



Legislation Text

File #: 14-210, **Version:** 2

ORDINANCE Amending Title 4, Chapter 4-5 of the San Leandro Municipal Code Relating to Peddlers, Solicitors, and Itinerant Merchants (provides for consistency with state law pertaining to public street vending)

The City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. PURPOSE. To make the current ordinance consistent with state law pertaining to public street vending and to make necessary amendments that are consistent with a proposed Mobile Food Vending ordinance.

SECTION 2. AMENDMENT OF CODE. Title 4, Chapter 4-5 of the San Leandro Municipal Code is hereby amended as follows:

Words that appear with a strike-through (~~strike-through~~) shall be deleted from the Code by the City Clerk. All other text, including any added to this amendment, shall be published by the City Clerk as it appears herein, and where applicable, replace in its entirety the text that currently exists in the Code.

CHAPTER 4-5 PEDDLERS, SOLICITORS, AND ITINERANT MERCHANTS

ARTICLE 1. DEFINITIONS

4-5-100 PERSON.

“Person” shall mean any natural person, corporation, association, co-partnership, or any other organization however organized.

4-5-105 PEDDLER.

“Peddler” shall mean any person traveling by foot, wagon, automobile, truck, van, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automobile, truck, van, railroad car, or other vehicle or conveyance, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this Chapter shall be deemed a peddler subject to the provisions of this Chapter.

4-5-110 SOLICITOR.

“Solicitor” shall mean any person traveling either by foot, wagon, automobile, truck, van or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sales of goods, wares, and merchandise, personal property of any

nature whatsoever for future delivery, or for services to be furnished or performed in the future, or whose activities may, in any way, result in such sale or the furnishing of such services, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sale or not, provided that such definitions shall include any person who, for himself, or for another firm or corporation, hires, leases, uses, or occupies any building, structure, tent, railroad box car, hotel room, lodging house, apartment, shop, or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

4-5-115 ITINERANT MERCHANT.

“Itinerant merchant” shall mean any person, firm, or corporation, whether as owner, agency, consignee or employee, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares and merchandise, meats, fish, vegetables, fruits or other food products, within the City of San Leandro, and who, in furtherance of such purpose, hires, leases, uses or occupies any nonresidential building, structure, shop, or room in any hotel, motel, auto court, within the City, for the exhibition and sale of such goods, wares and merchandise provided that such definition shall not be construed to include any person, firm or corporation who while occupying such location does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery, and further shall not include sales of pumpkins or Christmas trees. For purposes of this Chapter 4-5, the term “temporary business” shall mean a lawfully permitted business conducted for less than seven (7) consecutive days in any calendar year. Any business conducted for more than seven consecutive days shall obtain a business license in accordance with the provisions of Chapter 2-2 of the San Leandro Municipal Code.

4-5-120 PUSH CART.

“Pushcart” shall mean a piece of vending equipment which is intended to store all materials and merchandise related to vending activity, and is easily moved by a person.

~~4-5-125 ICE CREAM TRUCK.~~

~~“Ice cream truck” shall mean any motor vehicle, as the term is defined in the California Vehicle Code, engaged in the curbside vending or sale of frozen or refrigerated desserts, confections or novelties commonly known as ice cream, prepackaged candies, prepackaged snack foods or soft drinks. Reserved.~~

4-5-130 TRAILER.

“Trailer” shall mean any non-motorized vehicle which is attached to a motorized vehicle.

~~4-5-135 ICE CREAM PEDDLER.~~

~~“Ice cream peddler” shall mean any person engaged in the vending or sale of frozen or refrigerated desserts, confections or novelties commonly known as ice cream, prepackaged candies, prepackaged snack foods or soft drinks. Reserved.~~

4-5-140 HAND CART.

“Handcart” shall mean a cart drawn or pushed by hand.

4-5-145 DOLLY.

“Dolly” shall mean a platform on a roller or on wheels or coasters used to move objects.

ARTICLE 2. PERMIT

4-5-200 PERMIT.

