

ORDINANCE NO. 0412-2022

PEDDLERS AND ITINERANT VENDORS

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MUNDAY, TEXAS, REVOKING ORDINANCE #081004 – ENTITLED “ITINERANT MERCHANGES AND VENDORS”, AND REPLACING IT WITH ORDINANCE #0412-2022, ENTITLED “PEDDLERS AND ITINERANT VENDORS”; PROVIDING CRIMINAL PENALTIES; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUNDAY AS FOLLOWS:

WHEREAS, the City Council of the City of MUNDAY, Texas, deems it in the best interest of citizens of MUNDAY to exercise the police powers of the state and of the city for the public safety, comfort, convenience, and protection of the city and the citizens thereof and all of the provisions of this chapter shall be construed for the accomplishment of that purpose.

PART 1 Enacted.

THAT, Ordinance #0412-2022, of the Code of Ordinances of the City of MUNDAY. Entitled “Peddlers and Itinerant Vendors” is hereby enacted and shall read as follows:

ARTICLE 1.000 PEDDLERS AND ITINERANT VENDORS

Sec. 1.001 Purposes and Definitions

(a) The purpose of this article is regulatory so as to generally require registration and identification of persons conducting commercial solicitation; and to protect the health, life, property and welfare of the citizens of the city against unwarranted and unreasonable solicitations. Notwithstanding anything to the contrary contained in this article, there shall be exempt from the registration requirements bona fide religious organizations and those otherwise participating in non-commercial solicitations.

(b) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Charitable purpose means the solicitation of money or property, for the benefit of a charity, philanthropy, or nonprofit organization or for the poor, underprivileged, needy, crippled, or handicapped persons; the teaching of

patriotism or assistance to veterans or veteran's organizations; or for existing educational institutions or for the establishment or endowment of educational institutions. Nonprofit organizations shall include, but not be limited to, American Heart Association, Muscular Dystrophy, American Cancer Society, Boy Scouts of America, Girl Scouts, etc.

Consumer means an individual who acquires real or personal property, services, money, or credit for personal, family or household purposes.

Parkway means the area between the edge of the designated street and the adjacent owner's property line.

Peddler, solicitor, or person means any individual, firm, company, partnership, corporation, association, trust, society, religious sect, organization, league, or other legal entity and includes any trustee, receiver, assignee, agent, or similar representative and include all peddlers, solicitors, hawkers, canvassers, itinerant merchants or vendors and transient merchants or vendors of goods, wares, merchandise, services or any other articles.

Religious organization means an organization that is dedicated to the support of a church, religious society, or any other religious sect, group, or order and has been recognized by the State as an organized religion.

Sidewalk means any surface provided for the exclusive use of pedestrians.

Solicitation means conduct whereby a person or its agent, member, or representative:

- (1) Either orally or in writing, asks for a ride, employment, property, financial aid, money, or any article representing monetary value, for any purpose;
- (2) Whether orally or in writing, sells or offers to sell goods, services, publications, or subscriptions;
- (3) Distributes without remuneration goods, services, publications, or subscriptions; or
- (4) Solicits signatures on a petition or opinions for a survey.

The term "solicitation" shall include persons engaged in the delivery of handbills or circulars door to door for the solicitation of money, products, services or other items of pecuniary value. An offer of membership in any organization is expressly excluded.

Street means the portion of the street that is paved, designated, or used for vehicular traffic, and all areas dedicated to public use for public street purposes, which includes parkways, alleys, and sidewalks.

Traffic island means a barrier within a street or roadway to exclude vehicles, designated for the purpose of separating or directing streams of vehicular traffic.

Sec. 1.002 Soliciting on Posted Property Prohibited

It shall be unlawful to solicit the sale of goods, wares, merchandise and services upon property posted by the owner, leasee or occupant with a sign stating "No Soliciting" unless specifically requested by the owner, leasee or occupant of the premises

Sec. 1.003 Permit Required

(a) Required.

- (1) It shall be unlawful for any person to attempt or to peddle, sell, solicit, canvass, or take orders for any services, wares, merchandise, or goods, or any article of value, including plants, flowers, paintings, novelties, painting house numbers on streets, firewood, books, magazines, photographs, or any articles for future delivery, on a sidewalk, parking lot or parkway within the city or from door to door without having first obtained a permit from the city.
- (2) Each person engaged in peddling or soliciting or selling as described in subsection (a)(1) of this section must have a permit issued under the terms of this section, and such permit shall be personal to the applicant and shall not be reproduced nor assigned nor transferred to any other person. Any such attempted transfer or reproduction shall render the permit void.
- (3) Each permit shall expire as of the date noted thereon, which date shall be in accordance with the provisions of this chapter, and such permit shall indicate the hours when peddling, solicitation and selling within the city is permitted in accordance with the provisions of this chapter.
- (4) It shall be unlawful for any person who shall solicit funds in the city to represent in connection with such solicitation of funds that the issuance of a permit by the city constitutes an endorsement thereof.
- (5) It shall be unlawful for any person to solicit funds for a purpose other than that set out in the registration statement or application upon which the permit was issued.
- (6) A permit shall not be issued to any person under 13 years of age.
- (7) Solicitation shall be deemed completed when made, regardless of whether the person making the solicitation receives any contribution or makes any sale.

