ORDINANCE O-14-1909

AN ORDINANCE OF THE CITY OF COLLEYVILLE AMENDING THE CODE OF ORDINANCES CHAPTER 70, ARTICLE II, SECTION 70-28, RELATING TO HOME SOLICITATION, DISTRIBUTION, AND MISCELLANEOUS SALES; PROVIDING FOR A PENALTY BY FINE NOT TO EXCEED FIVE HUNDRED DOLLARS ($500); PROVIDING A SAVINGS CLAUSE; REPEALING CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Colleyville City Council consists of residents of the City with varied backgrounds, experiences, and interests; and

WHEREAS, multiple members of the City Council are graduates of the Citizens Police Academy; and

WHEREAS, in considering this Ordinance, the City Council relies on the entirety of its experiences and knowledge; and

WHEREAS, the City of Colleyville, Texas, is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City of Colleyville currently regulates home solicitation and distribution on private property in a manner to promote good order and protect citizens and non-citizens, while at the same time maintaining the First Amendment right to communicate through that medium; and

WHEREAS, the City of Colleyville has endeavored to protect the health, safety, and welfare of the public from the negative impacts associated with soliciting and distributing since at least 1993; and

WHEREAS, the regulation of door-to-door solicitation services the City's interests in preventing crime and protecting the privacy of its residents; and

WHEREAS, the City's efforts to protect its citizens have included a 4:30 pm curfew on soliciting and distributing, and said curfew has played an important role in the City's overall safety plan; and

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

WHEREAS, everything about law enforcement is priority based, and any time taken away from dealing with priority major criminal activity and the prevention of that makes the Police Department less effective; and

WHEREAS, due to the extremely complex nature of crime, the City and its Police Department attempt to devise as many strategies and tactics and utilize as many tools as they can to cover as many bases as possible; and

WHEREAS, the curfew allows the Police Department to concentrate on the greatest likelihood of encountering the unsavory type of characters during peak times, and has enhanced residents' comfort level and safety; and

WHEREAS, the curfew has served as an enhancement to the other tactics, tools, and strategies employed by the Police Department; and

WHEREAS, there is no magic bullet to fight and prevent crime; and

WHEREAS, the philosophy behind the solicitor ordinance is to do everything the City can do legally to ensure the safety of the City and its citizens; and

WHEREAS, the entirety of the solicitor ordinance has contributed to making our community a safer place; and

WHEREAS, it is not possible to delineate the proportionate effect of the multiple measures or strategies implemented to protect the health, safety, and welfare of the public, including the solicitor ordinance; and

WHEREAS, overall crime rates in Colleyville have been on the decline in recent years; and

WHEREAS, the most dramatic decreases in crime is the number of residential burglaries; and

WHEREAS, the decrease in residential burglaries has at least a temporal connection to the City's 2011 amendments to the solicitor ordinance; and

WHEREAS, the 2011 amendments to the solicitor ordinance included the addition of criminal background checks for commercial solicitors; and

WHEREAS, the City reviews, updates, and amends ordinances on an as needed basis; and

WHEREAS, the purpose of such reviews and amendments is to maximize the effectiveness of the City's rules and regulations, while accommodating protected activities such as free speech; and

WHEREAS, the City Council endeavors to allow people 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, anecdotal evidence shows that Colleyville residents have been reluctant to utilize "no solicitation" signs at their residences to protect themselves from undue annoyance and harassment; and

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

WHEREAS, the City recently added No Knock and Solicitors Welcome registries as part of the solicitor ordinance; and

WHEREAS, the initial roll-out of the lists has shown strong interest by the public in utilizing the lists; and

WHEREAS, based on the trend of decreased residential burglaries and the initial interest in the No Knock and Solicitors Welcome lists, the City Council is considering relaxing the curfew; 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 City has a legitimate and compelling interest in protecting the privacy of its residents in a most important place, the homestead; and

