

CITY OF MOUNT VERNON

ORDINANCE NO. 2023-25

AN ORDINANCE OF THE CITY OF MOUNT VERNON AMENDING THE CODE OF ORDINANCES CHAPTER 15, PROVIDING FOR REGULATIONS FOR DOOR-TO-DOOR SOLICITATIONS, PEDDLERS, ITINERANT VENDORS AND PAWNBROKERS; PROVIDING A PENALTY UP TO \$500 PER VIOLATIONS; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Mount Vernon, Texas (“City”), is a is a general law municipality and is authorized to enact regulations as necessary to protect the health, safety and welfare of the public and, may enact ordinances relative to its citizens’ health, safety, and welfare that are not inconsistent with the Constitution and laws of the State; and

WHEREAS, it is the intent of the City of Mount Vernon City Council (“City Council”) to regulate door-to-door solicitation on private property in a manner to protect the health, safety, and welfare of its residents, while at the same time maintaining the First Amendment right to communicate through that medium; and

WHEREAS, the City Council finds and determines regulating door-to-door solicitation serves the City’s interests in preventing crime and protecting the privacy of its residents; and

WHEREAS, the City Council finds and determines that establishing a curfew on door-to-door solicitation is important to the City’s overall safety plan; and

WHEREAS, the City Council finds and determines that the regulations provided in this ordinance allow its Police to focus its operations on crime-related activity during the evening, night, and early morning hours when calls for service naturally increase; and

WHEREAS, the curfew established by this ordinance is intended enhance residents’ comfort level and safety and reduce unnecessary calls for service; and

WHEREAS, the City Council finds and determines that the purpose of this ordinance is to maximize the effectiveness of the City’s rules and regulations regarding health, safety, and welfare, while accommodating protected activities such as free speech; and

WHEREAS, the City Council endeavors to allow its residence to choose to be free from interruption at home and to have comfort that unknown persons will not come up to their door and disturb them while at home with their families; and

WHEREAS, the City Council finds that simply posting “no-solicitation” or similar signs alone is inadequate to protect its citizens from undue annoyance; and

WHEREAS, the City Council finds that the regulations provided by this ordinance are necessary to promote the City's legitimate and compelling interests and are provided without reference to the content of any message; and

WHEREAS, the City Council finds that the regulations provided by this ordinance are provided without reference to the content of any message; and

WHEREAS, the City Council finds that the City has a legitimate and compelling interest in protecting the privacy of its residents in a most important place, the homestead; and

WHEREAS, the City Council determines that preserving the sanctity of the home, including the right to be free from unwanted and unwelcome intrusion, is a compelling governmental interest; and

WHEREAS, the City Council finds that the City has a legitimate and compelling interest in preventing undue annoyance of its residents; and

WHEREAS, the City Council finds that the City has a legitimate and compelling interest in protecting its residents from crime; and

WHEREAS, the City Council finds door-to-door activities pose an inherent risk of crime, especially after dusk; and

WHEREAS, the City Council finds that curfew regulations limiting the hours and days when a person may conduct door-to-door solicitation on private property are necessary to prevent undue annoyance of its residents and to protect the sanctity of citizens' homes; and

WHEREAS, the City Council finds that curfew regulations limiting the hours and days when a person may conduct door-to-door solicitation on private property are necessary to prevent crime to property and persons and to protect the health and safety of persons engaged in such activity; and

WHEREAS, the City Council finds the regulations of this ordinance do not prevent door-to-door activity and that ample alternative channels of communication exist beyond the curfew requirements, including solicitation via telephone and other electronic communication, public solicitation outside of the privacy of citizens' doorsteps, and solicitation via direct mail, television, radio, and internet; and

WHEREAS, the City Council finds that an unanticipated visit by a stranger on citizens' doorsteps is capable of causing fear or suspicion or anxiety resulting in an unnecessary call for service; and

WHEREAS, the City Council finds the regulations provided in this ordinance are an integral component of the City's safety plan and that crime prevention efforts would be less effective without the provisions of this ordinance; and

WHEREAS, the City Council finds that regulations requiring persons who engage in door-to-door contact with its citizens to obtain a permit are necessary to prevent crime to property and persons; and

WHEREAS, the City Council is authorized by law to adopt the provisions contained herein, and has complied with all the prerequisites necessary for the passage of this Ordinance; and

WHEREAS, all statutory and constitutional requirements for the passage of this ordinance have been adhered to, including but not limited to the Open Meetings Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, TEXAS:

SECTION 1: That the findings stated hereinabove are found to be true and correct and are hereby adopted as findings of fact and as a part of the operative provisions hereof.

SECTION 2: That the City of Mount Vernon Code of Ordinances, Chapter 15, Article I is amended and replaced, and shall read as follows:

ARTICLE I – IN GENERAL

Sec. 15-1 Purpose.

The purpose of this article is to provide for the general health, public safety and welfare, comfort, convenience and protection of the city and the residents of the city by:

(1) creating a permit procedure so that solicitors and handbill distributors register with the city in order to assist crime detection efforts and deter deceptive practices and fraud;

(2) prohibiting door-to-door solicitation and canvassing activity at residences during the times when such activity is most intrusive and disruptive to citizens' privacy; and

(3) Regulating the manner in which any solicitation activity, canvassing activity or handbill distribution may occur to promote good order, prevent litter and protect citizens from aggressive and intimidating practices.

