

ORDINANCE NO. 236

AN ORDINANCE REPEALING ORDINANCES NO. 141 AND 141A; RECOGNIZING AND PROVIDING FOR NON-COMMERCIAL AND CERTAIN COMMERCIAL SOLICITATIONS WITHIN THE TOWN OF ENCHANTED OAKS, TEXAS; PROVIDING A REPEALER AND SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE UNDER WHICH VIOLATIONS OF THE ORDINANCE CONSTITUTE A CLASS C MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED \$500 OR AN AMOUNT OTHERWISE ESTABLISHED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ENCHANTED OAKS, TEXAS:

Section 1

FINDINGS

The Town Council of the Town of Enchanted Oaks, Texas makes the following findings regarding the following ordinance.

(1) The Town has a compelling interest in protecting the peace, repose, and safety of the citizens of Enchanted Oaks.

(2) Those who desire to solicit door-to-door have a recognized Constitutional right to do so, subject to reasonable, content-neutral regulations as to time, place, and manner.

(3) Courts have long recognized that ordinances providing for the reasonable regulation of home solicitations, including the posting of "no-solicitation" notices by residents who do not wish to engage door-to-door solicitors are a valid means of balancing the interests of citizens in the peace, repose, and safety that they reasonably expect in their homes with the rights of persons who desire to engage in home solicitations.

(4) For similar reasons, the courts have recognized the ability of the federal government and the states to provide for "Do Not Call" lists.

(5) The Town has a compelling interest in protecting the privacy of its residents when they so desire from unwelcome intrusions.

(6) Door-to-door solicitations and distributions provide a unique cover for those who want to survey residences in a close manner for the purpose of engaging in crime.

(7) The Town Council finds that the Town's limited police resources and crime prevention efforts will be less effective

without the provisions of this ordinance.

Section 2

HOME SOLICITATIONS

Sec.1.01 Definitions

As used in this ordinance:

(1) Charitable purpose means philanthropic, religious or other nonprofit objectives, including the benefit of the 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.

(2) Commercial home distribution means the door-to-door distribution of advertisements (other than through the United States mail) that does not or is not designed or intended to involve an in-person solicitation.

(3) Commercial home solicitation means a solicitation at a residence for the purpose of selling or offering to sell goods, services or realty through an in-person communication.

(4) Do Not Solicit List is a list, developed and maintained by the City Secretary or a designee appointed by the Mayor, of residences at which the property owner or occupant has indicated that they do not wish to receive home solicitations.

(5) Home solicitation means a commercial home solicitation or a noncommercial home solicitation.

(6) Noncommercial home solicitation means the dissemination of, or a request for, information in-person or a distribution of written material whether or not in-person (other than through the United States mail) that is not primarily concerned with the characteristics or costs of goods, services or realty or that involves only the incidental, noncommercial sale of goods or services for political or charitable purposes.

(7) Residence means any separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Sec. 1.02 Permit required for commercial home solicitations

(A) No person shall engage in a commercial home solicitation without having a valid, current written permit issued under the provisions of this ordinance by the Chief of Police. A permit is not required for a noncommercial home solicitation.

(B) A person desiring to make a commercial home solicitation within the Town shall make written application to the Chief of

Police, on a form provided by the Chief of Police, for a permit. The application shall include the following information:

- (1) The name, date of birth, physical address, and (if available) the email address of the person(s) applying;
- (2) The dates within which commercial home solicitations will be made, including the proposed beginning date and the projected date of conclusion, and an estimate of how often the applicant will solicit during the period;
- (3) A description of the methods and means by which the commercial home solicitations will be accomplished;
- (4) A description of the goods or services or other product to be sold or offered for sale;
- (5) If the applicant is under 16 years of age, 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 pursuant to section 1.05(C) of this ordinance; and
- (6) A statement whether the applicant has ever been:
 - (a) Convicted of or pleaded nolo contendere to any felony or to a misdemeanor involving fraud, theft, embezzlement, burglary, fraudulent conversion, or misappropriation of property within the preceding ten years;
 - (b) 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;
 - (c) Found liable under any law regarding the use of unfair, unlawful, or deceptive business practices; or
 - (d) 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.

(C) The application must be signed by the applicant and shall be accompanied by a nonrefundable permit fee of \$20.00 to compensate the Town for the cost of administering this ordinance. The applicant shall attach to the application a recent passport size photographic likeness of the applicant.