Sec. 1.004 Application; Fee, Context, Etc.

- (a) Permit Required: Every person desiring to solicit in the city shall, unless otherwise excepted, apply for a permit from the City Manager or City Secretary or his designee. Each application for a permit required by this

section shall be in writing, under oath, notarized and shall set out the following:

- (1) The name and permanent address of the applicant;
 - (2) If the person represents a partnership, corporation or association, then include the business address and telephone number of the business and the telephone number of the contact person.
 - (3) The name, permanent address and telephone number of each person to solicit under the permit as well as of all individuals who will be in direct charge or control of the solicitation of funds.
 - (4) The kind, type and character of goods, wares and merchandise offered or to be offered for sale or services he proposes to offer for sale, including the name brand, manufacturer, and distributor of goods and commodities and the name, publisher and distributor of all books, magazines or periodicals to be offered for sale
 - (5) Whether such applicant upon any such order so obtained will demand, accept or receive payment or deposit of money in advance of final delivery; and/or a description of the methods and means by which the solicitation of funds is to be accomplished.
 - (6) The period of time such applicant so wishes to solicit, sell or take orders in the city.
 - (7) The names of all cities where the applicant has worked within the previous three (3) months.
 - (8) Whether the applicant, or any solicitor listed in the application, has ever been convicted or received deferred adjudication of a felony or a misdemeanor. If yes, the applicant shall include in the application the date of offense, type of offense, and disposition of the offense.
 - (9) The state driver's license number or a state approved identification card number of the applicant and each solicitor.
- (b) Attachments. In addition, there shall be attached to each application for a permit, the following.
- (1) Attach a copy of the current sales tax permit to said application
- (c) Application Fee. The application shall be accompanied by a \$35.00 fee for the original solicitor or applicant, plus a \$20.00 fee for each additional

solicitor, for cost of the investigation and administration of the provisions of this chapter.

- (d) Investigation of applicant. The Chief of Police, or his authorized designee, shall have the discretion to request a background check through any lawful means on each applicant, and all other persons listed on the application before issuance of a permit, which investigation may include, but is not necessarily limited to, personal interviews with named individuals, verification of references and information contained within the application.
- (e) Issuance. A permit applied for under this chapter shall receive a response by the City Manager or City Secretary within ten days after the application is completed and filed. If granted, the permit will have an expiration date of no longer than twelve months. An expired permit may be renewed under the same terms and conditions as the original application and subject to the same fees.
- (f) Form. Each permit shall be printed on official City of Munday paper with a statement in bold prominently printed thereon: "The issuance of the permit is not an endorsement by the City of Munday or any of its officers or employees." Each permit shall bear a permit number, which is the same as the file containing the application filed by the applicant.
- (g) Permit to be displayed. It shall be unlawful for any person to sell or solicit in the city without displaying the permit required, by this section on his person, in plain view, while engaged in such soliciting or selling.
- (h) Exhibiting permit. Every solicitor or peddler or seller shall identify himself as a salesperson upon approaching a citizen in a public place or at a private dwelling and explain his purpose, whether it be direct sales, solicitation or orders of the demonstration of goods or merchandise, or any combination of purposes thereof, and shall produce for inspection, upon request by any person, the solicitor's permit issued by this city.
- (i) Responsibility for acts of solicitors. The recipient of a permit or named applicant shall be responsible for the acts of his authorized representatives or solicitors listed in permit application in connection with solicitation activities. In this regard, the recipient of the permit shall actively supervise all persons listed in the permit application, which supervision shall include, but not be limited to, remaining within the corporate city limits during all solicitation activity and responding promptly (within ten minutes) to calls by city representatives relative to the solicitation activity which may include responding to an on-site complaint from a citizen.
- (j) Revocation of permit.
 - (1) If, after the permit required by this section has been issued, the City Manager, the City Secretary or the Chief of Police, or his authorized designee, finds that the permit was obtained by false representation in the application, or the permit has been reproduced or transferred or

assigned to another person or the applicant has led someone to believe the permit is an endorsement of the applicant's product or service by the city, or in the event of fraud or misrepresentation by the permit holder, or in the event of conviction of the permit holder of a felony or a misdemeanor involving moral turpitude, or in the event the permit holder has failed to furnish the items required by this chapter, such permit may be immediately revoked.

