

ARTICLE II. SOLICITORS, PEDDLERS AND ITINERANT MERCHANTS

DIVISION 1. GENERALLY

Sec. 6-25. Applicability.

The regulations contained in this article shall apply to all persons conducting commercial solicitations within the corporate limits of the city.

(Code 1987, ch. 6, subch. C, art. I, § 1(a); Code 1995, § 4.04.001)

Sec. 6-26. 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:

Commercial solicitation or *solicitation* means the selling or offering for sale of any property, real or personal, tangible or intangible, whether of value or not, including, but not limited to, food products, goods, books, pamphlets, tickets, publications or subscriptions to publications, brochures, or memberships.

Mobile food peddler or *food peddler* means a person who makes a solicitation relating to any food product.

Permittee means a person issued a permit under this article.

Resident means the owner or occupant of a residential dwelling unit.

Solicitor means any person making a commercial solicitation.

(Code 1987, ch. 6, subch. C, art. I, § 1(b); Code 1995, § 4.04.002)

Sec. 6-27. Penalty.

Any person violating any provision of this article shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation of any provision of this article is committed, continued, or permitted, and, upon the conviction of any such violation, such person shall be punishable by a fine of not more than \$500.00.

(Code 1987, ch. 6, subch. C, art. IV, § 2; Code 1995, § 4.04.003)

Sec. 6-28. Hours and places of solicitations.

- (a) *Private residences.* All solicitations to private residences conducted under a valid permit issued pursuant to this article shall occur between the hours of 9:00 a.m. and 7:00 p.m. during central daylight savings time designations, and between the hours of 9:00 a.m. and 6:00 p.m. during Central Standard Time designations. This subsection does not apply where the solicitor is on the premises at the express prior invitation of the resident.

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- (b) *Public property.* Solicitations may be conducted on public property under a valid permit issued pursuant to this article; provided, however, that solicitors may not solicit in public streets or rights-of-way or from medians in the streets, or in any manner block, obstruct or unduly hinder passage on public streets and rights-of-way. In addition, solicitors may not block, obstruct or unduly hinder passage on public sidewalks or passageways.

(Code 1987, ch. 6, subch. C, art. I, § 2; Code 1995, § 4.04.004)

Sec. 6-29. Prohibited conduct.

It is unlawful for any person engaged in solicitation to:

- (1) Solicit within the corporate limits of the city without first obtaining a permit in accordance with the provisions of this article, including, without limitation, the requirement that the solicitor visibly display a valid permit issued by the city in accordance with this article;
- (2) Alter any permit issued in accordance with this article;
- (3) Be engaged in solicitation to make physical contact with the person being solicited unless that person's permission is first obtained;
- (4) Misrepresent the purpose of a solicitation or the affiliation of those engaged in the solicitation;
- (5) Continue efforts to solicit once the person being solicited informs the solicitor that he does not wish to give anything to or to buy anything from that solicitor; or
- (6) Represent the issuance of any permit or registration under this article as an endorsement or recommendation of the solicitation.

(Code 1987, ch. 6, subch. C, art. I, § 3; Code 1995, § 4.04.005)

Sec. 6-30. Review of permit application; issuance or denial of permit.

- (a) The city secretary shall review each application for a permit and shall determine if the application is complete.
- (b) Within ten days of receipt of an application, the city secretary shall either:
 - (1) Issue a permit to the applicant as provided in this article;
 - (2) Notify the applicant that the application does not comply with the requirements of this article, in which event the city secretary shall specifically point out what information has not been furnished that is required before a permit can be issued; or
 - (3) Deny the permit, in which event the denial shall automatically be appealed to the city council.
- (c) Any permit application denied by the city secretary shall automatically be appealed to the city council. The city secretary shall, within three days of any denial, notify the mayor of the appeal and ensure that the application is placed on the next regular agenda of the city council for consideration. The city council shall review the action of the city secretary and shall either affirm or overrule the denial of the permit. If the action of the city secretary is overruled, the permit shall be issued. If the action of the city secretary is affirmed, the denial of the permit shall be appealed as provided in section 6-33.
- (d) A permit application may be denied if:
 - (1) One or more of the statements made in the permit application is not true;