Sec. 15-2 Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Building Official. The term "Building Official" shall mean the Building Official of the City of Longview, or the Building Official's designee for the purposes of this ordinance.

Charitable purpose: shall mean philanthropic, religious, or other nonprofit objectives, including the benefit of poor, needy, sick, refugee, or handicapped persons; the benefit of any church or religious society, sect, group, or order; the benefit of a patriotic or veterans' association or organization; the benefit of any fraternal, social, or civic organization, or the benefit of any educational institution. "Charitable purpose" shall not be construed to include any direct benefit to the individual making the home solicitation, to include the benefit of any political group, or political organization, which is subject to financial disclosure under state or federal law.

Charitable solicitations. The term "charitable solicitations" shall mean conduct whereby a person, organization, society, corporation, or its agent, member, or representative directly or indirectly solicits property, financial aid, gifts in money, or any article representing monetary value; or sells or offers to sell a product, article, tag, service, or printed material on the plea or representation, whether express or implied, that the proceeds from the solicitation or sale are for a charitable, educational, religious, benevolent, patriotic, civic, or other philanthropic purpose.

Commercial home solicitation or soliciting means the solicitation at a residence through the attempt or act of asking, bartering, or communicating in any manner for the purpose of selling or offering to sell goods, services, or realty for a for-profit purpose, which includes promoting, advertising, receiving or obtaining money, gifts or items of value for said individual or group of individuals, or for-profit organization, club, company, corporation.

Interstate commerce: Soliciting, selling or taking orders for or offering to take orders for any goods, wares, merchandise, photographs, newspapers or magazines or subscriptions to newspapers or magazines which at the time the order is taken are in another state or will be produced in another state and shipped or introduced into this city in the fulfillment of such order.

Itinerant or transient vendor: One who sells commodities or services from a private premises but remains at one place for said purpose for temporary periods.

Peddler: One who sells tangible commodities from house to house, store to store or place to place in the city. Sales are not made from one established spot except where they are made at a house, store or other place, and delivery is made at time of the sale. The collection for sale of said commodities at time of sale is immaterial.

Solicitor: One who takes orders for future deliveries or for intangible services or solicits subscriptions from house to house, store to store or place to place and not from an established place or private premises (solicitation of funds or orders by telephone is not considered soliciting in this sense of the word).

Temporary: Any act of offering commodities or services for sale in the city upon premises for which definite arrangements have not been made in writing for at least a 30-day period for the purposes of transacting or conducting such business.

Do not solicit list: is defined as a list, developed and maintained by the police chief, or his designee, of residences where the property owner or occupant has indicated that they do not wish to be solicited.

Door-to-door soliciting. The term “door-to-door soliciting” shall mean going to one or more locations within the city in person or by agent for the purpose of vending, selling or taking orders for merchandise or services and which may include the use of a cart, wagon, truck, or easily movable display. This does not include charitable, religious, or political solicitations or temporary outdoor vending as defined in this chapter.

Handbill: means and includes any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original, or copies of any matter or literature.

Handbill distribution: is defined as traveling by any means, going door-to-door, house-to-house or building-to-building to distribute or leave on or at each premises handbill for any purpose.

Itinerant vendor: shall mean any person who sets up and operates a temporary business on privately owned property, whether improved or unimproved, in the City, soliciting, selling, or taking orders for, or offering to sell or take orders for any goods, food, or services.

Merchandise. The term “merchandise” shall mean property of every kind including services, which is used in its broadest sense, and shall include any work done for the benefit of another person.

Mobile display. The term “mobile display” shall mean a temporary vending location where no lease or contract has been signed for use of the property and the display of goods or services is conducted directly from an easily movable display that is removed at the end of business each day including but not limited to passenger vehicles or push carts.

~~—Mobile Food Unit (MFU). The term “Mobile Food Unit” (MFU) shall have the same meaning as ascribed to term in Chapter 46 of the Mount Vernon City code.~~

Person. The term “person” shall mean an individual, corporation, association, or other legal entity.

Political purpose. The term “political purpose” shall mean the use of money or property for the support of a political party, candidate, group, or association.

Political solicitation. The term “political solicitation” shall mean conduct whereby a person, organization, society, corporation, or its agent, member, or representative solicits property, financial aid, gifts in money, or any article representing monetary value; or sells or offers to sell a product, article, tag, service, or printed material, on the plea or representation, whether express or implied, that the proceeds from the solicitation or sale are for a political purpose.

Public property. The term “public property” shall mean any property open or devoted to public use or owned by the city, including, but not limited to, sidewalks, streets, rights-of-ways, parks, and municipal buildings. This definition does not include property owned by any county entity.

Public rights-of-way. The term “public rights-of-way” shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, easement, or similar property in which the city or the State of Texas now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a person's facilities. Nothing in this article or in any permit shall be deemed to be a representation of or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes. The holder of a permit shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

Religious purpose. The term “religious purpose” shall mean the use of money or property for the support of a church, religious society, or other religious sect, group, or order.

