

ORDINANCE 2013-03

AN ORDINANCE REPEALING ORDINANCE NO. 87-39 IN ITS ENTIRETY AND ESTABLISHING AN ORDINANCE FOR THE REVIEWING, PERMITTING, LICENSING AND REGULATING OF SOLICITORS, CANVASSERS, PEDDLERS, ITINERANT MERCHANTS, TRANSIENT VENDORS, HANDBILL DISTRIBUTORS, MOBILE VENDORS, COMMERCIAL HOME SOLICITATION AND DISTRIBUTION; PROVIDING DEFINITIONS; PROVIDING FOR THE APPLICATION AND PERMITTING PROCESS, INVESTIGATION OF APPLICANTS, ISSUANCE, DENIAL AND REVOCATION OF PERMIT; PROVIDING FOR EXEMPTIONS TO REQUIREMENTS AND APPEAL; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY CLAUSE THAT ANY VIOLATION OF THE TERMS OF THIS ORDINANCE IS DECLARED TO BE A MISDEMEANOR, AND ANY PERSON FOUND TO BE GUILTY THEREOF SHALL BE PUNISHABLE BY A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500), AND EACH DAY THAT SUCH VIOLATION CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE AND SHALL BE PUNISHABLE ACCORDINGLY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Midlothian, Texas is a home rule city within the State of Texas, with full power of local self government; and,

WHEREAS, the City Council of the City of Midlothian, Texas, finds and determines that it is in the best interest of the health, welfare and safety of the citizens of the City to provide an ordinance adopting and updating solicitor regulations and repeal Ordinance 87-39 in its entirety. The Police Department and City staff has received numerous complaints regarding increased numbers of solicitors in neighborhoods by overzealous peddlers, solicitors, mobile food vendors, and canvassers; and

WHEREAS, the City of Midlothian Solicitor, Peddler and Itinerant Vendors Ordinance has not be modified or updated since 1987; and

WHEREAS, it is now deemed necessary to repeal the existing ordinance and adopt new ordinance language to license and regulate vendors and solicitors to ensure and limit door-to-door solicitation and mobile food vending at residences during the times when such activity is most intrusive and disruptive to citizens' privacy; require solicitors to go through a background and application process from the city to aid in crime detection and deter deceptive practices; afford a reasonable expectation of privacy and protection from unwanted vendors and solicitation and ensure the safety and well-being of the citizens of Midlothian, Texas:

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

SECTION 1. Definitions. The following words and phrases, when used in this ordinance, shall have the meanings ascribed to them by this section:

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, service organization, fund-raiser or the benefit of any educational institution. "Charitable purpose" shall not be construed to include any direct benefit to the individual making the commercial home solicitation, to include the benefit of any political group or political organization which is subject to financial disclosure under state or federal law.

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.

Commercial home distribution or distribute means the door-to-door distribution of advertisements or handbills (other than through the United States mail).

Dusk means 30 minutes before sunset.

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 distributor means and includes any person engaging or engaged in the business for hire or gain of distributing handbills, other than newspapers distributed to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

Handbill sponsor means and includes any person, firm or corporation who utilizes handbills as a medium of advertising or spreading a message.

Itinerant operations shall mean and refer to the conduct of business operations at one or more locations or properties throughout the day, provided that the mobile food vendor does not remain or linger at any particular property or location for longer than 30 minutes.

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 or services.

Mobile food vendors shall mean any person who operates a vehicle on the streets of the city for the purposes of soliciting sales of hot or cold food, either made or produced at the time of the sale, or prepackaged and wrapped in a covering

Mobile frozen dairy food vendors shall mean any person who operates a vehicle on the streets of the city for the purposes of soliciting sales of frozen dairy food, either made or produced at the time of the sale, or prepackaged and wrapped in a covering.

Mobile ice cream truck is a mobile food unit that operates from a motor vehicle and sells only prepackaged, single-portion, ice cream or frozen confections.

Peddler shall mean any person traveling by foot, wagon, vehicle or any other type of conveyance from street to street carrying, conveying, or transporting goods, wares or merchandise and offering or exposing them for sale, or making sales and delivering articles to purchasers; or who, without traveling from place to place, exhibits, displays, sells, or offers for sale such products from a wagon, handcart, pushcart, motor vehicle, conveyance or from his person while on the public ways of the City of Midlothian. A peddler also includes any street vendor, itinerant vendor or transient vendor.