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- (2) The applicant or person in charge of the solicitations campaign has made or caused to be made false statements or misrepresentations to any member of the public with regard to the solicitations campaign or other activities described in the permit, or has made or caused to be made false statements or misrepresentations in the permit application, or has in any way publicly represented that the permit granted hereunder is an endorsement or recommendation of the cause for which the solicitations campaign is being conducted or has otherwise violated any of the terms of the permit or this article; or
 - (3) Under a prior permit obtained from the city, the applicant failed to submit the required reports at the end of the solicitations campaign or, upon investigation of the applicant's financial records, the financial report submitted was found to be false. Denial of a permit under this provision shall only be allowed prior to the applicant filing a truthful and accurate required report.
 - (e) Following approval of a proper and complete permit application, the city secretary shall, within three working days after the application is approved and the appropriate application fee is received, issue a permit to the applicant.

(Code 1987, ch. 6, subch. C, art. I, § 4; Code 1995, § 4.04.006)

Sec. 6-31. Transfer of permit.

Any permit issued hereunder shall be personal or specific to the applicant and shall not be assigned or transferred to any other person. Any attempted assignment or transfer shall render the permit void.

(Code 1987, ch. 6, subch. C, art. I, § 5; Code 1995, § 4.04.007)

Sec. 6-32. Revocation of permit.

- (a) If, after issuance of a solicitation permit, it is determined that the applicant has knowingly given false or misleading information on his application, any solicitation permit shall be revoked by the city secretary.
- (b) If a solicitor is convicted of theft or fraud or a violation of any state penal law in connection with the solicitation for which that permit was issued, that solicitor's permit shall be revoked by the city secretary.
- (c) If a person holding a solicitation permit from the city violates any provision of this article, that person's solicitation permit shall be revoked by the city secretary.
- (d) Any permit revoked by the city secretary shall automatically be appealed to the city council. The city secretary shall, within three days of any revocation, notify the mayor of the appeal and ensure that the revocation is placed on the next regular agenda of the city council for consideration. The city council shall review the action of the city secretary and shall either affirm or overrule the permit revocation. If the action of the city secretary is overruled, the permit shall be reinstated. If the action of the city secretary is affirmed, the revocation of the permit shall be appealed as provided in section 6-33.

(Code 1987, ch. 6, subch. C, art. I, § 6; Code 1995, § 4.04.008)

Sec. 6-33. Appeal of action on permit.

- (a) In the event that any permit application is finally denied or a permit is finally revoked by the city council under the terms of this article, the city, acting by and through the city attorney or his designee, shall, within five working days following such denial or revocation, apply to a court of competent jurisdiction for a judicial determination as to whether the proposed activities described in the application may be prohibited or the permit revoked, naming the applicant or permittee as a party defendant. The city shall exert every

reasonable effort to have the matter heard on its merits without delay, and as soon as legally possible. The burden of showing that the proposed activities may be prohibited or the permit revoked shall rest on the city.

- (b) If the issue for judicial determination is not heard and decided on the merits by the court within ten working days from the date the complaint is filed, then an interim 30-day permit shall be deemed issued under this article to the applicant by operation of law, and all activities proposed to be carried on in the application or under the original permit may be carried on just as though a permit had been duly issued by the city secretary, subject to the restrictions and obligations set forth in this article.
- (c) The interim permit shall be deemed renewed for successive 30-day periods for so long as no judicial determination has been made and from the time such determination is made until the time for appeal therefrom has expired.
- (d) Should either party appeal from the judicial determination, an interim permit shall be deemed issued under this article to the applicant by operation of law as of the date the notice of appeal is filed, and all activities proposed to be carried on in the application or under the original permit may be carried on just as though the permit had been duly issued by the city secretary, subject to the restrictions and obligations set forth in this article. The interim permit shall be deemed renewed for successive 30-day periods and shall continue in effect as provided hereinabove until a final and binding appellate decision has been reached. If the city appeals an adverse judicial determination, it shall file its notice of appeal within five working days following the determination.