Religious solicitation. The term "religious solicitation" shall mean conduct whereby a person, organization, society, corporation, or its agent, member, or representative solicits property, financial aid, gifts in money, or any article representing monetary value; or sells or offers to sell a product, article, tag, service, or printed material; on the plea or representation, whether express or implied, that the proceeds from the solicitation or sale are for a religious purpose.

Sale. The term “sale” shall mean the actual transfer of goods or merchandise, or the agreement to transfer goods or merchandise.

Solicit. The term “solicit” shall mean to offer for sale, attempt to sell, vend, display for sale, or accept orders for any merchandise, goods, or services or to ask, beg, or plead, by the spoken, written, or printed word, or other such means of communication, for the purpose of receiving contributions, alms, charity, money, or anything of value from another person, regardless of the solicitor's purpose or intended use of the money or thing of value, and regardless of whether consideration is offered.

Stationary display. The term “stationary display” shall mean a temporary vending location designed for sale of goods or services from a temporary structure or display that is not easily movable or is not removed at the end of each day including but not limited to tents, trailers, sheds, or awnings.

Temporary. The term “temporary” shall mean any such business for which no contract, hire, rental or lease agreement has been for more than 30 consecutive calendar days for the lot, tract, or location on which such business is to be operated or conducted.

Temporary outdoor vending. The term “temporary outdoor vending” shall mean the sale, display, offering for sale soliciting of any merchandise, goods, or services from a temporary outdoor location not within any permanent building or structure designed for the sale of such goods. The term shall specifically include the sale of merchandise, goods, or services from a stationary display by means such as stands, stalls, or tents; from a mobile display by means of

a vehicle; and all other sales not within a permanent structure. The term shall not include the activity of door-to-door vending.

Vend. The term “vend” shall mean to sell, offer for sale, solicit, distribute, or display for sale any merchandise, goods or services.

Vendor. The term “vendor” shall mean any person who engages in a temporary business in the city of selling, exhibiting, or offering or soliciting for sale any merchandise or service, including door-to-door soliciting or temporary outside vending as defined in this chapter.

Sec. XX-XX Temporary outdoor vendors - Prohibited acts.

(a) No person, personally, by agent, or as the agent of another, may engage in, transact, or conduct the business or occupation of a temporary outdoor vendor, as herein defined, which shall specifically include, but is not limited to:

(1) vending, selling, distributing, or displaying for sale any food, household items, clothing, furniture, novelties, toys, boats, automobiles or any other manufactured items;

(2) vending, selling, distributing, donating, offering for sale, or displaying for sale any animal whether or not for profit or charge;

(3) vending, soliciting, selling, distributing, offering for sale or order, or in any manner displaying for sale any merchandise from public property or public rights-of-way within the city limits;

(4) utilizing a camper vehicle, tent, travel trailer, motor home, bus, or any manner or type of shelter used as a dwelling or for purposes of sleeping, cooking, or living quarters, for the purposes of offering, or displaying merchandise for sale at any location permitted as a sales site under this chapter; and

(5) allowing an outdoor stationary display to remain at a location, business, lot, or tract of land for more than 30 days.

Sec. XX-XX. Prohibited conduct.

No person, personally, by agent, or as the agent of another, may engage in, transact, or conduct the business or occupation of door-to-door soliciting, temporary outdoor vending, or charitable, political, or religious soliciting, or otherwise solicit, as herein defined, and:

(a) make physical contact with the person being solicited unless that person grants permission;

(b) misrepresent the affiliation of the vendor;

(c) continue to sell to an individual, or solicit from an individual, once that individual gives notice to the vendor that they do not wish to be sold merchandise by, or solicited by that vendor or solicitor. Notice includes but is not limited to verbal communication that the individual does not wish to be solicited, or a sign or signs prominently displayed on or near the entrance to the business or residence conspicuously stating, “NO SOLICITORS”, “NO SOLICITING”, or similar language of notice;

(d) vend, sell, or solicit at a private residence at any time other than between the hours of 9:00 a.m. to 8:00 p.m., or such other hours posted by the occupant unless a prior invitation from the occupant has been received;

(e) enter a private residence under false pretenses; or

f No person shall conduct commercial home solicitation or handbill distribution upon residential property without displaying a valid, unexpired written permit as required by this chapter.

g No person conducting home solicitation or handbill distribution shall approach any part of a residence other than the front door.

h It shall be unlawful for any person conducting handbill distribution to distribute, deposit, place, throw, scatter, or cast any handbill upon any residential property except:

(1) By handing or transmitting such handbill directly to the owner or occupant then present in or upon such private premises; or

(2) By placing or depositing such handbill in a manner to secure and prevent such handbill from being blown or drifting about such premises, except that mailboxes may not be used when prohibited by federal postal laws or regulations.

i It shall be unlawful for any person to engage in commercial home solicitation or handbill distribution at private property if requested by anyone thereon not to do so.

j It shall be unlawful for any person to engage in commercial home solicitation or handbill distribution at a private property if there is placed on such premises in a conspicuous place upon or near the main entrance to the residence or property, a weatherproof sign, not less than three (3) inches by four (4) inches in size bearing the words "no trespassing," "no peddlers," "no advertisements," "no solicitation," "no handbills," or any similar notice indicating in any manner that the occupants of such premises do not desire to have visitors engaging in commercial solicitation or handbill distribution on their premises.

k It shall be unlawful for any person to engage in commercial home solicitation or handbill distribution on a residential property that is listed on the "do-not-solicit list" as defined by this chapter.