It shall be unlawful for any person to engage in the business of peddler, solicitor or itinerant merchant within the City of San Leandro without first obtaining a permit therefore as provided herein.

This section does not apply to events which require a special event permit.

4-5-205 APPLICATION.

Applicants for permits under this Chapter must file with the Finance Director a sworn application in writing on a form furnished by the Finance Director which shall give the following information:

- (a) Name and description of the applicant;
- (b) Permanent home address of applicant;
- (c) A brief description of the goods to be sold;
- (d) If employed, the name and address of the employer, and the capacity in which the applicant is employed;
- (e) If a vehicle is to be used, a description of the same together with license number and other means of identification;
- (f) For peddlers and solicitors only, the fingerprints of the applicant shall be provided for the initial application, and for renewals, every even numbered year thereafter;
- (g) A statement as to whether or not the applicant has been convicted of any crime, including violation of any municipal ordinance, the nature of the offense and the punishment or penalty imposed; and
- (h) For itinerant merchants only, a written statement signed by the owner or his authorized agent, consenting to applicant's use of the subject property.

4-5-210 APPLICATION AND RENEWAL FEE.

The application and any renewal application shall be accompanied by a fee in such amount or amounts, as designated by the City Council, to cover administrative costs. No part of such fees shall be refunded whether such permit is issued or not.

4-5-215 VERIFICATION OF APPLICATION.

The applicant shall sign a declaration under penalty of perjury that the information contained or submitted with the application is true.

4-5-220 GROUNDS FOR DENIAL OF PERMIT.

The Finance Director shall deny the permit if he finds:

- (a) That any information contained in or submitted with the application is not true; or
- (b) That the activity as proposed by the applicant would not comply with any provision of this Chapter or any other ordinance or regulation of the City of San Leandro or any statute or regulation of the State of California or of the United States; or
- (c) That the applicant has been convicted of any of the following offenses or convicted of an offense outside the State of California that would have constituted any of the following offenses if committed within the State of California:
 - (1) An offense involving the use of force or violence upon the person of another that amounts to a felony;
 - (2) Burglary (P.C. § 459);
 - (3) Robbery (P.C. § 211);
 - (4) Fraud, misrepresentation (P.C. §§ 351, 531, 532); or
- (d) That, for any other reason, the activity as proposed would be detrimental to the public peace,

health, morals or welfare.

4-5-225 ISSUANCE OR DENIAL OF PERMIT.

The Finance Director shall, within twenty (20) days after receipt of an application complying with the provisions of this Chapter, issue a permit or deliver to the applicant, personally or by mail, written notice of denial of the permit, setting forth the reason or reasons therefor, in accordance with the provisions of Section 4-5-220. If the permit is issued, the permit shall contain the signature of the issuing officer and shall show the name and address of the issuing officer and shall show the name and address of the permittee, the class of permit issued, the kind of goods to be sold thereunder, the date of issuance, and the length of time (not to exceed one year) the same shall be operative as well as the license number and other identifying description of any vehicle, if any, used in such business. The Finance Director shall keep a permanent record of all permits issued. Permits shall be renewed annually upon payment of the renewal fee and business license fee. If the permit is for peddling at the Shoreline Recreation Area, the permit shall indicate the area or areas where the permittee may peddle.

4-5-230 BADGES.

The Finance Director shall issue to each permittee at the time of delivery of his permit such identification badges as deemed necessary by the Finance Director. Badges (peddlers and solicitors only) shall be carried and shall be exhibited to any police officer or other authorized city official on demand and to any person upon whom such peddler or solicitor shall call.

4-5-235 TRANSFER.

No identification badge issued under the provisions of this Chapter shall be used or worn at any time by any person other than the one to whom it was issued.

4-5-240 REVOCATION OF PERMIT.

