

**ORDINANCE NO. 2011-01**

AN ORDINANCE AMENDING CHAPTER 54, PEDDLERS AND SOLICITORS, OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY PROVIDING EXCEPTIONS TO THE REGULATIONS ESTABLISHED IN CHAPTER 54; BY PROVIDING REGULATIONS AND CRIMINAL VIOLATIONS RELATED TO ANY PEDDLER WHO REFUSES TO LEAVE A PREMISES UPON NOTIFICATION TO LEAVE OR NOT TO ENTER SUCH PREMISES; BY PROVIDING FOR HOURS OF OPERATION; BY PROHIBITING MISREPRESENTATIONS BY PEDDLERS; BY PROVIDING REGULATIONS RELATED TO THE RESPONSIBILITY OF OWNERS, TENANTS AND LESSEES WHO ALLOW PEDDLERS TO UTILIZE THEIR PROPERTY; BY PROVIDING FOR COMPLIANCE WITH THE HOME SOLICITATION SALES ACT; BY PROVIDING FOR REGULATIONS RELATED TO STRUCTURES ERECTED OR MAINTAINED BY PEDDLERS; BY PROVIDING INFORMATION REQUIRED TO OBTAIN A PERMIT; BY PROVIDING APPLICATION AND PERMIT FEES; BY PROVIDING REGULATIONS RELATED TO THE APPROVAL, DENIAL, ISSUANCE AND APPEAL OF A PERMIT; BY PROVIDING CERTAIN LIMITATIONS AND PROHIBITING THE ASSIGNABILITY OF PERMITS; BY PROVIDING FOR THE REQUIRED CONTENTS OF A PERMIT; BY PROVIDING FOR THE DURATION AND RENEWAL OF A PERMIT; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$500 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR PUBLICATION; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Subsection (4) of Section 54-2 and substituting a new Subsection (4) and adding a new Subsection (5), to read as follows:

**“Sec. 54-2. Exceptions to chapter.**

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- (4) Noncommercial solicitations, sales or distributions for purposes of fundraising or generating profits by religious or charitable organizations, political organizations, conservation organizations, Tomball civic organizations, or other educational organizations, which have their principal place of activity within this city.

- (5) Minors conducting fundraising activities, who represent an organization for the benefit of youths, including but not limited to Boy Scouts, Girl Scouts, Little League groups, and Tomball school groups.”

**Section 2.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-3 and substituting a new Section 54-3, to read as follows:

**“Sec. 54-3. Refusing to leave.**

Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, or any peddler who enters upon property posted with a “No Peddlers Allowed,” “No Solicitations Allowed,” or other similar type posted sign, shall be deemed guilty of criminal trespass and/or attempted criminal trespass and may be punished as provided in V.T.C.A., Penal Code §§ 15.01, 30.05.”

**Section 3.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-6 and substituting a new Section 54-6, to read as follows:

**“Sec. 54-6. Hours of operation.**

(a) It shall be unlawful for any peddler engaged in the business of peddling within the city, 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 prior to 9:00 a.m. or after 8:00 p.m. of any day Monday through Friday, or prior to 10:00 a.m. or after 8:00 p.m. on Saturday, Sunday, or any Federal, State or City of Tomball holiday, except by specific appointment with or invitation from the prospective customer.”

**Section 4.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-8 and substituting a new Section 54-8, to read as follows:

**“Sec. 54-8. Misrepresentation.**

(a) It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

(b) If, after a permit has been issued, the City determines that such permit was obtained by false representation in the application or the permit holder has committed any act or practice that violates Subchapter E of Chapter 17 of the Texas Business and Commerce Code, otherwise known as the Texas Deceptive Trade Practices-Consumer Protection Act, or any crime or misdemeanor involving moral turpitude, or any violation of this Chapter or any other City

Ordinance, or any other state or federal law, during the term of the permit, the permit shall be revoked by the Chief of Police.”