Sec. 15-4 Do-Not-Solicit List.

(a) The Police Chief, or the Chief's designee, is authorized to develop and maintain a list of residences where commercial home solicitation is prohibited and such list shall be referred to as the "do-not-solicit list."

(b) Any property owner or occupant may elect to add or remove his or her residence to or from the do-not-solicit list through the procedures developed by the Police Chief. The property

owner or occupant making such a request will be required to affirm that he or she is an owner or occupant of the residence, and is making the request on their behalf and on behalf of any other occupant at that address.

(c) The Police Chief shall make the do-not-solicit list available on the City's website and to any person upon request.

(d) The Police Chief shall provide a copy of the do- not- solicit list to each person issued a permit under this article.

(e) Solicitation of any residence on the “do not solicit list” shall be grounds for the immediate revocation of the solicitor’s permit.

Sec. 15-5 Time Restrictions.

(a) No Person shall engage in commercial home solicitation or handbill distribution prior to 10:00 a.m. or after dusk Monday through Saturday, except by specific appointment with or invitation from the customer.

(b) No Person shall engage in commercial home solicitation or handbill distribution on Sunday.

(c) No Person shall engage in commercial home solicitation or handbill distribution on any federally designated holiday.

(d) Itinerant Vendors shall engage in operations between the hours of 10:00 a.m. until 8:00 p.m. in their designated areas Sunday through Saturday.

Sec. 15-6 Refusing to leave.

~~Any peddler or hawker of goods or merchandise who enter upon premises owned or leased by another and willfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his or her agent, to leave the same and not return to such premises shall be deemed guilty of a violation of this article.~~

Sec. XX - XX Vending or soliciting on public property or public rights-of-way prohibited.

(a) No person shall occupy public property or the public rights-of-way in the city for the purpose of vending, selling, distributing, soliciting, or offering for sale any merchandise or services, or for the purpose of charitable, political, or religious solicitation.

(b) No person shall conduct vending, soliciting, charitable, political, or religious solicitations, selling, distributing, offering for sale, ordering or in any manner displaying for sale any merchandise from a public street or public rights-of-way within the city limits.

(c) It is a defense to prosecution under the provisions of this section if the person:

- (1) is doing so in connection with the transaction of official government business;

(2) is doing so by authority of a contract with the city to operate a concession within designated areas of public property;

(3) is doing so in a city park as defined in Chapter 81 of the City of Mount Vernon Code of Ordinances pursuant to a permit issued by the Director of Parks and Recreation, or the Director's designee;

~~(4) is doing so at any of the Activity Center locations by authority or agreement with the city;~~

(5) is doing do as the permit holder of an outdoor event permit or parade permit as defined in Chapter 79 of the city code;

(6) is operating as a mobile food unit or mobile produce vendor according to the requirements of Chapter 46 of the city code while moving from location to location along the public rights-of-way;

(7) is operating a vehicle for hire as defined in Chapter 103 of the city code;

(8) is doing so on the public rights-of-way controlled by the state pursuant to appropriate authorization issued by the state; or

(9) is doing so on City property or on-street parking pursuant to a permit issued by the ~~Director of Community Services~~ City.

Sec. 15-7 Penalty.

Any person, firm, or corporation violating any of the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not to exceed \$500.00 for each offense, and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Sec. 15-8 Misrepresentation.

It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his or her goods, wares, merchandise or services for the purposes of inducing another to purchase the same.

Sec. 15-9 Sale of goods on streets, parking lots and parks.

It shall be unlawful for any person to sell or offer to sell any wares, goods, merchandise or services upon the public street or roadway, public parking lot without permission of land owner, city ark without permission of the City of Mount Vernon or city cemetery located within the city limits of Mount Vernon. However, the city shall issue permits authorizing operation of concession stands located in city parks and operation of any such concession stand shall not be in violation of this section. A concession stand owned and operated by the city shall be exempt from this article. The act of internment within a city cemetery shall be exempt from this article.

Sec. 15-10 Exceptions.

The provisions of this chapter shall not apply to:

1. Public utility companies operating under a franchise granted by the city.
2. Commercial agents or drummers dealing with local business establishments in the usual course of business;
3. An insurance salesperson, a real estate salesperson and others licensed by the State of Texas;
4. ~~Vendors of farm produce, poultry, stock or agricultural products in their natural state by the person growing same;~~
5. Sales made under authority and order of law;
6. Sale of goods or merchandise donated by the owners thereof, the proceeds of which are to be applied to any charitable or philanthropic purpose;
7. Organized nonprofit clubs, churches or school groups;
8. Peddler or vendor entering property by express, prior invitation of the person residing on such premises;
9. A peddler, solicitor, itinerant or transient vendor who shall rent, lease or otherwise acquire space wholly inside a permanent facility for a period of seventy-two (72) hours or less shall be exempt from this article;
10. A person, firm or corporation exhibiting goods for sale concurrent with and as an adjunct to their business, group display, meeting or convention.