(Code 1987, ch. 6, subch. C, art. I, § 7; Code 1995, § 4.04.009)

Sec. 6-34. List of residents objecting to solicitation.

- (a) All residents within the city may register an objection to any or all solicitations governed by the provisions of this article. Such an objection shall be made on forms provided by the city secretary, who shall prepare and maintain a list of such residents' objections indicating the name of the resident, his address, and the particular type or form of solicitation to which he objects.
- (b) The city secretary shall furnish a copy of the residents' objection list to every person granted a permit under this article, and each person shall be required to execute an acknowledgment of the receipt of such list.
- (c) It is unlawful for any solicitor to perform or engage in any solicitation of a resident which is of a type to which the resident has registered objection on the objection list.

(Code 1987, ch. 6, subch. C, art. I, § 8; Code 1995, § 4.04.010)

Sec. 6-35. Permit certificate.

Along with every individual permit issued under the provisions of this article, the permittee shall be issued a permit certificate which shall contain the following information: name of permittee, permit number, date of expiration of permit, and the signature of the city secretary. It is unlawful for any person to engage in solicitation within the corporate limits of the city without having such a certificate in his possession, or to fail or refuse to show or display such certificate upon the request of any person while the permittee is soliciting.

(Code 1987, ch. 6, subch. C, art. I, § 9; Code 1995, § 4.04.011)

Sec. 6-36. Credentials of permittee's representatives.

- (a) All permittees shall furnish proper credentials to their agents and solicitors. Such credentials shall include the name of the permittee, the date, and a statement describing the permittee's activity; a description of the purpose of the solicitation; the signature of the permittee or of the permittee's chief executive officer; the name, address, age, sex and signature of the solicitor to whom such credentials are issued; and the specific period of time during which the solicitor is authorized to solicit on behalf of the permittee. No person shall solicit under any permit granted under this article without the credentials required by this section and a facsimile copy of the permit in his possession. The credentials and a copy of the permit shall be shown, upon request, to any persons solicited and to any police officer of the city.
- (b) No agent or solicitor shall conduct or participate in any solicitation except under a valid permit issued in compliance with this article.

(Code 1987, ch. 6, subch. C, art. I, § 10; Code 1995, § 4.04.012)

Sec. 6-37. Responsibility of permittee for acts of representatives.

The permittee shall be responsible for the acts of his authorized representatives in connection with each solicitation campaign.

(Code 1987, ch. 6, subch. C, art. I, § 11; Code 1995, § 4.04.013)

Secs. 6-38—6-62. Reserved.

DIVISION 2. PEDDLERS AND ITINERANT MERCHANTS

Sec. 6-63. Permit required.

No person shall solicit in person or call from house to house in the city to sell or attempt to sell food products, goods, merchandise, wares, services or anything of value or to take or attempt to take orders for the future delivery of food products, goods, merchandise, wares or anything of value, or take or attempt to take orders for services to be furnished or performed in the future, without first having obtained a written permit therefor.

(Code 1987, ch. 6, subch. C, art. II, § 1; Code 1995, § 4.04.051)

Sec. 6-64. Application for permit.