(D) After review of the permit application and within ten working days of the receipt of the application, the Chief of Police 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.

(E) It shall be unlawful for any person to file an application for a commercial home solicitation permit that contains any false statement of fact.

(F) It shall be unlawful for any person to engage in a commercial home solicitation 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.

(G) Unless sooner revoked under the provisions of this ordinance, a commercial home solicitation permit shall be valid only until the termination of the solicitation period specified in the permit or one year from the date of issuance, whichever is less.

Sec. 1.03 Commercial home solicitation permit; issuance, denial, and revocation

(A) The Chief of Police shall issue the applicant a commercial home solicitation permit if the Chief of Police determines that the application has been fully and accurately completed, the permit application fee has been paid, and the applicant has answered in the negative to each of the statements required by section 1.02(B)(6); if not, the Chief of Police may deny the permit.

(B) The Chief of Police may revoke a commercial home solicitation permit if the Chief of Police 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 section 1.02(B)(6) is or has become applicable to the permit holder;

(4) The permit holder has engaged in a commercial home solicitation that involves the use of false, misleading, fraudulent, or deceptive acts; or

(5) The permit holder has engaged in a home solicitation at an address included on the Do Not Solicit List.

(C) The Chief of Police shall provide notice of the revocation by certified mail, personal service, by email to the email address provided by the applicant or by courier-receipted commercial delivery sent to the address provided on the permit holder's application. The permit holder may appeal the denial or revocation of a permit to the Mayor or a designated representative of the Mayor by filing a written notice of appeal with the Chief of Police within ten days of delivery of notice

of the denial or revocation. The Mayor (or the designated representative) shall render a decision on the appeal within five days of the date of the hearing. The decision of the Mayor or the designated representative shall be final. A revocation shall remain in effect for a period of 18 months, during which time the permit holder may not be issued another commercial home solicitation permit.

Sec. 1.04 Commercial home distributions; registration, denial, and revocation

(A) No person shall engage in a commercial home distribution without first having registered with the Chief of Police.

(B) A person desiring to make a commercial home distribution within the Town shall make application to the Chief of Police for a registration on a form provided by the Chief of Police. The registration application shall include the following information:

(1) The name, date of birth, and address of the person applying for the registration and, in the case of a group registration as provided by subsection 1.04(C), the names of each person who will be engaging in commercial home distributions under the group registration;

(2) If the registrant or a person to be included in a group registration is under 16 years of age, 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 registrant pursuant to section 1.05(C) of this ordinance; and

(3) A statement whether the person or persons being registered is or are qualified to obtain a registration under section 1.05(F) of this ordinance.

The application must be signed by the applicant and shall be accompanied by a nonrefundable permit fee of \$20.00 to compensate the Town for the cost of administering this ordinance. The applicant shall attach to the application a recent passport size photographic likeness of the applicant.

(C) A person may apply for a group registration applicable to two or more persons who desire to engage in commercial home distributions. The registration application shall contain all of the information required by subsection 1.04(B) 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 nonrefundable registration fee of \$15.00 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 registration fee shall be \$10.00 per person. The applicant for a group registration shall provide

each person distributing under the applicant's registration an identification badge which shall be worn and displayed while the person is engaging in a commercial home distribution.

(D) After review of the registration application and within ten working days of the receipt of the application, the Chief of Police shall either register the applicant on a registry to be maintained by the Chief of Police and issue to the registrant a certificate of registration 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. If the applicant is applying for a group registration, the Chief of Police shall promptly issue the registration certificate if the application is complete and the application contains a verification signed under oath by the responsible applicant.

(E) It shall be unlawful for any person to file an application for a commercial home distribution registration that contains any false statement of fact.

(F) Except for a person engaging in a commercial home distribution under a group registration pursuant to subsection 1.04(C), it shall be unlawful for any person to engage in a commercial home distribution without carrying the registration certificate issued by the Chief of Police on his or her person while so engaged or to display a registration certificate issued in the name of another person.

(G) Unless sooner revoked under the provisions of this ordinance, a commercial home distribution registration shall be valid for one year from the date of issuance.

(H) The Chief of Police may revoke a commercial home distribution registration if the Chief of Police determines that reasonable cause exists to believe that:

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

(2) The registrant has failed to comply with any of the provisions of this ordinance; or

(3) Three or more cumulative violations of any of the provisions of this ordinance have been committed by a person distributing under a registrant's group registration. The violations must have occurred in a consecutive period of 12 months, and the registrant:

(a) Knowingly allowed such violations to occur;

(b) Did not make a reasonable effort to prevent the occurrence of such violations; or

(c) Should have known that such violations were occurring or did occur.

