile food vendor permit may be revoked.
- (2) If a mobile food vendor permit is revoked, any deposits and fees paid to the City will be forfeited.
- (3) The former permittee may appeal the revocation of a mobile food vendor permit by submitting a written request for appeal to the City Secretary within ten days of receiving the notice of revocation. The City Manager will hold a hearing within a reasonable time of receipt of the appeal, but no later than thirty days after receipt, at which the former permittee will have an opportunity to explain why the permit should not be revoked. The City Manager shall issue his decision within thirty days of the date of the hearing. The City Manager's decision shall be final.

(C) Permit Renewal and Fees

- (1) Mobile Food Vendor Permits expire at the end of the calendar quarter in which they were issued and must be renewed every calendar quarter. A permittee's violation of this code, the Food Establishment Rules, or any applicable Texas State, law, rule or regulation shall be grounds for denial of a permit. Denial of a permit may be appealed pursuant to the procedure for appealing revocation of permits.
- (2) Fees for the Mobile Food Vendor – hot and Mobile Food Vendor – cold are provided for in Appendix A of this code and payable in advance. Where both hot and cold food are offered, only one permit is required, and the permit for hot food will prevail. Permits will not be prorated, though the permittee may chose which calendar quarter during which the permit will be valid.

Sec. 11-176. Temporary Food Vendors.

It shall be unlawful for Temporary Food Vendors to operate within the city limits of the City of Kyle, without having first applied for and obtained a permit from the City Building Department as provided for in this section. It shall be unlawful for a temporary food vendor permit holder to fail to comply with any condition of such permit.

(A) Permit Requirements. To receive and hold a permit for a Temporary Food Vendor operation, the applicant/permittee must meet each of the following minimum requirements:

- (1) Meet all requirements set forth by Section 11-166 of this code.
- (2) Meet all state and local laws and regulations applicable to Mobile Food Vendors and food establishments, including but not limited to the Food Establishment Rules.
- (3) In addition, where not in conflict with the Food Establishment Rules, comply with the following:
 - (a) All foods must be from an approved source and bear label demonstrating that they are from an approved source.
 - (b) Temporary Food Vendors - hot must operate from an approved commissary, *A residential home commissary is not allowed.* The commissary shall comply with all Texas

Food Establishment Rules and hold current licenses and permits as required by the Rules. The mobile unit shall return to that commissary for replenishing of supplies, and servicing of the mobile unit. If the commissary is located outside the City of Kyle, valid copies of the commissary's current licenses and permits issued under the Food Establishment Rules and the most recent health inspection report must be kept on file with the City.

1. Temporary food vendors must complete a commissary certification letter.
 2. Temporary Food Vendors – cold and vendors offering only shaved ice or prepackaged frozen treats are exempt from commissary requirements so long as there is no history of violations of this code.
- (c) Only single service/use items are allowed (i.e. styrofoam, plastic or paper).
- (d) The Temporary Food Vendor shall properly sanitize all food contact surfaces.
- (e) All employees must have a valid Food Handler's Training Certificate.
- (k) If a Temporary Food Vendor unit or vehicle is not commercially designed, then a plan or drawing showing the layout of the mobile unit must be submitted to the City Building Department for review with the application for permit.
- (l) The Temporary Food Vendor must operate out of a clean and enclosed unit/vehicle.
- (m) The Temporary Food unit or vehicle must be equipped with the following:
1. Covered trash receptacles.
 2. Smooth, easily cleanable, & nonabsorbent surfaces.
 3. Thermometers (cold hold, hot hold and stem type for cooked foods).
 4. Trash receptacle for customers

(4) Temporary Food Vendors are permitted in 'RS' Retail Services, 'CBD-2' Central Business and 'E' Entertainment Zoning Districts only, where each of the following conditions are met:

- (a) The Temporary Food Vendor is or will be located on private property where an existing, permanent business operates in a building with a Certificate of Occupancy at all times while the Temporary Food Vendor occupies the property.
- (b) Temporary connections to utilities such as potable water, city sewer, or electricity are not utilized. Water shall be from an internal tank. Waste water shall be handled with

an internal tank which may not be emptied into city sewer system. Electricity shall be from a generator or an electrical outlet via a portable cord that is in conformance with the National Electrical Code as adopted by the City, including amendments thereto.