Public right-of-way for the purposes of this ordinance shall mean a legally established area or strip of land, either public or private, on which an irrevocable right of passage has been recorded, and which is occupied or intended to be occupied by a street, utility service, water main, sanitary or storm sewer main, or other similar use. Right-of-way also includes the travel portion of the roadway and all traffic medians.

Push cart food vendors shall mean any person who operates a push carts on the streets or sidewalks of the city for the purposes of soliciting sales of frozen dairy food, either made or produced at the time of the sale, or prepackaged and wrapped in a covering.

Residential street means a thoroughfare or public driveway, other than an alley, not on the City's Master Thoroughfare Plan, which has been dedicated or deeded to the public for general use and affords a principal means of vehicular or other access to property abutting thereon.

Seasonal business means one that continues for less than 180 days permitted on city property (i.e. Farmers Market, city park concession stands, etc) and, exists whether solicitation is from a stand, vehicle, or freestanding. Any business that exists more than 180 days shall be deemed to be a permanent occupancy and is required to obtain a certificate of occupancy from the building inspection department.

Temporary business means one that continues for 45 days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding. Any business that exists more than 45 days shall be deemed to be a permanent occupancy and is required to obtain a certificate of occupancy from the building inspection department.

Transient vendor shall mean vendors who sell items for a limited time and have no permanent place of business at that location. Examples of places where transient vendor sales may take place are at fairs, bazaars, flea markets, art or craft shows, or concerts.

SECTION 2. Duty to Enforce. It shall be the duty of any police officer or other designee of the Chief of Police, to require any person observed soliciting, vending, distributing handbills, mobile vending to enforce the provisions of this ordinance to include the requirement of licensing and permitting and all other requirements of the ordinance.

SECTION 3. Investigation of the applicant. Non-refundable Criminal History Background Check fee. In addition to all permit fees, each applicant for any type of permit in this ordinance shall pay a non-refundable fee of \$20.00 to cover the cost of conducting a criminal background check on the applicant(s). It shall be the duty of the Chief of Police or his designee to investigate each applicant for a permit under this ordinance before issuance of such a permit based on a review of the applicant's background.

SECTION 4. Records. The Chief of Police or designee shall maintain records of all permits and licenses applied for, issued, revoked or denied in addition to any complaints against vendors in accordance with applicable laws.

SECTION 5. Permit Application/Issuance; Permit Fees and Renewals. If the applicant passes the required background check a solicitor's permit may be applied for. Each applicant is required to pay a \$50.00 non-refundable application fee. If a permit is issued, the approved applicant is required to pay a permit fee of \$75.00 PER PERSON. Permit(s) granted under this article shall be valid only until the termination of the solicitation period specified in the permit or for 60 days, whichever is less, but may be renewed once for an additional 60 days, if made within the initial 60-day period of the original permit. Each application for renewal must verify permit information as correct. A permit renewal application shall be \$50.00 if submitted within 60 days of the original application. If permit is NOT renewed within first 60 days of original application date, a new permit must be taken out to include the non-refundable application fee.

SECTION 6. Permit Issuance Denial and / or Revocation. The Chief of Police or his designee may issue the applicant a commercial home solicitation, commercial home distribution, mobile or itinerant vendor permit if the chief or designee determines that the application has been fully and accurately completed, the applicant passes the background check, the permit application fees have been paid, and that the applicant has satisfied each requirement of this ordinance. If not, the chief or designee may deny the permit. A commercial home solicitation, commercial home distribution, mobile or itinerant vendor permit may be revoked if the Chief of Police or designee so determines that reasonable cause exists to believe that: A statement of fact contained in the application was false or materially misleading; The permit holder has failed to comply with any of the provisions of this ordinance; Any of the conditions of this ordinance is, or has become applicable to the permit holder; or The permit holder has engaged in a commercial home solicitation or commercial home distribution that involves the use of false, misleading, fraudulent,

or deceptive acts. The chief of police or his designee shall provide notice of the revocation by certified mail, personal service, or courier-receipted commercial delivery sent to the address provided on the permit holder's application. A permit will not be issued if there is an affirmative statement as to whether the applicant has ever been: Convicted of or pleaded nolo contendere to a misdemeanor involving fraud, theft, embezzlement, burglary, fraudulent conversion, or misappropriation of property within the preceding ten years, or convicted of or pleaded nolo contendere to any felony; Found liable in a civil or administrative action in which the complaint or petition alleged fraud, theft, embezzlement, fraudulent conversion, misappropriation of property, or the use of untrue or misleading representations in an attempt to sell or dispose of property or to obtain money or a thing of value from another; Found liable under any law regarding the use of unfair, unlawful, or deceptive business practices; or subject to an injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency, including an action affecting a vocational license; Or for cause as determined by Chief of Police or designee. No fees will be refunded as result of denial or revocation of permit.