The Chief of Police shall provide notice of the revocation by

certified mail, personal service, by email to the email address provided by the applicant or by or courier-receipted commercial delivery sent to the address provided on the registrant's application. The registrant may appeal the denial or revocation of a registration certificate to the Mayor or a designated representative of the Mayor by filing a written notice of appeal with the Chief of Police within ten days of receipt of notice of the denial or revocation. The Mayor (or the designated representative) shall render a decision on the appeal within five days of the date of the hearing. The decision of the Mayor or the designated representative shall be final. A revocation shall remain in effect for a period of 18 months, during which time the registrant may not be issued another commercial home solicitation registration.

Sec. 1.05 Provisions generally applicable to all home solicitations and commercial home distributions

(A) A person who desires to prohibit all home solicitations (including commercial home solicitations, noncommercial home solicitations, and commercial home distributions) at the person's residence may, either or both:

(1) exhibit in a conspicuous place upon or near the main entrance to the residence a weatherproof card, not less than three inches by four inches (3" x 4") in size, containing the words "No Solicitors", "No Solicitation", "Do Not Solicit", "No Trespassing" or "No Solicitations" in letters of not less than two-thirds of an inch (2/3") in height; or

(2) register on the Do Not Solicit List.

(B) Unless an occupant of the residence expressly requests the home solicitation or commercial home distribution in advance, it shall be unlawful to engage in a home solicitation or commercial home distribution at a residence if the residence displays a notice posted in accordance with subsection (A)(1) or the property owner or an occupant has registered on the "Do Not Solicit" list described in subsection (A)(2).

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

(D) It shall be unlawful for any person to engage in a home solicitation or commercial home distribution at an unreasonable time. For home solicitations, a time is presumptively unreasonable if it occurs more than thirty minutes before sunrise and more than thirty minutes before sunset. For

commercial home distributions, a time is presumptively unreasonable if it occurs before 7:00 a.m. or after 7:00 p.m. The presumption may be rebutted by showing that a reasonable person would not, considering the circumstances then presented, be on notice that a home solicitation or commercial home distribution would unduly disturb an occupant of the residence.

(E) If the person to whom a home solicitation is made expresses a clear and affirmative unwillingness to listen, the person or persons presenting the home solicitation shall immediately end the home solicitation and promptly depart from the residence.

(F) Notwithstanding any other provision of this ordinance, the following persons shall be ineligible for a permit or registration under this ordinance:

(1) A registered sex offender;

(2) A person who has been convicted of or pleaded nolo contendere to the offense of burglary of a residence within the past five years;

(3) A person who has been convicted of or pleaded nolo contendere to the offense of theft, criminal trespass or criminal mischief within the past two years.

(G) No person shall leave any unsolicited circular, unsolicited newspaper, unsolicited pamphlet, unsolicited brochure, unsolicited flyer, unsolicited package, unsolicited printed advertisement or other unsolicited printed material at a residence at a place further than five feet from the front door of the residence or at any residence at which home solicitation or home distribution is prohibited under subsection (B).

(H) The Town Secretary, or another person designated by the Mayor, shall develop and maintain a Do Not Solicit List. A 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 Town Secretary. 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 his or her behalf and on behalf of all other occupants at that address. The Do Not Solicit List shall be made readily available without charge to any person upon request.

(I) The provisions of this section do not apply to anything lawfully delivered through the United States mail.

Section 3

That Ordinance Nos. 141 and 141A, as well as the provision of any previous ordinance in conflict with this Ordinance are hereby repealed; all other ordinances shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 4

That the terms and provisions of this Ordinance are severable.

Section 5

That a violation of any provision of this Ordinance shall be a misdemeanor punishable by a fine not exceeding five hundred dollars provided that, if the laws of this state mandate a different penalty for the same or similar offense, then the laws of this state shall control.

Section 6

That this Ordinance shall be and become effective immediately upon and after its passage and approval.


PASSED AND APPROVED this the 8 day of November, 2022.]

TOWN OF ENCHANTED OAKS, TEXAS



Mayor

ATTEST:



City Secretary

PUBLISHED: 11-10-2022