WHEREAS, there has been anecdotal evidence of door to door solicitors engaging in aggressive and harassing tactics resulting in complaints, including permitted background-checked solicitors talking to residents over their fence; 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; and

WHEREAS, the City Council finds that curfew regulations limiting the hours and days when a person may solicit, peddle, or distribute 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 solicit, peddle, or distribute on private property are necessary to prevent crime to property and persons and to protect the health and safety of persons engaged in solicitation or distribution; 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 early evening hours is when calls for crime-related assistance are consistently higher and the curfew provisions are necessary to assist with crime prevention by enabling the City's police officers to respond to other crime-related calls in the evening and night; 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 a 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 to adopt ordinances to protect the health, safety, and welfare of its citizens; and

WHEREAS, the City Council has determined that it is a necessity to regulate activities as provided for herein to safeguard the public; 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; and

WHEREAS, the purposes of this Ordinance include protecting and promoting the public health, safety, and general welfare of the citizens of the City of Colleyville.

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

Sec. 1. THAT all of the above premises are found to be true and correct and are hereby incorporated into the body of this ordinance as if copied in their entirety herein.

Sec. 2. THAT Chapter 70 of the Code of Ordinances is hereby amended in its entirety and replaced with the attached Exhibit "A".

Sec. 3. THAT the City Manager is directed to monitor and review the impact and effects of this Ordinance and to provide updates to the City Council on an as needed basis. If, for any reason, this Ordinance fails to achieve its stated goals or otherwise proves ineffective, the City Manager is directed to present recommended revisions to the City Council for review and consideration.

Sec. 4. THAT any person, firm, or corporation violating any provision of this ordinance shall be deemed guilty of a misdemeanor and shall upon final conviction thereof be fined in the amount not to exceed five hundred dollars ($500.00). Each and every day any such violation shall continue shall constitute a separate violation hereunder.

Sec. 5. THAT if any section, sentence, clause, or phrase of this ordinance be declared unconstitutional for any reason, it shall not affect the constitutionality and the validity of any other section, sentence, clause, or phrase, and the City Council declares that it would have passed all other sections, sentences, clauses, or phrases of this ordinance notwithstanding the unconstitutionality or invalidity of any paragraph, section, sentence, clause or phrase hereof.

Sec. 6. THAT all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect; provided, however, that the ordinance or ordinances under which the cases currently filed and pending in the Municipal Court of the City of Colleyville, Texas, shall be deemed repealed only when all such cases filed and pending under such ordinance or ordinances have been disposed of by a final conviction or a finding of not guilty or nolo contendere, or dismissal.

Sec. 7. THAT the effective date of this ordinance shall be immediate upon its passage.

AND IT IS SO ORDERED.

The first reading and public hearing being conducted on the 4th day of February 2014.

The second reading and public hearing being conducted on the 18th day of February 2014.

PASSED AND APPROVED by the City Council of the City of Colleyville, Texas, on this the 18th day of February 2014.

ATTEST:

Amy Shelley, TRMC
City Secretary

APPROVED:

David Kelly
Mayor

APPROVED AS TO FORM AND LEGALITY:

Matthew C.G. Boyle
City Attorney

Exhibit "A"

PEDDLERS, SOLICITORS, AND MISCELLANEOUS SALES

I. SOLICITATION GENERALLY

The purpose of this ordinance is to secure the general health, safety, and welfare for the residents of the City of Colleyville by:

Prohibiting door-to-door solicitation at residences during the times when such activity is most intrusive and disruptive to citizens' privacy;

Regulating the locations in which solicitation activity may occur to promote safety and minimize congestion;

Regulating the manner in which any solicitation activity may occur to promote good order, and protect citizens from aggressive and intimidating practices; and

Requiring solicitors to obtain permits from the City to aid in crime detection and deter deceptive practices and fraud.

II. DEFINITIONS

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

1. *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.

2. *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.