SECTION 7. Appeal. Any person aggrieved by the action of the Chief of Police or designee in the denial or revocation of a permit as provided by the ordinance shall have the right of appeal to the designated Hearing Officer. Such appeal shall be requested in writing by the aggrieved party within 14 calendar days of denial or revocation. The Hearing Officer shall set the time and place for the hearing of the appeal and notice of the hearing shall be given to the aggrieved no less than 10 calendar days before the hearing. The decision of the Hearing Officer is final.

SECTION 8. Application Process. Application for permits for commercial home solicitation, handbill distribution, canvassers, commercial home distribution, group distribution and itinerant and mobile vending.

(1) A person or organization seeking a permit for the purpose of conducting home solicitation, handbill distribution, group distribution, itinerant and mobile vending shall file an application with the City of Midlothian Police Department. The application shall contain the following information:

- a. The full and legally recognized names and any associated aliases, logos, nicknames, and abbreviated names of the entity or person applying for a permit to solicit;
- b. Whether the person applying is an individual, partnership, corporation or association, and:
 1. The business or residence address and telephone number of the applicant;
 2. If a partnership, the names of all partners and the principal business address and telephone number of each partner;
 3. If a corporation, the person applying shall state whether it is organized under the laws of this state, another state or is a foreign corporation, and must show the mailing address, business location, telephone number, name of the individual in charge of such corporation, and, if a foreign corporation, the place of incorporation;
 4. If an association, the application shall show the association's principal business address and telephone number, if any, and shall show names and principal business or residence addresses and telephone numbers of all members of the association unless they exceed ten in number, in which case the application shall so state and the person registering may alternatively list the name and principal business or residence addresses and telephone numbers of the officers and directors or trustees of the association;
 5. If the association is a part of a multistate organization or association, the mailing address and business location of its central office shall be given, in addition to the mailing address and business location of its local office.
- c. The names, mailing address and telephone number of all individuals who will be in direct charge or control of the solicitation;
- d. The time period within which the solicitation is to be made, giving the date of the beginning of solicitation and its projected conclusion and the specific location(s);
- e. A description of the methods and means by which the solicitation is to be accomplished;
- f. The type of merchandise to be sold or offered for sale or the nature of the services to be furnished;
- g. Whether such applicant, upon any such order so obtained, will demand, accept or receive payment or deposit of money in advance of final delivery;
- h. The names of any cities where the applicant has worked in the previous 365 days;
- i. Two full-face photographs of each applicant, two inches square;
- j. A copy of a valid state tax sales certificate, if applicable;
- k. An authorization to conduct a criminal background check on the applicant;
- l. Any other information which the city deems necessary for the administration of this ordinance.

- (2) The application must be signed by the applicant and accompanied by a non-refundable application fee of \$50.00 PER PERSON and a permit fee of \$75.00 PER PERSON if approved. Such application shall also show satisfactory written proof of the individual's authority to represent the company.
- (3) Information provided by applicant will be subject to verification by the police department.
- (4) Failure to provide a complete and thorough application or falsification of any part of the application shall be grounds for the denial or revocation of a permit.
- (5) After review of the permit application and within ten business days of the receipt of the application, the chief of police or his 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.
- (6) If the applicant is 15 years of age or less, a copy of the parental consent form required by Section 51.0145 of the Texas Labor Code and the name, address and telephone number of all persons who will be responsible for supervising the activities of the applicant must be provided.
- (7) A permit granted under this article shall be valid only until the termination of the solicitation period specified in the permit or for 60 days, whichever is less, but may be renewed once for an additional 60 days, if made within the initial 60-day period of the original permit. Each application for renewal must verify permit information as correct.
 - a. A permit renewal application shall be \$50.00 if submitted within 60 days of the original application. If permit is NOT renewed within first 60 days of original application date, a new permit must be taken out to include the non-refundable application fee.