- (c) The Temporary Food Vendor is located no closer than fifty (50) feet from major thoroughfares, as designated on the City's Thoroughfare Plan, as it exists or may be amended.
- (d) A drive through is not utilized in conjunction with the Temporary Food Vendor.
- (e) Temporary Food Vendors may not be located within one hundred fifty (150) feet of another Temporary Food vendor on the same lot, except that two Temporary Food Vendors may cluster (be within one hundred fifty (150) feet of each other on the same lot) but the buffer then becomes three hundred (300) feet for any other Temporary Food Vendors;
- (f) The Temporary Food Vendor operate no closer than one hundred fifty (150) feet from property used or zoned for residential purposes.

(5) Temporary Food Vendors may operate only during the hours allowed by the zoning district they are located in so long as restroom access is still available.

(6) A Temporary Food Vendor may not remain on a particular property for a period of time that cumulatively exceeds 9 months within a calendar year.

(7) The Temporary Food Vendor may not use amplifiers, loudspeakers, or devices for the production of sound.

(8) No tables, chairs, ice chests or equipment are allowed outside the stationary cart or trailer, except for use by Temporary Food Vendor Employees;

(9) Every Temporary Food Vendor must visibly display the approved permit issued by the City.

(10) No signage is allowed other than what is permitted by the City Building Department and permanently installed on the stationary cart or trailer itself except for one (1) sandwich board which may be placed during business hours, but must be removed daily.

(11) Temporary Food Vendors must submit with the permit application written authorization or other suitable documentation

showing that the owner of the property consents to the Temporary Food Vendor operating on said property.

(12) A Temporary Food Vendor shall submit a site map depicting the location of the Temporary Food Vendor on the property, shall secure a health permit from the County, and a permit from Building Inspections prior to the operation of such use.

(13) The operator of the Temporary Food Vendor operation shall possess a valid Texas Sales and Use Tax Permit.

(D) Permit Revocation.

- (1) Compliance with Subsection (A) shall be a condition of the temporary food vendor permit. If the permittee fails to comply with Subsection (A), then the temporary food vendor permit may be revoked.
- (2) If a temporary food vendor permit is revoked, any deposits and fees paid to the City will be forfeited.
- (3) The former permittee may appeal the revocation of a temporary food vendor permit by submitting a written request for appeal to the City Secretary within ten days of receiving the notice of revocation. The City Manager will hold a hearing within a reasonable time of receipt of the appeal, but no later than thirty days after receipt, at which the former permittee will have an opportunity to explain why the permit should not be revoked. The City Manager shall issue his decision within thirty days of the date of the hearing. The City Manager's decision shall be final.

(C) Permit Renewal and Fees

- (1) Temporary Food Vendor Permits expire at the end of the month in which they were issued and must be renewed every calendar month. A permittee's violation of this code, the Food Establishment Rules, or any applicable Texas State law, shall be grounds for denial of a permit. Denial of a permit may be appealed pursuant to the procedure for appealing revocation of permits.
- (2) A permittee may not hold a Temporary Food Vendor Permit for more than nine (9) consecutive months, nor more than nine (9) months total in any given year.
- (3) Fees for the Temporary Food Vendor – hot and Temporary Food Vendor – cold are provided for in Appendix A of this code and payable in advance. Where both hot and cold food are offered, only one permit is required, and the permit for hot food will prevail. Permits will not be prorated, though the permittee may choose which calendar month during which the permit will be valid.

Secs. 11-177--11-239. Reserved.

SECTION 2: If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle, in adopting this ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion or provision.

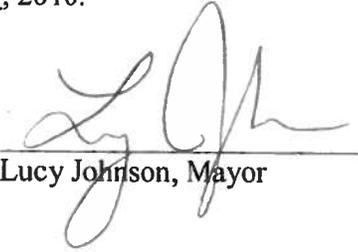
SECTION 3. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 4. It is hereby officially found and determined that the meeting at which this WAS passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the 6th day of July, 2010, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the 3rd day of August 2010, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this 3rd day of August, 2010.



Lucy Johnson, Mayor

ATTEST:



Amelia Sanchez, City Secretary