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

4. *Dusk* means thirty (30) minutes after sunset.

5. *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.

6. *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.

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

8. *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 vendor does not remain or linger at any particular property or location for longer than thirty (30) minutes.

9. *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.

10. *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.

11. *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.

12. *Peddle* shall mean 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 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 their person, while on the public right-of-way of the City of Colleyville.

13. *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 right-of-way of the City of Colleyville. A peddler also includes any street vendor, itinerant vendor, or transient vendor.

14. *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 rite 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.

15. *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.

16. *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 any purpose, which includes promoting, advertising, receiving or obtaining money, gifts or items of value for said individual or group of individuals, or organization, club, company, corporation.

17. *Temporary business* means one that continues for forty-five (45) days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding. Any business that exists more than forty-five (45) days shall be deemed to be a permanent occupancy and is required to obtain a certificate of occupancy from the Community Development Department.

18. *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.

III. COMMERCIAL HOME SOLICITATION AND COMMERCIAL HOME DISTRIBUTION

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 for any person(s), 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:

   a. By handing 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.

4. 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 (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 any such handbills left upon their premises. The letters on such signs shall be not less than two-thirds (2/3) of an inch in height.

5. It shall be unlawful for any person to employ, use, or otherwise put into service, a child who is fifteen (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 eighteen (18) years of age who is within one hundred (100) feet of the child, or who has written consent from a parent or legal guardian for a charitable purpose.

6. 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 (5) feet from the front door of the residence.

7. It shall be unlawful for any person to solicit, peddle, or distribute on a residential property that is listed on the "do-not-solicit list" as defined by this chapter.

B. DISPLAY OF IDENTIFICATION

1. The person(s) in charge of conducting commercial home solicitation or commercial home distribution shall ensure that all commercial home solicitors, or commercial home distributors involved, possess on their person photo identification, such as a valid driver license, or other valid governmental 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 solicitor(s) or commercial home distributor(s) 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 fifteen (15) years of age or less.

   a. Such person shall be supervised by a person who is over the age of eighteen (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.

C. 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 public right-of-way, with or without a permit.

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

D. 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.

IV. SOLICITATION PROHIBITED – HOURS

A. 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.

1. 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.

2. This subsection shall not apply to a visit to a residence that is listed on the "Solicitor's Welcome" list as defined by this Chapter.

B. It shall be unlawful to solicit, peddle, or distribute on residential property 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. 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.

V. DO-NOT-SOLICIT LIST

A. The city manager, or their designee, shall 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 city manager. 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 city manager shall make the do-not-call list available on the City's website and to any person upon request.

D. The chief of police shall provide a copy of the do-not-solicit list to each person issued a permit under this ordinance.

VI. SOLICITORS WELCOME LIST

A. The city manager, or their designee, shall develop and maintain a list of residences where solicitation is welcome without regard to the time of day or day of the week and shall be referred to as the "solicitors welcome list."

B. Any property owner or occupant may elect to add or remove his or her residence to or from the solicitors welcome list through the procedures developed by the city manager. 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 city manager shall make the solicitors welcome list available on the City's website and to any person upon request.

D. The chief of police shall provide a copy of the solicitors welcome list to each person issued a permit under this ordinance.

VII. ITINERANT VENDORS

A. REQUIREMENTS

1. It shall be unlawful to operate a mobile ice cream truck, or any other itinerant street vendor vehicle in the City, and no person who owns or controls a mobile ice cream truck or itinerant street vendor vehicle shall permit it to be so operated at any time, unless the driver of said vehicle shall have first obtained, and shall then have in force, an itinerant street vendor permit, issued under the provisions of this ordinance.

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

3. Mobile frozen dairy food vendors, mobile ice cream trucks, 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 thirty (30) minutes, without specific approval, as contained in the permit.

4. 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 one hundred (100) yards of schools, hospitals, churches, courthouses, funeral homes, or cemeteries and shall meet all noise nuisance provisions contained in the Colleyville 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 (10) 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 (2) inches in height.