SECTION 9. Group registration (applies to commercial home distribution permits only). A person may apply for a group registration applicable to five or more persons who desire to engage in commercial home distributions. The registration application shall contain all of the information required above for each person who will be engaging in commercial home distributions under the group registration. The application must be signed by a person responsible for the group application and shall be accompanied by a non-refundable application fee of \$50.00 and an additional permit fee of \$75.00 for each person to be included under the group application.

Provided that, if the applicant registers ten or more persons under a group application, the additional permit fee shall be reduced down to \$50.00 per person. The applicant for group registration shall provide each person distributing under the applicant's registration an identification badge to be worn and displayed while the person is engaging in a commercial home distribution. The non-refundable application fee of \$50.00 per person of the group is still required for each person.

SECTION 10. Commercial home solicitation and commercial home distribution; restrictions, requirements; Display of permit/ identification; soliciting in right of way

(a) Commercial home solicitation and commercial home distribution on private property.

(1) It shall be unlawful for any person to conduct commercial home solicitation or commercial home distribution upon residential property within the city without first obtaining a written permit as prescribed by this ordinance.

(2) It shall be unlawful to approach any part of a residence other than the front door.

(3) It shall be unlawful to solicit, peddle, or distribute on residential property prior to 9:00 a.m. or after dusk of any day Monday through Saturday, or any time on Sunday or any other federally designated holiday; or

a. On any day where the Department of Homeland Security has issued a formal alert regarding a specific or credible terrorist threat resulting in an imminent or elevated threat level, the chief of police may suspend any commercial home solicitation or commercial home distribution activities until such time that the threat level is rescinded;

(4) It shall be unlawful for any person, handbill distributors, or commercial home solicitors to distribute or cause to be distributed, deposited, placed, thrown, scattered, or cast any handbill upon any residential property except, if person distributing handbills has valid solicitor permit issued through the City of Midlothian, permit holder may:

a. By handling or transmitting such handbill directly to the owner or occupant then present in or upon such private premises; or

b. By placing or depositing the same 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.
(5) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, scattered or cast any handbill upon any residential property or to go upon any residential premises for the purpose of commercial home solicitation or commercial home distribution and ring the doorbell, knock upon the door or create any sound for the purpose of attracting the attention of the occupants of the residence if:

a. Requested by anyone thereon not to do so; or

b. If there is placed on such premises in a conspicuous place upon or near the main entrance to the residence, a weatherproof sign, not less than three inches by four 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 any such handbills left upon their premises. The letters on such signs shall be not less than two-thirds of an inch in height.

(6) It shall be unlawful for any person to employ, use or otherwise put into service a child who is 15 years of age or less to engage in a commercial home solicitation or commercial home distribution unless the child is soliciting or distributing within 1,000 feet of the child's home or the child is actively supervised by an adult at least 18 years of age who is within 100 feet of the child or who has written consent from a parent or legal guardian for a charitable purpose.

(7) No person shall leave any unsolicited pamphlet, unsolicited brochure, unsolicited flyer, unsolicited package or unsolicited printed advertisement at a residence at a place further than five feet from the front door of the residence.

b. This section shall not apply to a visit to the premises as a result of a request or invitation made by the occupant, invitation of the owner of the property or a person residing on the premises.

Display of identification.

(1) The person(s) in charge of conducting commercial home solicitation or commercial home distribution shall ensure that each and every commercial home solicitors or commercial home distributors involved possess a valid solicitor's permit on their person photo identification, such as a valid driver license or other valid governmental or city identification that correctly identifies whom the solicitor/distributor is and for whom the solicitor/distributor is working.

(2) It shall be unlawful for any commercial home solicitors or commercial home distributors to fail or refuse to show or display such identification upon the request of any person.

(3) It shall be unlawful for any commercial home solicitors or commercial home distributors to engage in commercial home solicitation or commercial home distribution without having a copy of the permit in their possession, except that where the person who will be peddling or soliciting is 15 years of age or less.

a. Such person shall be supervised by a person who is over the age of 18 years of age and who shall obtain a license on behalf of the person to be supervised.

(4) The permit holder must ensure that the permit is properly displayed while conducting peddling, commercial home solicitation or commercial home distribution activities.

a. Properly displayed shall mean attached or hung so that the permit is clearly visible to the public and law enforcement officials.