Secs. 15-11 – 15-30 Reserved.

ARTICLE II – PERMIT

Sec. 15-31 Permit required.

(a) No person, personally, by agent, or as the agent of another, may engage in, transact, or conduct the business or occupation of door-to-door soliciting or temporary outdoor vending, as herein defined, either as principal or as agent or employee of any other person, unless a valid permit has been issued as provided in this chapter.

(b) No person may engage in, transact, conduct the business or occupation, or allow door-to-door vending or temporary outdoor vending, in violation of the terms and conditions of a valid permit issued in accordance with this chapter. ~~It shall be unlawful for any or persons to engage in business as a peddler, solicitor, itinerant or transient vendor or a person or persons engaged in interstate commerce within this city without first obtaining a permit to do so.~~

Sec. XX-XX. Application for permit.

(a) Any person desiring to engage in, transact or conduct the business or occupation of temporary outdoor vending within the city shall file a written application for a permit with the City Planner, or the City Planner's designee. The application must provide the following:

(1) the name, address, and telephone number of the applicant including the name under which the business is operating;

(2) the name, address, and telephone number of the owner or owners of the business;

(3) the period of time the applicant is requesting to vend in the City of Longview Mount Vernon;

(4) the location where the vendor will conduct business, and provide written permission from the property owner permitting the vendor to conduct business at the location including any contract, hire, rental, or lease agreement for use of the property;

(5) a site plan including the location of the all displays or structures, parking, and driveway accesses;

(6) a valid form of identity such as a Texas drivers license or Texas identification card issued by the Texas Department of Public Safety from the owner or the applicant; and

(7) a copy of a valid sales tax certificate issued by the State of Texas.

(b) Any person desiring to engage in, transact or conduct the business or occupation of door-to-door vending within the city shall file a written application for a permit with the Chief of Police, or the Chief of Police's designee. The application must provide the following:

(1) the name, address, telephone number and date of birth of the applicant;

(2) if the applicant is the agent or employee of another, the name, address and telephone number of applicant's principal or employer;

(3) the period of time the applicant is to vend or solicit in the City of Longview Mount Vernon;

(4) if the applicant is vending food as a door-to-door solicitor, attach a copy of the current mobile food service permit or mobile produce vendors permit issued by the City of Mount Vernon environmental health division;

(5) a valid form of identity such as a Texas drivers license or Texas identification card issued by the Texas Department of Public Safety; and

(6) a recent photographic likeness of the applicant for attachment to the permit.

(c) The required permit fee, as established by separate resolution, must be submitted with the application.

Sec. XX-XX. Issuance of permit.

- (a) Permits issued under the provisions of this chapter shall be valid for the type, location, and dates stated on the permit application.
- (b) Door-to-door solicitor permits shall be issued for a time not to exceed 12 months per permit. Employees, agents, or representatives of a partnership or corporation must obtain a door-to-door solicitor permit for each individual that vends or solicits.
- (c) Temporary outdoor vendor permits shall only be granted for the sale of seasonal items such as Christmas trees, pumpkins, roses, or produce and only for the period of time related to the season.

(1) Permits for stationary displays may only be issued for the season appropriate for the items for which the permit is granted. In no case shall more than one permit be granted to any applicant within any 12-month period, either as the individual applicant or as a business entity. Additionally, no more than three permits may be granted for any location, lot, or tract of land within any 12-month period.

(2) Permits for mobile displays shall not exceed 90 days per permit. Permits may only be issued for the season appropriate for the items for which the permit is granted. In no case shall more than two permits be granted to any applicant within any 12-month period, either as the individual applicant or as a business entity. No more than two permits may be granted for any location, lot, or tract of land within any 12-month period.

Sec. XX-X. Denial of permit, grounds.

- (a) A permit shall be granted to an applicant meeting all requirements of this chapter. The following are considered grounds for denial of permit:
 - (1) an applicant or employee is prohibited from working by federal or state law because of applicant's age;
 - (2) false or misleading information is contained in the application or required information is omitted;
 - (3) the permit fee has not been paid;
 - (4) the location indicated on the application does not have an improved off-street parking surface of adequate size to accommodate the proposed vending activity and a driveway for entrance on to the property. For the purpose of this chapter, the minimum parking standards are established by the "zoning" ordinance of the city as it currently exists and as it may hereafter be amended;
 - (5) the applicant has failed to comply with any applicable requirements of state or federal laws or regulations, or has failed to comply with any applicable requirements of the Code of the city, including but not limited to the provisions of the ordinances regulating building

standards, zoning, food and food establishments, and parks and playgrounds of this Code as said ordinances, laws or rules currently exist and as they may hereafter be amended;

(6) the applicant fails to obtain all applicable permits including but not limited to building permit, electrical permit, or mobile food permit;

(7) the activity would violate an applicable federal, state or municipal law;

(8) the location of the temporary outdoor vending activity does not comply with applicable zoning ordinances and/or restrictions of the city related to outside storage and display of merchandise;

Sec. XX-X. Revocation of permit.

