

**City of Cottonwood Shores**

**ORDINANCE 4005**

**AN ORDINANCE OF THE CITY OF COTTONWOOD SHORES FOR THE DEFINITIONS AND REQUIREMENTS OF PERMIT ISSUANCE AND DISPLAY PERTAINING TO GARAGE SALES; REPEALING CONFLICTING ORDINANCES; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AND OPEN MEETINGS CLAUSE.**

**History:** August 2, 2012 – Repealed Ordinance 072006 and adopted Ordinance 4005

April 19, 2018 – Amended to include Texas Sales Tax determination on occasional sales and provide limits on number of garage sales per year.

**WHEREAS,** The City of Cottonwood Shores has not had a prudent and formal policy in place governing the definitions for the following words, terms and phrases, shall have the meanings ascribed.

Garage Sale means and includes all sales entitled "garage sale", "lawn sale", "yard sale", "attic sale", "rummage sale", "storage sale", "flea market", or any similar casual sale of tangible personal property which is advertised by any means whereby the public at large is or can be made aware of such sale.

Goods are meant to include any goods, warehouse merchandise or other property capable of being the object of "the sale".

**WHEREAS,** The City of Cottonwood Shores will require a permit for the above ascribed known as a garage sale, lawn sale, yard sale, attic sale, rummage sale, storage sale or flea market.

It shall be unlawful for any person to conduct a garage sale in the City of Cottonwood Shores without first filing with City Hall for the information hereinafter specified and obtaining a permit to do so, to be known as a garage sale permit.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COTTONWOOD SHORES, TEXAS, THAT:**

**Section 1: Garage Sales and Texas Sales Tax**

- (a) Pursuant to the Texas Tax Code Section 151.034, Texas sales tax is due on sales of tangible personal property. "Tangible Personal Property" means property that can be seen, weighed, measured felt or touches. Examples include clothing, shoes, CDs DVDs, books, furniture, bicycles, toys and other personal items typically sold at a garage sale.
- (b) Occasional Sales
  1. can be held by a person or entity who does not have a sales tax permit to collect tax on sales of items. If the person or entity holds a sales and use tax permit, the sales made do

not qualify as occasional sales.

**2. Occasional Sales include:**

- a. one or two sales of taxable items, regardless of price, during any 12-month period (Texas Tax Code Section 151.304(b)(1)); or
- b. sales totaling up to \$3,000 in a calendar year of items that were originally acquired by the person or entity
- c. a person with sales totaling more than \$3,000 per calendar year is considered engaged in a business and must collect and report sales tax

**Section 2. Number of Garage Sales Annually**

A person or entity shall be limited to holding no more than two (2) garage sales per year in the City of Cottonwood Shores. More than two per year does not qualify for the sales tax exemption as defined by the Texas Tax Code Section 151.304(b)(1) and requires a sales tax permit.

**Section 3. Permit Issuance and Displays for Sales**

A garage sale permit shall be issued to any one person or location for no more than three consecutive calendar days. Each permit issued must be prominently displayed on the premises upon which the garage sale is conducted throughout the entire period of the permitted sale. The permit holder shall have forty-eight (48) hours prior to the sale to arrange merchandise for display and also shall have forty-eight (48) hours to remove and clean up sale site.

**Section 4. Required information for the Sales**

Information to be filed with City Hall, pursuant to this shall be as follows:

- (a) Name of person, firm, group, corporation, association, or organization conducting the sale;
- (b) Name of owner of the property on which the sale is to be conducted and consent of owner if applicant is other than the owner;
- (c) Location at which sale is to be conducted;
- (d) Number of days of sale;
- (e) Date of sale and dates of past sales;
- (f) Sworn statement of affirmation by the person signing that the information given is full and true and known to him to be so.

**Section 5. Garage Sale Signs**

- (a) Ordinance 14000, Section 303, Article 13.e.ii, provides that signs shall show name, date, and address, that signs shall be removed within 24 hours of the sale.
- (b) Signs giving notice of or advertising garage sales in residential areas shall not exceed four square feet in face area. They may not be illuminated, may not be erected earlier than one day preceding the sale and shall be removed within one day following the sale. Signs will show the date(s) of the sale. A permit to hold a garage sale is required separate from the signage. No permit is required for the sign itself.
- (c) The placement of or advertising of a garage sale sign in the right-of-way of any street, alley, or public property is prohibited. No sign shall be erected or affixed within or

project over any public right-of-way. This section shall not be construed so as to prohibit vehicular signs as long as such comply with other provisions of this section; nor to prohibit the carrying or display of signs by a person or persons as long as such sign is not connected or affixed to the real property comprising the public right-of-way, its fixtures and appurtenances.

**Section 6. Enforcement**

(a) **Civil and Criminal Penalties**

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any Police Officer, Code Enforcement Officer or City Official is authorized to enforce the provisions of this Ordinance. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

b) **Criminal Prosecution**

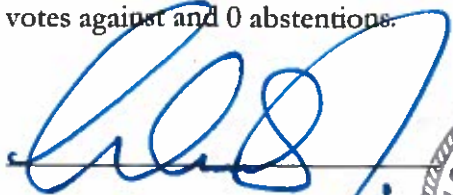
Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C Misdemeanor.

**Section 7. Severability.** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**Section 8. Open Meetings.** That it is hereby officially found and determined that the meeting at which this ordinance is 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, Loc Government Code.*

**Section 9. Effective Date.** This ordinance shall take effect immediately from and after its passage and publication.

**AMENDED ORDINANCE PASSED AND APPROVED** by the City Council of Cottonwood Shores, Texas, at a meeting on the 19<sup>th</sup> day of April, 2018 with 3 votes in favor, 0 votes against and 0 abstentions.

  
Donald Orr, Mayor



Attest: 

Sheila C. Moore  
City Administrator/City Secretary