(5) It shall be unlawful for any person to conduct themselves as a commercial home distributor without wearing an orange traffic safety vest.

Solicitation in selected public right-of-way.

(1) It shall be unlawful for any person to solicit or to distribute handbills on, in, upon, or around any city rights-of-way, with or without a permit.

(2) Employees of the City of Midlothian are hereby exempt from the provisions of subsection (1) above provided approval is first obtained from the city manager, Chief of Police or their designee.

Solicitation for purposes not set out in the application.

(1) It shall be unlawful for any commercial home solicitor to solicit for a purpose other than that set out in the application upon which the permit was issued.

SECTION 11. Refusal to Leave Premises. Any peddler, vendor, distributor who enters 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 agent to leave the same shall be deemed guilty of a misdemeanor

SECTION 12. Additional insurance, requirements safety provisions and additional permits required for Itinerant Vendors and Mobile Food Vendors;

(1) It shall be unlawful to operate a mobile ice cream truck, mobile frozen dairy vendor, hot or cold food truck or push cart vendor or other itinerant street vendor vehicle in the city, and no person who owns or controls an ice cream truck or itinerant street vendor vehicle shall permit it to be so operated at any time, unless the driver and employee or worker on the truck of said vehicle shall have first obtained and shall then have in force an itinerant street or solicitor's vendor permit issued under the provisions of this ordinance. All persons operating as a mobile food vendor must also have an applicable, valid City of Midlothian Food Permit.

(2) All permits shall be for specific time periods, dates and locations.

(3) Mobile frozen dairy vendors, mobile ice cream trucks, hot or cold food truck, push cart vendor or other itinerant vendor vehicles are permitted to vend in an area for a short period of time and move to multiple other locations providing they do not remain at a location for more than 30 minutes without specific approval as contained in the permit.

(4) Mobile food vendors may operate no earlier than 8:00 a.m. to dusk, Monday through Friday and no earlier than noon to dusk on Saturday and Sunday. Sound equipment must be limited to music or human speech and can only be used between 11:00 a.m. and dusk each day.

(5) Sound may not be broadcast within 100 yards of schools, hospitals, churches, courthouses, funeral homes, or cemeteries and shall meet all noise nuisance provisions contained in the Midlothian Code of Ordinances. Music must be played at a reasonably low volume while the unit is stopped for vending. If the unit is stopped for vending for more than ten minutes, then music shall be turned off.

(6) A sign or decal that is visible at all times with the business address and telephone number of the business permit holder printed on the side of the vehicle in letters of not less than two inches in height. A City of Midlothian Annual Mobile Food Vendor permit sticker must be affixed to the windshield or back glass of the vehicle. Permit must be affixed to the push car in an approved location on the cart. Each mobile vehicle must have a separately issued permit approved and assigned for that individual food unit.

(7) Vehicles must be in good condition and have a current safety inspection sticker from the Texas Department of Motor Vehicles. All vehicle owners must have valid insurance.

(8) All itinerant vendors shall comply with all provisions of the City of Midlothian Planning and Zoning Department (Development Services). Any itinerant vendor seeking to locate at a stationary point for more than 30 minutes must also obtain a temporary use permit from the City of Midlothian.

(b) Safety equipment for ice cream trucks or other vehicles vending food products to children.

(1) Signs stating "WATCH FOR CHILDREN" or "SLOW CHILDREN CROSSING" must be posted on the front, back and both sides of the vehicle in at least four-inch letters of contrasting colors in distinctive lettering which is visible at 300 feet to the front and rear in normal sunlight upon a straight, level roadway or highway. Swing arms stating "Stop for Children" may be used as an option on the side of the vehicle in lieu of the signage with four-inch lettering.

(2) A serving window capable of being closed when not in use must be provided and located on the curbside only.

(3) The vehicle must be provided with left and right outside rear view mirrors, as well as two additional outside wide-angle mirrors on the front and back of the vehicle to enable the driver in his normal seated position to see around the entire vehicle and see the area in front of the vehicle obscured by the hood. Rear mirrors shall not be required if the vehicle is equipped with a no ride bumper.

(4) All vehicles must have operable four-way, yellow flashing hazard lights to warn approaching drivers of children.

(5) A rear bumper cover or a no ride bumper must be installed to prevent children from standing or jumping on the rear of the vehicle.