At any time the Chief of Police, City ~~Manager~~ Administrator, or the City ~~Manager's~~ Administrator's designee, after written notice to the vendor may revoke the permit on a finding that the information as stated in the application is false or incorrect, or the conditions imposed by the permit will not be met.

Sec. XX-X Display of permit.

When engaged in door-to-door soliciting the permit required by this chapter shall be carried by each individual solicitor whether conducting business as an individual or an employee, representative, or agent of another, and shall, upon request, be displayed to any police officer or city employee for examination. Otherwise, such permit shall be prominently displayed upon the premises or place where the business is authorized and conducted.

Sec. XX-X. Exceptions.

The provisions of this chapter shall not apply to the following:

(a) Any person who is conducting business at a location for which a certificate of occupancy has been granted and the activity conducted at the location is not in violation of any ordinance regulating zoning, or any other provision of law, for the activity for which the certificate of occupancy has been granted at that location.

(b) Any vending that is conducted as a part of a scheduled event held exclusively on property owned by the city and controlled by the ~~city parks and recreation department, or the Longview Activity Center,~~ when approval has been obtained from the city prior to the event.

(c) Any vending that is conducted as a part of an event held exclusively on property owned by a county, such as Franklin ~~Gregg County or Harrison County,~~ when the vending is conducted with the permission of the county.

~~(d) Any vending that is conducted as a part of an outdoor event or parade as defined in Chapter 79 of the city Code as they currently exist or as they may be amended, when written permission is obtained from the permit holder.~~

- (e) Any occasional sale or garage sale in a residential zoned district that is conducted in compliance with the requirements of the zoning ordinance and any other applicable requirements of law for such activity.
- (f) Any vending of fresh fruits or vegetables from the farm or land from which produce is grown.
- (g) Any vehicle offered for sale by the owner at the private residence of the owner or when driven or parked by the owner as a part of the owner's normal daily activities.
- (h) Any religious, political, or charitable solicitation as defined in this chapter where all of the proceeds are used for religious, political, or charitable purposes, unless otherwise specifically prohibited in ordinance or by state statute.

Sec. XX-X. Penalty.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed \$500.00 for each offense *as well as life in prison*. Each day that a violation is permitted to exist shall constitute a separate offense. The City Council hereby dispenses with the requirement of establishing a culpable mental state in order to prove a violation of this section.

Sec. 15-32 Persons engaged in interstate commerce to register.

- a. The provisions of this article shall not apply to persons engaged in interstate commerce as the term is herein defined; provided, however, that it shall be unlawful for persons engaged in interstate commerce to go from house to house or place to place in the city without having first registered an application with city hall.
- b. The registrant at the time of registration, as herein provided for, shall submit for inspection of the city written proof of his or her identity, which may be in the form of an automobile operator's license or identification letter or card issued to registrant by the person, firm or corporation for whom or through whom orders are to be solicited or cleared.

~~Sec. 15-33 Permit Application, Commercial Home Distribution and Handbill Distribution or Itinerant Vendors.~~

- ~~(a) A person who conducts commercial home solicitation or handbill distribution within the City shall first complete a permit application as required by this Article.~~

~~(b) — A separate permit shall be required for every person involved in commercial home solicitation or handbill distribution.~~

~~(c) — A separate permit shall be required for each company or entity involved in commercial home solicitation or handbill distribution.~~

~~(d) — No one permit will be valid for multiple people, companies, or entities. Every driver or person desiring a permit to conduct sales activity in the city as a mobile ice cream truck, mobile frozen dairy food vendor, mobile food vendor or “food truck” or other itinerant street vendor shall make a written application therefore to the Chief of police or designee.~~

~~(e) — A permit under this Article will be valid for the duration of the current calendar year.~~

~~(f) — The application shall contain or be submitted with the following information:~~

~~(1) — The full name, date of birth, phone number and permanent and (if different) current address of the applicant;~~

~~(2) — A valid state driver's license number or a state approved identification card number (the Police Department will make a photocopy and attach to the application) of the applicant;~~

~~(3) — The desired calendar year in which the applicant will be engaging in commercial home solicitation or handbill distribution activities;~~

~~(4) — The name, address and telephone number of the person, company or entity that is employing the applicant to distribute handbills, if applicable;~~

~~(5) — If a vehicle or vehicles are used to conduct the solicitation or handbill distribution activity, a description of each vehicle, its license plate number and vehicle identification number; the name and license number of the driver who will operate each vehicle, and adequate proof under state law that each driver maintains financial responsibility for the vehicle they will operate shall be attached to the application;~~

~~(6) — The nature of the solicitation or handbill distribution activity (i.e. the merchandise to be sold or offered for sale; or the nature of the services to be furnished; or the type of pamphlets or handbills to be distributed);~~

~~(7) — The names of all cities in which the applicant has conducted solicitation or handbill distribution in the past six months;~~