The Finance Director shall revoke a permit issued pursuant to the provisions of this Chapter if:

- (a) He subsequently determines that facts exist which, under the provisions of Section 4-5-220 would have required denial of the permit at the time of application; or
- (b) Subsequent occurrences create a situation which, under the provisions of Section 4-5-220 would have required denial of the permit had the situation existed at the time of application; or
- (c) Fraud, misrepresentation, or false statement is contained in the application; or
- (d) Fraud, misrepresentation, or false statement was made in the course of carrying on the business of peddler, solicitor or itinerant merchant; or
- (e) Any violation of this Chapter or of the terms and conditions of the permit; or
- (f) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or constitute a threat to the health, safety or general welfare of the public.

4-5-245 HEARING.

Notice of the hearing before the Finance Director for revocation of a permit shall be given in writing, setting forth specifically the basis for revocation and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permittee at his last known address at least five (5) days prior to the date set for hearing.

4-5-250 APPEAL.

Any person who has been denied a permit pursuant to Section 4-5-225, or has had his or her permit revoked pursuant to Section 4-5-240, may appeal that decision to the City Manager.

4-5-255 LIABILITY FOR DAMAGES-PUBLIC LIABILITY INSURANCE.

(a) If a permit is for peddling from a conveyance located from the public right-of-way, it shall not be issued until the applicant provides evidence to the satisfaction of the Finance Director of public liability and property damage insurance in such form and amount as may be required by the Finance Director to protect the City, its officials, directors, officers, employees and agents from claims which may arise from permittee's activities under the permit. Such insurance shall be maintained during the term of the permit.

(b) Permittee shall be responsible for all liability for personal injury or property damage which may result from permittee's activities under the permit, or proximately caused by failure on permittee's part to perform his obligations under said permit. If any claim or such liability is made against the City, its officers, or employees, permittee shall defend, indemnify and hold them and each of them, harmless from such claim including any claim based on the active or passive negligence of the City, its officers or employees, insofar as permitted by law.

ARTICLE 3. EXEMPTIONS

4-5-300 REGULAR CONTACT.

Persons regularly calling on persons, firms or corporations shall be exempt from the provisions of this Chapter.

4-5-305 SHORELINE RECREATION AREA (MARINA)

No person engaged in the business of peddler, or itinerant merchant shall conduct business on public or private property within the Shoreline Recreation Area. ~~also known as the San Leandro Marina, unless such person has a permit issued pursuant to this Chapter which specifically authorizes the peddler or itinerant merchant in the Shoreline Recreation Area or any part thereof. The only permit that may be issued for the business of peddler, within the San Leandro Marina is one limited to the business of ice cream peddler. Solicitation is prohibited in the Shoreline Recreation Area.~~

4-5-310 NEWSPAPERS.

The provisions of this Chapter shall not apply to the solicitation of subscriptions or advertising for, or sale of, newspapers, magazines or other periodicals published for the dissemination of news and intelligence of a general character and printed or published at regular intervals.

4-5-315 MOBILE FOOD VENDORS

The provisions of this chapter shall not apply to Mobile Food Vending as defined in Chapter 4-34 of this Code.

ARTICLE 4. BUSINESS LICENSE FEES

4-5-400 BUSINESS LICENSE FEE.

Every person carrying on the business of peddler, solicitor or itinerant merchant who is not exempted from the provisions of this Chapter shall pay as a license fee the sum prescribed in Chapter 2 of Title II of this Code in addition to the application fee provided in this Chapter.

ARTICLE 5. GENERAL

4-5-500 LOUD NOISES AND SPEAKING DEVICES.

No permittee or anyone acting in his behalf shall shout, make any outcry, blow a horn, ring a bell, or use any other sound device including any loud speaking radio or amplifying system upon any of the streets, alleys, parks, or other public places of the City or upon any private premises in the City where sound of sufficient volume is emitted or produced therefrom capable of being plainly heard upon the streets, avenues, alleys, or parks, or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which such permittee proposes to sell.

4-5-505 USE OF STREETS.

(a) No peddler shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location (unless otherwise provided) or be permitted to operate in any congested area where his operations might impede or inconvenience the public.

(b) No peddler shall stand or park any motorized vehicle or trailer for more than ~~two (2)~~ **five (5)** hours in any particular location, nor shall any peddler stand or park any motorized vehicle or trailer in violation of any section of the San Leandro Municipal Code.

