

ORDINANCE NO. 0-2010-126

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE III, "HOME SOLICITATION", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, RELATING TO HOME SOLICITATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be

expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

WHEREAS, the Tyler City Council has adopted reasonable time, place and manner regulations on solicitation and distribution of handbills on residential premises in Tyler City Code Chapter 4; and

WHEREAS, it is important to amend and update existing sections of the Home Solicitation provisions in Tyler City Code Chapter 4;

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

PART 1: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article III., "Home Solicitation", is hereby amended by adding the following definition to Section 4-60 in the appropriate alphabetical order:

Sunset means the time of day identified by the National Weather Service as the time for sunset for that day for the City of Tyler. (Ord. No. 0-2010-126; 12/8/10)

PART 2: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article III, "Home Solicitation", is hereby amended by amending Section 4-61 to read as follows:

Sec. 4-61. Solicitations permitted only during certain hours; prohibited if notice provided by occupants

a. No person shall go upon any residential premises and ring the doorbell, rap or knock upon the door, or create any sound in a manner calculated to attract the attention of the

occupant of the residence for the purpose of engaging in or attempting to engage in a charitable solicitation or home solicitation transaction, prior to 10:00 a.m. or after sunset of any day Monday through Saturday, or at any time on a Sunday or New Year's Day, Fourth of July, Memorial Day (observed), Labor Day (observed), Thanksgiving, or Christmas Day.

b. It is unlawful for any person to go upon any residential premises and ring the doorbell, rap or knock upon the door, or create any sound in a manner calculated to attract the attention of the occupant of the residence, for the purpose of a charitable solicitation or a home solicitation transaction, if there is placed on such premises in a conspicuous place upon or near the main entrance to the residence or main entrance to a residential gated community, apartment complex or other residential living facility, a sign indicating in any manner the occupants' desire not to have their privacy disturbed or otherwise prohibiting solicitation, peddling or trespassing. Distribution of handbills on residential premises is governed by Section 4-91.

c. This section shall not apply to a visit to the premises as a result of a request by the occupant.

d. This section shall not apply to deliveries made by the U.S. Postal Service or by private mail delivery businesses. (Ord. 0-97-71; 12/17/97) (Ord. No. 0-2010-126; 12/8/10)

PART 3: That Tyler City Code Chapter 4, "Offenses and Miscellaneous Provisions", Article VI, "Miscellaneous Offenses", is hereby amended by amending Section 4-91 to read as follows:

Sec 4-91. Certain handbill distribution prohibited.

a. No changes...

b. No changes...

c. No changes...

d. No changes...

e. It is unlawful to throw, place, or distribute any commercial or noncommercial handbill in or upon private premises which are inhabited except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present or by placing or depositing the handbill so as to secure or prevent such handbill from being blown or carried about by the elements. No person shall go upon any residential premises and ring the doorbell, rap or knock upon the door, or create any sound in a manner calculated to attract the attention of the occupant of the residence for the purpose of distributing a handbill, prior to 10:00 a.m. or after sunset of any day Monday through Saturday, or any time on a Sunday or New Year's Day, Fourth of July, Memorial Day (observed), Labor Day (observed), Thanksgiving, or Christmas Day. Home solicitations are governed by Section 4-61. (Ord. No. 0-2010-126; 12/8/10)

f. No changes...

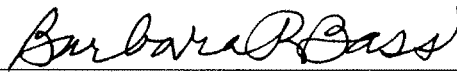
g. No changes...

(Ord. 0-98-27, 3/25/98) (Ord. No. 0-98-52, 6/24/98)

PART 4: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 5: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be December 10, 2010.

PASSED AND APPROVED this 8th day of December, A. D., 2010.



BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK

APPROVED:



GARY C. LANDERS, CITY ATTORNEY