- (2) If a police officer or the Chief of Police has probable cause to believe that a solicitor has engaged in prohibited conduct as defined by this chapter, the officer may revoke the permit of the permit holder.
 - (3) If more than one complaint of misconduct by a solicitor or group of solicitors working for the same company is received, the permit may be immediately revoked by the city.
- (k) Appeal from denial or revocation of permit. Should an applicant be denied a permit, or have a permit revoked, he may appeal that action to the city council by submitting a letter to the city manager within ten days to complain of that action. A hearing of the denial will then be scheduled for the next regular meeting of the city council, or a special meeting of the city council, to be held within 30 days of the appeal. The city council shall render a decision on the appeal within one day of the date of the hearing. Such hearing shall be an administrative hearing. Adherence to formal rules of evidence shall not be required. The decision of the city council shall be final and binding. No new application for a permit will be considered for six months after denial or revocation, unless said denial or revocation is without prejudice or is conditional and the conditions have been satisfied as determined by the counsel.
- (l) Exemptions:
- (1) The following persons engaged in the activities set out in this ordinance are exempt from the terms and conditions of this section and from paying a fee therefore, namely:
 - a. Public utility companies or others operating under a franchise granted by the city;
 - b. Commercial agents dealing with local business establishments in the usual course of business; and
 - c. Insurance salesmen, real estate salesmen and others licensed by the state.
 - (2) Solicitations related to children's activities, including, but not limited to, Girl Scouts, Boy Scouts, and other children's extracurricular activities, which may involve children under the age of 13. Children under the age of 13 may participate in such activities to the extent they are actively supervised by a parent, guardian or other adult person, at least 18 years of age, who is responsible for the well being of the child.

- (3) Religious, political or nonprofit organizations and their representatives distributing handbills or pamphlets only for the purpose of communicating issues of general interest to the public need not register with the city permits and inspections department or pay a permit fee. A donation received from the distribution of handbills or pamphlets does not affect this exemption.

Sec. 1.005 Prohibited location, activities and conduct.

- (a) It shall be unlawful for any person to peddle, solicit, hawk, sell or take orders for or offer to take orders for any item or service in the following places in the city:
 - (1) On any public street or alley or traffic island;
 - (2) Within 25 feet of the following facilities:
 - a. ATM machines;
 - b. Entrances and exits of banks, credit unions, or other financial institutions; or
 - (3) Any residence which shall exhibit in a conspicuous place upon or near the main entrance to the residence containing the words "NO SOLICITORS."
- (b) It shall be unlawful for any person to block or obstruct or hinder the free flow of traffic in the lawful use of the street or free passage of pedestrians in the lawful use of the sidewalk. No solicitations, sales, or distribution of merchandise, products, or service shall be offered or made to occupants of motor vehicles moving or stopped in traffic on a public street or alley.
- (c) It shall be unlawful for a person engaged in solicitation to:
 - (1) Misrepresent the affiliation of those engaged in the solicitation;
 - (2) Continue efforts to solicit from an individual once that individual informs the solicitor that he does not wish to give anything to or buy anything from that solicitor;
 - (3) Represent the issuance of any permit or registration under this chapter as an endorsement or recommendation of the solicitation;
 - (4) Remain on property after the property owner, or the property owner's designee, representative or agent, has instructed the solicitor to leave.

Sec. 1.006 Times when soliciting prohibited.

No person shall peddle, solicit, hawk, sell or take orders for or offer to take orders for any item or service at a private residence in the city after 7:00 p.m. until 9:00 a.m., Monday through Saturday, unless the transaction is the result of a request made to such person by the occupant of such private residence. There

shall be no solicitations on Sunday, New Years Day, Fourth of July, Memorial Day (observed), Labor Day (observed), Thanksgiving, or Christmas Day.

Sec.1.007 Right to Solicit Upon Specific Property

No person may use any lot, parking lot, open space, building, structure or area within the City for the purpose of soliciting persons passing by the property without written documentation showing the person is the owner or lessee of the property or has specific authorization from the owner or lessee of the property to use the property to solicit.

Sec. 1.008 Penalty

Any person violating any of the provisions of this article, shall upon conviction thereof, be fined in accordance with the Code of Ordinances of the City of Munday. Each individual instance a violation of this article occurs or continues shall constitute a separate offense. Allegation and evidence of a culpable mental state is not required for proof of any offense defined in this chapter.

PART 2. Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

PART3. Publication

The City Secretary is hereby authorized and directed to cause publication of this ordinance in accordance with law.

PART 4. Effective Date

This ordinance shall be in force and effect from and after its publication as required by law.

SIGNED this _____ day of April, 2022.

CITY OF MUNDAY, TEXAS

BOB BOWEN, Mayor

ATTEST:

Bianca Harrimon, City Secretary