(6) A trash receptacle to dispose of all litter that is generated from products sold from the mobile ice cream truck, mobile frozen dairy vendor, or other itinerant street vendor vehicle.

Mobile Food Vendors are required to maintain a valid Annual Solicitor's permit and an Annual Food Establishment Permit to operate in the City of Midlothian.

- (1) Every driver or person desiring a permit to conduct sales activity in the city as a mobile ice cream truck, mobile frozen dairy vendor, push cart vendor (whether being pushed or stationary), consumable goods or other itinerant street vendor shall make a written application therefore to the chief of police.
- (2) The application shall be made on a form approved by the chief of police, accompanied by a non-refundable \$50.00 application fee.
- (3) If the application is approved an additional \$300.00 permit fee is required. Mobile food vendors and /or push cart vendors may apply for an annual solicitor's permit fee that is valid for up to 1 year and expires at midnight on December 31st each year regardless of the date of issuance. The annual solicitor's permit fee is \$300.00 (plus permit fees applicable to the mobile unit as set forth in the Health and Sanitation Ordinance and fees established by Council)
- (4) Permit information includes:
 - a. Name and business address and phone number of applicant;
 - b. Name, address and phone number of the person, firm or corporation the applicant is representing; the agent or service of process of a corporation and/or name and address of any owner of a business not incorporated and the assumed name of said business filed in the index in the county of its home office, for any business;
 - c. Attached to the application shall be a certified original copy of the sales tax permit issued by the comptroller of the state;
 - d. Statement of the kind, type and character of solicitation and/or the 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;
 - e. The period of time the applicant requests to sell or solicit in the City;
 - f. Location or area of the city where sales activity will be conducted;
 - g. List of all convictions of all felonies and misdemeanors and violations of this article of applicant and representatives, stating the offense, city and state, the court of conviction and the punishment imposed;
 - h. If sales are to be conducted from one or more stationary locations the applicant shall submit written consent of the property owner or its authorized agent consenting to applicant's use of such private property for sales activity indicated in the permit application; If sales are from a stationary location, appropriate permits and approval and/ or Special Use Permit or Certificate of Occupancy may be required from the City of Midlothian Development Services and/or Building Inspections.

Insurance Requirements.

Before a permit is issued by the Chief of Police or designee, the applicant will be required to furnish a policy of liability insurance, in the amount of \$250,000.00 per incident. This policy must include a provision that the city will be notified within 30 days if this policy of insurance is to be cancelled for any reason.

- a. Cancellation of an insurance policy for a mobile ice cream truck, mobile frozen dairy vendor, frozen food, hot or cold food truck, push cart vendor or other itinerant street vendor shall be an automatic revocation of the permit issued to that mobile ice cream truck, mobile frozen dairy vendor hot or cold food truck, or other itinerant street vendor.
- b. Cancellation of an insurance policy for any company that operates any mobile ice cream truck, mobile frozen dairy vendor, hot or cold food truck or push cart vendor or other itinerant street vendor shall be an automatic revocation of all city permits issued to all mobile ice cream trucks, hot or cold trucks or push cart vendor, mobile frozen dairy vendors, or other itinerant street vendors operated by that company.

Vehicles must be in good condition and have a current safety inspection sticker and current license plates from the Texas Department of Motor Vehicles.

Any itinerant vendor handling or selling non-prepackaged food must also possess a current Health Department Food Handler Card or Food Protection Manager Card recognized and approved by the City of Midlothian Health/ Code/ Police Department. Proof of an annual health department inspection shall be provided at the time of permit application.

Each driver will be given a mobile ice cream truck, mobile frozen dairy vendor, hot or cold food truck or other itinerant street vendor permit number, which will be on such permit. Permit shall be posted in a prominent place in the mobile ice cream truck, mobile frozen dairy vendor, or other itinerant street vendor vehicle and shall be shown to any customer, police officer, or code enforcement officer or designee upon request.

A copy of the permit shall be posted in the mobile ice cream truck, mobile frozen dairy vendor, hot or cold mobile unit or push cart unit or other itinerant street vendor vehicle at all times.

A Mobile Food Vendor permit granted under this article shall be valid for one year—from between January 1 and December 31—regardless of the date of application. Permits are not transferable. Each application for renewal must verify permit information as correct.

SECTION 13. Annual issuance. Transferability. A Mobile Food Vendor permit granted under this article shall be valid for one year—from between January 1 and December 31—regardless of the date of application or issuance. Permits are not transferable. Each application for renewal must verify permit information as correct. Permit renewal fees paid on or after January 1 of each year will be doubled.