- (a) Any person desiring to perform commercial solicitations within the city, as described in section 6-63, shall file a written application for a permit to do so with the city secretary, which application shall include:
 - (1) The name, telephone number and address of the applicant and, if the applicant is an association, partnership, company or corporation, the name of such entity together with the names of the persons who will be soliciting in the city;
 - (2) The name and address of the employer or firm which such applicant represents;
 - (3) If the applicant is a corporation, or if the individual is employed by a corporation, the date and place of incorporation;

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- (4) The names of other communities in which the applicant has solicited in the previous 12 months and, if employed by a different company in the other communities, the name of those companies;
 - (5) The nature of merchandise to be sold or offered for sale or the nature of the services to be furnished;
 - (6) Whether such applicant will demand, accept or receive payment or a deposit of money in advance of final delivery of due goods or services;
 - (7) The period of time such applicant proposes to conduct solicitations in the city;
 - (8) An outline of the methods to be used in conducting the solicitations;
 - (9) A physical description of the applicant and all agents of the applicant, which shall include name, address, race, sex, height, weight, hair and eye color, date of birth, driver's license number and the name of the state issuing the driver's license;
 - (10) A description of all vehicles to be used by the applicant or its agents, including license plate number;
 - (11) An itinerary to be used by the applicant or its agents, including a street map highlighted to show actual routes to be used by such applicant and its agents in any solicitations within the corporate limits of the city; and
 - (12) A copy of the applicant's current general liability, property damage and medical coverage insurance policies issued by an insurance company authorized to do business in the state, which policies shall be for the minimum amounts set forth in section 6-67.
- (b) Each applicant shall also provide written evidence of his authority to represent the company or individual such applicant purports to represent.
- (c) To compensate the city for the cost of administering this division, each application under this division shall be accompanied by a nonrefundable fee as provided for in the fee schedule, and no permit hereunder shall be issued until such fee has been paid by such applicant. Persons involved in interstate commerce shall have no fee imposed but shall remain subject to all other provisions of this article.

(Code 1987, ch. 6, subch. C, art. II, § 2; Code 1995, § 4.04.052)

Sec. 6-65. Duration of permit.

A permit requested under this division shall be issued for the length of time requested, not to exceed six months. A permit may be renewed in the manner prescribed by this article for issuance of a permit.

(Code 1987, ch. 6, subch. C, art. II, § 3; Code 1995, § 4.04.053)

Sec. 6-66. Exemptions from permit requirement.

The permit required by this division shall not be required for the following:

- (1) Ordinary commercial travelers who sell or exhibit for sale goods, wares or merchandise to persons engaged in the business of buying, selling and dealing in the same within the city.
- (2) Persons soliciting at a residence at the express prior invitation of the resident.
- (3) Persons operating under occupational licenses granted by a state agency.

(Code 1987, ch. 6, subch. C, art. II, § 4; Code 1995, § 4.04.054)

Sec. 6-67. Issuance of permit; bond; liability insurance.

- (a) If the application for a permit to solicit under this division in the city shows that the applicant will not demand, receive or accept payment or deposit of money in advance of final delivery of such goods, wares, merchandise or articles to be sold or solicited by such applicant, a permit shall be issued as set forth in section 6-30.
- (b) If the application for a permit to solicit under this division shows that such applicant shall receive, demand or accept payment or deposit of money in advance of final delivery of food products, goods, wares, merchandise, services or anything of value sold, then such application shall be accompanied by a bond in the penal sum of \$1,000.00 for an individual permit, or \$5,000.00 for a master permit, executed by such applicant as principal and by a surety company licensed to do business as such in the state. Such bond shall be conditioned upon the applicant making final delivery of value in accordance with the terms of such order or shall be for the benefit of all persons, firms or corporations who may pay in advance or make any advance deposit on the purchase of the orders.
- (c) An applicant for a permit under this division shall provide a copy of general liability insurance policy for insuring against public liability, property damage and medical coverage in the respective minimum amounts of \$100,000.00, \$300,000.00 and \$500,000.00.

(Code 1987, ch. 6, subch. C, art. II, § 5; Code 1995, § 4.04.055)

Secs. 6-68—6-92. Reserved.*DIVISION 3. FOOD PEDDLERS***Sec. 6-93. Health certificate required.**

In addition to the permit required by this article, a mobile food peddler must hold a valid health certificate issued by the state health department and must comply with the additional provisions of this division.