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

8. All itinerant vendors shall comply with all provisions of the Colleyville Code of Ordinances and Colleyville Land Development Code. Any itinerant vendor seeking to locate at a stationary point for more than thirty (30) minutes must also obtain a temporary use permit from the Community Development Department.

B. SAFETY EQUIPMENT FOR MOBILE 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 (4) inch letters of contrasting colors in distinctive lettering, which is visible at three hundred (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 (4) 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 (2) 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 food vendor, or other itinerant street vendor vehicle.

VIII. APPLICATION FOR PERMIT

A. COMMERCIAL HOME SOLICITATION

1. A person or organization seeking a permit for the purpose of conducting home solicitation shall file an application with the 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:

      i. The business or residence address and telephone number of the applicant;

      ii. If a partnership, the names of all partners, the principal business address, and telephone number of each partner;

      iii. 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;

      iv. 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 (10) 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;

v. If the association is a part of a multi-state 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. A permit will not be issued if there is an affirmative statement as to whether the applicant has ever been:

i. Convicted of, or pleaded nolo contendere, to a misdemeanor involving fraud, theft, embezzlement, burglary, fraudulent conversion, or misappropriation of property within the preceding ten (10) years, or convicted of, or pleaded nolo contendere, to any felony;

ii. 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;

iii. Found liable under any law regarding the use of unfair, unlawful, or deceptive business practices; or

iv. 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.

i. The names of any cities where the applicant has worked in the previous three hundred and sixty-five (365) days;

j. Two full-face photographs of each applicant, two (2) inches square;

k. A copy of a valid state tax sales certificate, if applicable;

l. An authorization to conduct a criminal background check on the applicant;

m. 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 $15.00 and a permit fee of $50.00, 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 (10) 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 fifteen (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 one hundred eighty (180) days, whichever is less, but may be renewed once for one hundred eighty (180) days, if made within the initial one hundred eighty (180) day period of the original permit. Each application for renewal must verify permit information as correct, and provide copies of sales tax returns for the prior permit period.

   a. A permit renewal application shall be $25.00, if submitted within one hundred eighty (180) days of the original application.

B. COMMERCIAL HOME DISTRIBUTION

1. No person shall engage in a commercial home distribution without having a valid, current permit issued under the provisions of this ordinance by the chief of police. The application shall contain the following:

   a. The name, date of birth and mailing address of the person(s) applying;

   b. The name, mailing address and phone number of the handbill sponsor and company organizing the distribution of same;

   c. The time period and locations within which commercial home distributions will be made, including the proposed beginning date, the projected date of conclusion, and an estimate of how often the applicant will distribute during the permit period;

d. A description of the methods and means by which the commercial home distributions will be accomplished;

e. A description of the goods or services to be sold or offered through the distribution;

f. If the applicant is fifteen (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;

g. A permit will not be issued if there is an affirmative statement as to whether the applicant has ever been:

   i. Convicted of, or pleaded nolo contendere, to a misdemeanor involving fraud, theft, embezzlement, burglary, fraudulent conversion, or misappropriation of property within the preceding ten (10) years, or convicted of, or pleaded nolo contendere, to any felony;

   ii. 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;

   iii. Found liable under any law regarding the use of unfair, unlawful, or deceptive business practices; or

   iv. 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.

2. It shall be unlawful for any person to file an application for a commercial home distribution permit that contains any false statement of fact.

3. The names of any cities where the applicant has worked in the previous three hundred and sixty-five (365) days.

4. The application for the permit must be signed by the applicant and accompanied by a non-refundable application fee of $15.00 and a permit fee of $50.00, if approved. Such application shall also show satisfactory written proof of the individual's authority to represent the company.

5. It shall be unlawful for any person to engage in a commercial home distribution without carrying the permit required by this ordinance, on his or her person, while so engaged, or to display a permit issued in the name of another person.