SECTION 14. Exemption from permit fees and requirements. The permit fees shall not be required of: Charitable solicitations, religious organizations, holders of organizations that hold a current, valid 501.c.3 , service organizations or approved fundraisers ,ordinary commercial travelers who sell or exhibit for sale goods, wares, or merchandise to persons selling and dealing in the same within the city, or individuals who file a statement with the police department indicating their indigent status. Permit applications are still required; however, the Chief of Police or designee may waive applicable fees.

Exemptions to permitting requirements. The following shall be exempt from the permitting requirements of this ordinance:

- (1) Religious organizations exclusively for the distribution of literature and other items for the purpose of proselytizing, provided that no fees are charged and no donations are solicited;
- (2) Political speech;
- (3) Non-profit;
- (4) The provisions of this ordinance shall not apply to sales made under authority and by order of law, nor to persons, or their authorized representatives, who have previously established with the owners or occupants of such private residences or property a regular business, trade, service or other contractual relationship;
- (5) Any operation, which is exempted by state or federal statute from this ordinance, is exempt only to the extent of such applicable exemption;
- (6) Any person claiming to be legally exempt from the provisions of this ordinance, including the payment of the permit or investigation fee shall make such a claim in writing to the chief of police citing the applicable statute or authority, and providing proof of its applicability
- (7) During an emergency state (natural or otherwise) the permitting process may be suspended, revoked or modified based on needs of the city. The modification to the process will be determined and authorized by the Chief of Police.

(8) Mobile food vendors offering food at construction sites with applicable permits are allowed to begin service at 6:00 a.m.

SECTION 15. - Penalties. Any person violating any provision of this ordinance or failing to observe any provisions of this ordinance shall have their permit revoked immediately and will not be entitled to reapply for a period of one year from the date of the revocation. In the event of such forfeiture of permit, no part of such permit fee as may have been so paid shall be refunded to such person, and; Any person, firm or corporation violating any of the terms or provisions of this ordinance 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. In case of any willful violation of any of the terms and provisions of this ordinance, the city, in addition to imposing the penalties above provided, may institute any appropriate action or proceeding in any court having proper jurisdiction, to restrain, correct or abate such violations; and the definition of any violation of the terms of this ordinance as a misdemeanor, shall not preclude the city from invoking the civil remedies given it by the laws of the state, but same shall be cumulative and subject to prosecution as hereinabove prescribed for such violations.

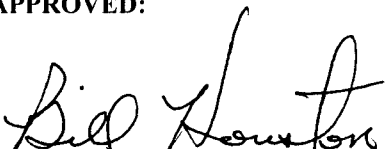
SECTION 16. Repealer Clause. Any ordinance or parts of ordinances in conflict with this ordinance or any part thereof, are hereby expressly repealed. This ordinance shall hereby repeal Ordinance 87-39 in its entirety.

SECTION 17. Severability. If any section, article, paragraph, sentence, clause, phrase or word in the ordinance or application thereto any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the ordinance; and the City Council hereby declares it would have passed such remaining portions of the ordinance despite the invalidity, which remaining portions shall remain in full force.

SECTION 18. Effective Date. This ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect 30 days from and after the date of its final passage and adoption.

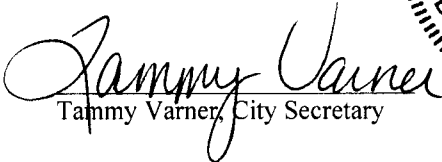
PASSED, ADOPTED AND APPROVED by the City Council of the City of Midlothian, Texas, on this the 22nd day of January, 2013.

APPROVED:

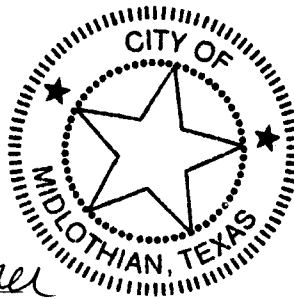


Bill Houston, Mayor

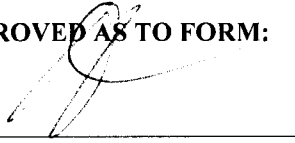
ATTEST:



Tammy Varner, City Secretary



APPROVED AS TO FORM:



Don Stout, City Attorney