(Code 1987, ch. 6, subch. C, art. III, § 1; Code 1995, § 4.04.091)

Sec. 6-94. Noncomplying operation declared nuisance; abatement.

The operation of a food peddler in violation of any provision of this division is hereby declared to be a nuisance, and prohibited within the corporate limits of the city. A nuisance shall be subject to abatement by summary action of the health officer of the city or by injunction, and this provision is cumulative of all other remedies of the city.

(Code 1987, ch. 6, subch. C, art. III, § 2; Code 1995, § 4.04.092)

Sec. 6-95. Provisions cumulative.

The provisions of this division do not repeal any existing ordinance regulating food peddlers but shall be cumulative of all other city ordinances and provisions of this Code dealing with the subject matter.

(Code 1987, ch. 6, subch. C, art. III, § 3; Code 1995, § 4.04.093)

Sec. 6-96. Inspections.

- (a) *Initial inspection.* Upon receipt of any application for commercial solicitation by a food peddler, the city secretary shall inspect the premises, equipment and each vehicle with which such applicant intends to carry on its food peddling business.
- (b) *Subsequent inspections.* The city secretary or his designated representative may inspect a food peddler's vehicle, storage or processing area as often as necessary to ascertain if the standards of this division are being maintained.
- (c) *Notice of violation.* The city secretary or his designated representative shall notify the food peddler of any violation of this division.
- (d) *Reinspection.* The city secretary shall make a reinspection after the lapse of such time as he deems necessary for any violation to be remedied.
- (e) *Correction of violations; reinstatement of permit.* Following suspension, a request for reinspection may be made to the city secretary and he may order reinstatement of the permit if all defects have been corrected.

(Code 1987, ch. 6, subch. C, art. III, § 4; Code 1995, § 4.04.094)

Sec. 6-97. Posting of permit in vehicle.

A food peddler obtaining a permit under this division shall keep the permit posted in a conspicuous place on the vehicle from which he conducts his business.

(Code 1987, ch. 6, subch. C, art. III, § 5; Code 1995, § 4.04.095)

Sec. 6-98. Access to premises and records.

The person operating the business of mobile food peddler shall, upon the request of the city secretary, permit access to all areas in which food or drink is stored, processed or kept and shall permit copying of all records of food and drink purchases.

(Code 1987, ch. 6, subch. C, art. III, § 6; Code 1995, § 4.04.096)

Sec. 6-99. Storage, sanitation and keeping of food products.

- (a) *Storage.* All food and drink must be stored, processed or kept in a location and manner required by applicable state laws and regulations.
- (b) *Construction and equipment of vehicles.* Vehicles must be constructed, equipped and maintained in such a manner as to protect all food and drink from insects, dirt, dust and other contamination.
- (c) *Unwrapped food.* No unwrapped food may be dispensed by a food peddler except fruits and vegetables which are usually peeled, cooked or shelled prior to consumption.
- (d) *Drinks.* All drinks, except coffee and tea, must be dispensed in the original containers.
- (e) *Labeling of packaged products.* All packaged food and drink must be adequately labeled as to the contents thereof.
- (f) *Prepared foods.* Prepared foods, such as sandwiches and salads, may not be sold or served more than 24 hours after preparation.

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- (g) *Perishables.* All perishable foods shall be kept at a temperature below 50 degrees Fahrenheit or above 150 degrees Fahrenheit at all times.

(Code 1987, ch. 6, subch. C, art. III, § 7; Code 1995, § 4.04.097)

Sec. 6-100. Sampling of food; condemnation of food.

- (a) *Sampling.* Samples of food or drink offered to the public by a food peddler may be taken and examined by the city secretary or his designated representative as often as may be necessary for the detection of unwholesomeness or adulteration.
- (b) *Condemnation.* The city secretary or his designated representative may condemn and forbid the sale of, or cause to be removed and destroyed, any food or drink which he finds to be unwholesome or adulterated.