6. After review of the permit application and within ten (10) 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.

7. A permit granted under this article shall be valid only until the termination of the solicitation period specified in the permit or for one hundred eighty (180) days, whichever is less, but may be renewed once for one hundred eighty (180) days, if made within the initial one hundred eighty (180) day period of the original permit. Each application for renewal must verify permit information as correct and provide copies of sales tax returns for the prior permit period.

    a. A permit renewal application shall be $25.00, if submitted within one hundred eighty (180) days of the original application.

C. GROUP REGISTRATION (applies to Commercial Home Distribution permits only)

1. A person may apply for a group registration applicable to two (2) or more persons who desire to engage in commercial home distributions.

2. The registration application shall contain all of the information required herein for each person who will be engaging in commercial home distributions under the group registration.

3. The application must be signed by a person responsible for the group application and shall be accompanied by a non-refundable application fee of $15.00 and an additional permit fee of $15.00 for each person to be included under the group application.

4. Provided that, if the applicant registers ten (10) or more persons under a group application, the additional permit fee shall be $10.00 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.

D. ITINERANT VENDORS

1. 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, or other itinerant street vendor shall make a written application therefore to the chief of police. The application shall be made on a form approved by the chief of police, accompanied by a non-refundable $15.00 application fee and a $50.00 permit fee if approved, and state the following:

   a. Name, business address, and telephone number of applicant;

   b. Name, address, and telephone 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. Name and phone number of three (3) character witnesses for applicant who can be contacted within forty-eight (48) hours;

i. If sales are to be conducted from one (1) 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;

j. 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;

k. The name of all cities in which the applicant has conducted sales activity in the last three hundred sixty-five (365) days.

2. No itinerant street vendor permit of any kind shall be granted unless:

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

   b. The applicant has no active suspension on his or her driving privileges in any state;

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

3. Before a permit is issued by the chief of police, or his designee, 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.

   a. 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.

   b. 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.

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

5. Any itinerant vendor handling or selling non-prepackaged food must also possess a current Tarrant County Public

Health Department Food Handler Card. 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 a county or city health department in the State of Texas.

6. When the application is approved, the mobile ice cream truck, mobile frozen dairy food vendor, or other itinerant street vendor's permit shall be issued in card form. The photograph of the driver shall be attached to the card.

   a. 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 in the mobile ice cream truck, mobile frozen dairy food vendor, or other itinerant street vendor vehicle, and shall be shown to any customer, police officer, or code enforcement officer upon request.

   b. A copy of the permit shall be posted in the mobile ice cream truck, mobile frozen dairy food vendor, or other itinerant street vendor vehicle at all times.

7. 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.

IX. EXEMPTION FROM PERMIT FEES

A. The permit fees shall not be required of charitable solicitations, 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.

X. INVESTIGATION OF THE APPLICANT

A. In addition to all permit fees, each applicant for any type of permit in this ordinance shall pay a non-refundable fee of $15.00

to cover the cost of conducting a criminal background check on the applicant(s).

B. 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.

XI. ISSUANCE, DENIAL, REVOCATION

A. The chief of police, or his designee, shall issue the applicant a commercial home solicitation, commercial home distribution, or itinerant vendor permit if the chief of police, or his designee determines that the application has been fully and accurately completed, the permit application fee has been paid, and that the applicant has satisfied each requirement of this ordinance. If not, the chief of police, or his designee, may deny the permit.

B. A commercial home solicitation, commercial home distribution, or itinerant vendor permit may be revoked if the chief of police so determines that reasonable cause exists to believe that:

1. A statement of fact contained in the application was false or materially misleading;

2. The permit holder has failed to comply with any of the provisions of this ordinance;

3. Any of the conditions of this ordinance is, or has become applicable, to the permit holder; or

4. 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.