~~(8) — Whether the applicant will receive a payment for goods or services at the time of solicitation or will demand, accept or receive payment or the deposit of money in advance of final delivery, and if so, the amount sought or the basis for calculation of such payment;~~

~~(9) — If the applicant, or the applicant's employer or principal has pled guilty, or nolo contendere to, or has been convicted of a felony or misdemeanor involving fraud, deceit, theft, embezzlement, burglary, larceny, fraudulent conversion, misrepresentation, or misappropriation of property within ten years preceding the date of application, a description of each such conviction or plea, the name of the court and jurisdiction in which the complaint or indictment was filed and the date of the offense;~~

~~(10) — If the applicant, or the applicant's employer or principal is a person against whom a civil judgment or administrative decision based upon fraud, deceit, theft, embezzlement, burglary, larceny, fraudulent conversion, misrepresentation, or misappropriation of property has been entered or ordered within ten years preceding the date of application, a description of judgment or action, the case or cause number, if any, and the court or administrative agency that rendered the judgment or decision.~~

~~(11) Attached to the application shall be a certified original copy of the sales tax issued by the comptroller of the state;~~

~~(12) Statement of the kind, type, and character of solicitation and/or goods that applicant will offer for sale, and state whether the purchaser of such wares or goods shall be required to make any deposit or advance payment of purchase price before delivery, and a complete and full statement of the delivery date;~~

~~(13) The period of time the applicant requests to sell or solicit in the city;~~

~~(14) Location or area of the city where sales activity will be conducted;~~

~~(15) Name and phone number of three (3) character witnesses for applicant who can be contacted within forty eight (48) hours;~~

~~(16) If sales are to be conducted from one (1) or more stationary locations, the applicant shall submit written consent from the property owner, or its authorized agent consenting to applicant's use of such private property for sales activity indicated in the permit application;~~

~~(17) Names of each employee, agent, or representative for whom the applicant will sell, offer, exhibit, or solicit orders for the sale of goods, wares, or merchandise for, or on behalf of, the applicant;~~

~~(g) — It shall be the responsibility of an applicant to update the information provided on application for a handbill distribution permit as such information may change.~~

~~(h) — Each driver will be given a mobile ice cream truck, mobile frozen dairy food vendor, or other itinerant street vendor permit number, which will be on such permit. This card shall be posted in a prominent place and shall be shown to any customer, police officer, or code enforcement officer upon request.~~

(i) A copy of the permit shall be posted and be visible at all times.

(j) A permit granted under this article shall be valid for one year – from between January 1 and December 31, regardless of the date of application. Each application for renewal must verify permit information as correct, and provide copies of sales tax returns for the prior permit period.

~~(k) Any itinerant vendor handling or selling non-prepackaged food must also possess a current State Health Department Food Handler Card and Food Manager Certificate. Proof of an annual health department inspection shall be provided at the time of permit application. The inspection shall be performed by a registered sanitarian licensed in the State of Texas and employed with the city health department in the State of Texas.~~

~~(l) A permit will not be issued if an applicant answers subsections (f)(9) and (f)(10) in the affirmative.~~

Sec. 15-34 Liability Insurance

(a) Before a permit is issued, the applicant will be required to furnish a policy of liability insurance, in the amount of \$250,000 per incident. This policy must include a provision that the City will be notified within thirty (30) days if this policy of insurance is to be cancelled for any reason.

~~(b) Cancellation of an insurance policy for a mobile ice cream truck, mobile frozen dairy food vendor, or other itinerant street vendor shall be an automatic revocation of the permit issued to that mobile ice cream truck, mobile frozen dairy food vendor, or other itinerant street vendor.~~

~~(c) Cancellation of an insurance policy for any company that operates any mobile ice cream truck, mobile frozen dairy food vendor, or other itinerant street vendor shall be an automatic revocation of all City permits issued to all mobile ice cream trucks, mobile frozen dairy food vendors, or other itinerant street vendors operated by that company.~~

Sec. 15-35 Investigation

The police shall cause an investigation of the business and moral character of any applicant who applies for a peddlers permit. Such investigation shall be made as the police deems necessary for the protection of the public good.

Sec. 15-36 Issuance or denial of permit for Commercial Home and Handbill Distribution

(a) After review of the permit application and within ten (10) business days of the receipt of the application, the chief of police, or designee, shall either issue a permit, as provided in this ordinance, or notify the person applying that the application does not comply with the requirements of this ordinance, specifying why the application is incomplete, or otherwise does not comply.

(b) Any permit under this article may be denied or revoked if the permit applicant or holder is convicted of a violation of any provisions of this chapter or has knowingly made a false material statement in the application.

(c) The permittee shall have ten (10) calendar days after receipt of notice of revocation or denial in which to file notice of appeal to the Chief of Police from the order denying or revoking the permit. If notice is received within the ten (10) day period, the Police Chief shall make an inquiry and determine whether the applicant's permit was wrongfully revoked or denied and will schedule a hearing with the applicant within 10 business days after the Chief of Police receives the applicant's appeal. The applicant will be notified of the time, date, and place of such hearing. After the hearing, the decision will be made in writing affirming or reversing the revocation or denial.