(Code 1987, ch. 6, subch. C, art. III, § 8; Code 1995, § 4.04.098)

Secs. 6-101—6-128. Reserved.

ARTICLE III. FOOD ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 6-129. Adoption of state food establishment rules.

The city adopts by reference the provisions of 25 Tex. Admin. Code ch. 228 regarding the regulation of food establishments in this jurisdiction.

(Code 1995, § 6.03.001)

Sec. 6-130. 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:

Authorized agent or employee means the employees of the city or the contractor providing services to the city under this article.

Food establishment means a food service establishment, a retail food store, a temporary food establishment, a mobile food unit, or a roadside food vendor.

State rules means 25 Tex. Admin. Code ch. 228, Retail Food.

(Code 1995, § 6.03.002; Ord. No. 2015-12-16(C), 12-16-2015)

Sec. 6-131. Penalty; additional remedies.

Any person who violates a provision of these rules and any person who is the permit holder of or otherwise operates a food service establishment that does not comply with the requirements of these rules and any responsible officer of that permit holder or those persons shall be fined not more than \$2,000.00. In addition, the city may seek to enjoin violations of these rules.

(Code 1987, ch. 6, subch. D, § 8; Code 1995, § 6.03.003)

Secs. 6-132—6-160. Reserved.

DIVISION 2. PERMIT

Sec. 6-161. Required; transfer; posting.

A person may not operate a food establishment without a permit issued by the city. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this article. A valid permit must be posted in or on every food establishment regulated by this article.

(Code 1987, ch. 6, subch. D, § 2; Code 1995, § 6.03.041)

Sec. 6-162. Application; renewal; fee.

- (a) Any person desiring to operate a food establishment must make a written application for a permit on forms provided by the city. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required, may result in denial or revocation of the permit. Renewals of permits are required on an annual basis, and the same information is required for a renewal permit as for an initial permit.
- (b) Prior to the approval of an initial permit or the renewal of an existing permit, the city shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.
- (c) The fee schedule for permits issued under this article is set forth in the fee schedule on file with the city.

(Code 1987, ch. 6, subch. D, § 3; Code 1995, § 6.03.042)

Sec. 6-163. Review of plans; compliance with approved plans.

- (a) Whenever a food establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the city for review before work is begun. Extensive remodeling means that 20 percent or greater of the area of the food establishment is to be remodeled.
- (b) The plans and specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and construction of materials of work areas, and the type and model of proposed fixed equipment and facilities. The plans and specifications will be approved by the city if they meet the requirements of the rules adopted by this article. The approved plans and specifications must be followed in construction, remodeling or conversion.
- (c) Failure to follow the approved plans and specifications will result in a permit denial, suspension, or revocation.

(Code 1987, ch. 6, subch. D, § 4; Code 1995, § 6.03.043)

Sec. 6-164. Suspension.

- (a) The city may, without warning, notice, or hearing, suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by this section. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.
- (b) Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the city by the holder of the permit within ten days. If no written request for hearing is filed within ten days, the suspension is sustained. The city may end the suspension at any time if reasons for suspension no longer exist.

(Code 1987, ch. 6, subch. D, § 5; Code 1995, § 6.03.044)

Sec. 6-165. Revocation.

- (a) The city may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the city in the performance of its duties. Prior to revocation, the city shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten days following service of such notice unless a written request for a hearing is filed with the city by the holder of the permit within such ten-day period.
- (b) If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

(Code 1987, ch. 6, subch. D, § 6; Code 1995, § 6.03.045)

Sec. 6-166. Procedure.

- (a) *Notices.* A notice, as required in these rules, is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last-known address of the holder of the permit. A copy of the notice shall be filed in the records of the city.
- (b) *Hearings.* The hearings provided for in these rules shall be conducted by the city at a time and place designated by it. Based upon the recorded evidence of such hearing, the city shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the city.

(Code 1987, ch. 6, subch. D, § 7; Code 1995, § 6.03.046)