C. 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.

D. The permit holder may appeal the denial or revocation of a permit to the chief of police by filing a written notice of appeal with the chief of police within ten (10) business days of delivery of notice of the denial or revocation. The chief of police shall

render a decision on the appeal within five (5) business days of the date of the receipt of the appeal. The decision of the chief of police shall be final. A revocation shall remain in effect for a period of one (1) year, during which time the permit holder may not be issued another commercial home solicitation, commercial home distribution, or itinerant vendor permit.

XII. EXEMPTIONS TO PERMITTING REQUIREMENTS

A. 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. Anonymous political speech;

3. Charitable purpose;

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.

XIII. MISCELLANEOUS OCCASIONAL SALES OF NONFOOD ITEMS IN RESIDENTIAL ZONES

Occasional sales, whether classified as garage sales, yard sales, or any other display for sale of any other item not classified in this article in a noncommercial zoned district, such as personal items; trucks, automobiles,

or tractors registered to a person residing on the premises; used household items or furniture; or any other item not grown, harvested, manufactured, processed, created, gathered, or otherwise produced on the premises, shall be permitted for not more than ten days per year, per premises. No signs shall be erected on property other than the location where the products are sold, or services are conducted.

XIV. SALES ON PUBLIC RIGHT-OF-WAY PROHIBITED

No person may display products for sale or conduct the sale of products anywhere within the public right-of-way. (Ord. No. 0-95-1014, § 3, 1-2-96)

XV. TENTS AND TEMPORARY STRUCTURES

The erection of a tent or other temporary structure as a shelter for outdoor display and sales of food products shall meet the following requirements:

(1) No tent or other temporary structure shall be erected within 20 feet of any property line, building, or other tent.

(2) No tent or other temporary structure shall be erected in any fire lane, dedicated access road, right-of-way, or dedicated easement.

(3) All tents and their appurtenances shall be securely roped, braced, and anchored to withstand the elements of weather against collapse.

(4) All sections or parts of all tents shall be of flame-retardant material. This shall include all floor coverings, bunting, decorations, side wall coverings, and other effects.

(5) Smoking shall not be permitted, and no smoking signs shall be posted at all entrance doors and where deemed necessary by the fire marshal.

(6) No fireworks, open flame, nor any device emitting flame, or fire, or creating a glow, shall be permitted, or used.

(7) Balloons or other similar devices that are filled with toxic, explosive, or flammable gases shall not be permitted in, or adjacent to, any tent or other temporary structure.

(8) All exits shall be in accordance with, and comply with, the International Fire Code, as adopted by the City Council.

(9) All exit signs shall be in accordance with, and comply with, the International Fire Code, as adopted by the City Council.

(10) Exit illumination shall be in accordance with, and comply with, the International Fire Code, as adopted by the City Council.

(11) All weeds, grass, vegetation, or other flammable materials shall be removed and not located within 30 feet of any tent, temporary structure, or their appurtenances.

(12) Fire extinguishers shall be installed in accordance with, and comply with, the International Fire Code, as adopted by the City Council.

XVI. OUTDOOR DISPLAY AND SALES OF HOMEGROWN PRODUCE IN RESIDENTIAL DISTRICTS

The display and sale to the general public of fruits, vegetables, and other homegrown produce from private residences in noncommercial zoned districts may be conducted during the normal growing and harvesting season under the following restrictions:

(1) A temporary sign advertising the products sold may be erected on the premises, in accordance with the sign code.

(2) Homegrown or home-produced food products may consist of, but are not limited to, peaches, pears, apples, nuts, berries, eggs, tomatoes, beans, peas, grapes, or products processed on the premises from food items such as jams, jellies, preserves, candies, pies, juices, or any other edible food product.

(3) Where fruits, vegetables, and other food items are to be displayed and sold for more than nine months per year, a special use permit shall be required in every zoning district.

XVII. PENALTIES

A. 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 (1) 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;

B. 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.

1. 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.