Issuance or denial of permit for Itinerant Vendors:

(d) An appeal from a revocation issued under the provisions of this article stays the revocation until the appeal proceedings are complete.

(e) No itinerant street vendor permit of any kind shall be granted unless:

(1) The applicant is at least eighteen (18) years of age, has a valid state issued driver license;

(2) The applicant has no active suspension on his or her driving privileges in any state.

(f) No permit shall be issued if the applicant has been convicted of, or pleaded nolo contendere to, any felony.

(g) A permit issued under this division may be revoked if the vehicle fails to display a current motor vehicle registration sticker from the Texas Department of Motor Vehicles.

(h) A permit issued under this division to a vendor for the sale of non-prepackaged foods may be revoked if vendor fails to have a valid, unexpired Food Handler Card.

Sec. 15-37 Appeal

Any person aggrieved by the action of the city in denial of an application for a permit as provided in this article or in the decision to revoke a permit shall have the right to appeal to the city council. Such appeal shall be taken by filing with the city secretary a written statement by the applicant setting forth fully the grounds for the appeal. Within ten (10) days after notice of the denial has been mailed to such person's last know address. The council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be mailed, postage prepaid, to the licensee at his or her last known address at least five (5) days prior to the date set for the hearing.

Sec. 15-38 Fees

Before any permit shall be issued under the provisions of this article, the applicant thereof shall pay a fee of **twenty five dollars (\$25.00)** per month he or she engage in business in the city. Such fee shall cover the partial cost of the investigation of the applicant and shall be for the enforcement of these sections. Persons representing firm or corporations shall be required to obtain separate permits and pay a separate investigation fee for each and every person to investigate.

Sec. 15-39 Transfer

The peddlers permit prescribed by this article shall be nontransferable.

Sec. 15-40 Duration

Every permit issued under the provisions of this article shall be valid for the period of one month, the time stated therein.

Sec. 15-41 Display

It shall be unlawful for any person to engage in any activity for which a permit is required by this chapter unless he or she is carrying such permit on his or her person or displays such license in a conspicuous place on the premises where the sale or exhibit is being conducted.

Sec. 15-42 – 15-64 - Reserved

DIVISION III – NON-COMMERCIAL SOLICITATIONS

Sec. 15-65 – Permit Applicability

The following shall be exempt from the permitting requirements of Article II:

- (1) Religious organizations exclusively for the distribution of literature and other items for the purpose of proselytizing;
- (2) Persons engaged in anonymous political speech;
- (3) Persons going door-to-door for a charitable purpose;
- (4) Sales made under the authority of a contractual relationship with the owners or occupants of a private residences;
- (5) Any operation, which is exempted by state or federal statute from this ordinance, is exempt only to the extent of such applicable exemptions

Sec. 15-66 Responsibilities for acts of solicitors

The recipient of a permit for a charitable solicitations campaign shall be responsible for the acts of his or her authorized representatives and solicitors in connection with such campaign.

Sec. 15-67 – 15-95 Reserved

ARTICLE IV – PAWNBROKERS

Sec. 15-96 Definition

For the purpose of this article, the word “pawnbroker” shall mean one who pursues the business of lending money upon interest and receiving upon deposit any personal property as security for the payment of such loan and interest.

Sec. 15-97 Compliance with state law

If any pawnbroker, or person doing business as such, shall receive any article in pledge or sell any article pledged to him or her, without complying with the statutes regulating pawnbrokers, he or she shall be fined according to provisions made under the “penalty” session of this article.

Sec. 15-98 Dealing with minors

It shall be unlawful for any owner, manager or employee of any pawnbroker business regulated hereby to buy or receive from any minor any goods, chattels or other property, unless such minor shall have in his or her possession the written consent of his or her parent or guardian, provided that this provision shall not apply to any minor who is married or who has had the disability of nonage removed.

Sec. 15-99 Responsibilities of owners for employees or agents

Any owners, manager or operator of any pawnbroker business whose employees or agents fail to observe any or the provisions of this article shall be equally guilty with the offender and subject to the same penalties.

State Law reference – Authority of city to license, regulate pawnbrokers, see V.T.C.A, Local Gov’t Code, §215.031. Occupation taxes, see V.T.C.A, tax Code, §191.001 et seq. Pawnbrokers generally, see Vernon’s Ann. Civ. St. Art. 6146 et seq.

Section 3: That this Ordinance shall be cumulative of all other City Ordinances and all other provisions of other Ordinances adopted by the City which are inconsistent with the terms or provisions of this Ordinance are hereby repealed.

Section 4: That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Mount Vernon, and upon conviction shall be punishable by a fine not to exceed the sum of Five Hundred (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 5: It is hereby declared to the intention of the City Council of the City of Mount Vernon, Texas, that sections, paragraphs, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared legally invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such legal invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the City of Mount Vernon without the incorporation in this Ordinance of any such legally invalid or unconstitutional, phrase, sentence, paragraph or section.

Section 6: This ordinance shall take effect immediately from and after its passage as the law in such case provides.

PASSED AND APPROVED ON THIS ____ DAY OF _____ 20_____.

Brad Hyman, Mayor

ATTEST:

Kathy Lovier, City Secretary