Regardless of the length of time parked at any particular location, no peddler shall stand or park any motorized vehicle or trailer within five hundred (500) feet, as measured in any direction, of any area where he or she previously parked at the beginning of the ~~two~~ **five (5)** hour period, until twenty-four (24) hours have elapsed from the end of said two hour period.

(c) No peddler shall stand or park any motorized vehicle or trailer within fifteen (15) feet of any curb return, driveway or fire hydrant.

4-5-510 INTERSTATE COMMERCE.

None of the fees provided for by this Chapter shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a fee is believed by a solicitor to place an undue burden upon such commerce, he may apply to the Finance Director for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at, or within six (6) months after payment of the prescribed fee. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Finance Director may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Finance Director shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which he shall determine whether the fee is unfair, unreasonable, or discriminatory as to the applicant's business and shall fix as the business license fee for the applicant, an amount that is fair, reasonable, and non-discriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. Any person aggrieved by the action of the Finance Director under this section may appeal to the City Manager.

4-5-515 ITINERANT MERCHANT DEPOSIT.

Before any permit may be issued to an itinerant merchant, the applicant must deposit with the Finance Director the sum of Fifty Dollars (\$50.00) in lawful money of the United States, which deposit shall be retained as a guaranty that the premises occupied by such applicant shall be left in a clean condition. Upon presentation of a certificate to be issued by the Building Inspector that said premises are clean, such deposit may be refunded to applicant, otherwise, the same shall be retained by the City and expended to clean said premises.

4-5-520 PEDDLERS, SOLICITORS-RESIDENTIAL DISTRICTS-HOURS PERMITTED-

NOTIFICATION.

(a) Except as allowed by subsection (b), it shall be unlawful for any person to engage in the business of peddler, solicitor or itinerant merchant within a residential zoning district, as described in the San Leandro Zoning Code, except during the hours of **87:00** a.m., to **810:00** p.m., on each day.

(b) Where a person has an appointment with the occupants of a residence, that person may engage in the business of peddler, solicitor or itinerant merchant at that residence.

(c) Every permit issued for the purpose of engaging in the business of peddler, solicitor or itinerant merchant shall contain the language set forth in subsections (a) and (b), above, and shall also contain a map depicting the residential zoning districts of the City:

4-5-525 PUSHCARTS PROHIBITED.

No person shall vend from or locate a pushcart, handcart or dolly within the City of San Leandro.

~~4-5-530 ICE CREAM TRUCKS PROHIBITED WITHIN FIVE HUNDRED (500) FEET OF PRIMARY OR SECONDARY SCHOOLS.~~

~~No person shall dispense any item from an ice cream truck parked or stopped within five hundred (500) feet of the property line of a primary or secondary school during the school day, one-half (1/2) hour prior to the start of the school day and one-half (1/2) hour following student dismissal at the end of the school day. Reserved.~~

4-5-535 PEDDLING FROM A VEHICLE OR TRAILER.

(a) Any and all vehicles and trailers used for the business of peddling shall be legally parked and capable of being self-propelled at all times. Peddlers engaged in the business of peddling from a vehicle or trailer may peddle their wares within the public rights-of-way on City streets, but shall not have exclusive rights to any particular location.

(b) No peddler shall dispense or sell any ~~food or other~~ type of merchandise within two (2) blocks or six hundred (600) feet, whichever is greater, of an established business which sells the same type of ~~food or other~~ merchandise as the peddler.

4-5-540 REFUSE COLLECTION.

Prior to leaving any location from which a peddler has engaged in the activity of peddling, peddlers shall pick up, remove and properly dispose of all trash or refuse which consists of materials originally dispensed by the peddler, including any packages or containers, or parts thereof, used with or for dispensing of such ~~food or~~ goods.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 4. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Prola on this 2nd day of June, 2014, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Cutter, Gregory, Lee, Prola, Souza; Mayor Cassidy (6)

NOES: None (0)

ABSENT: Councilmember Reed (1)