**Section 5.** The Code of Ordinances of the City of Tomball is hereby amended by adding a new Section 54-9, to read as follows:

**“Sec. 54-9. Responsibility of owners, tenants and lessees allowing peddlers to utilize property.**

Any property owner, tenant, or lessee who allows a peddler to utilize their private property shall be responsible, along with the peddler, for compliance with the adopted Zoning Ordinance of the City of Tomball. Approval by the Zoning Administrator must be obtained before a permit may be issued.”

**Section 6.** The Code of Ordinances of the City of Tomball is hereby amended by adding a new Section 54-10, to read as follows:

**“Sec. 54-10. Compliance with the Home Solicitation Sales Act.**

A peddler shall comply with the requirements of the Home Solicitation Sales Act provided for in Chapter 601 of the Texas Business and Commerce Code. In addition to any other rights or remedies available, a consumer may cancel a consumer transaction not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase. A peddler must provide a consumer notice and a complete cancellation form, as provided for in Sections 601.052 and 601.053 of the Texas Business and Commerce Code, at the time a consumer signs an agreement.”

**Section 7.** The Code of Ordinances of the City of Tomball is hereby amended by adding a new Section 54-11, to read as follows:

**“Sec. 54-11. Structures erected or maintained by peddlers.**

It shall be unlawful for any peddler to erect or maintain any permanent or temporary structure without complying with the applicable Building Codes, Zoning Regulations, and other applicable City Codes.”

**Section 8.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Subsection (12) of Section 54-31 and substituting a new Subsection (12) and adding a new Subsection (13), to read as follows:

**“Sec. 54-31. Required.**

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- (12) Facts showing explicitly that the registrant is engaged in interstate commerce and an affidavit signed by an officer of the corporation, attesting that the registrant is a bona fide representative or employee of the corporation;
- (13) The limited sales tax permit number issued by the State Comptroller of Public Accounts, if any.”

**Section 9.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-37 and substituting a new Section 54-37, to read as follows:

**“Sec. 54-37. Application and permit fee.**

Before an application will be considered or any permit shall be issued under the provisions of this article, the applicant shall pay a fee, based upon the duration he desires to engage in business in the city, as follows:

Minimum Application Fees:

- (1) Per day \$ 10.00
- (2) Per week \$ 25.00
- (3) Per month \$ 50.00
- (4) Per three months \$100.00
- (5) Per six months \$150.00”

**Section 10.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-39 and substituting a new Section 54-39, to read as follows:

**“Sec. 54-39. Approval, denial, issuance, and appeal.**

(a) No permit or license shall be issued under the provisions of this article until the applicant shall have complied with all the provisions and requirements of this chapter. A permit will not be issued until a background check has been completed on the individual.

(b) The Chief of Police shall cause such investigation of the applicant as he deems necessary for the protection of the public generally, no later than five (5) business days after receipt of the application from the City Secretary’s office. If, as a result of such investigation, the applicant’s character or business responsibility is found to be unsatisfactory, the Chief of Police shall enter the reasons for his denial on the application and return it to the City Secretary. If, as a result of such investigation, the applicant’s character and business responsibility are found to be satisfactory, the Chief of Police shall approve the application and return it to the City Secretary.

(c) Any applicant denied a permit may appeal the denial by filing, within five (5) business days of the denial, a written notice of appeal to the City Manager and, if denial is upheld by the City Manager, the applicant may appeal to the City Council by filing, within five (5) business days of the denial, a written notice of appeal to the City Secretary for placement on the next City Council agenda. The decision of the City Council shall be final.”

**Section 11.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-40 and substituting a new Section 54-40, to read as follows:

**“Sec. 54-40. Limitation.**

No peddler's permit or license shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit or license whether acting for himself or as an agent or representative of another. Permits are not assignable and may not be transferred to another individual.”

**Section 12.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-41 and substituting a new Section 54-41, to read as follows:

**“Sec. 54-41. Contents of permit.**

Each permit or license issued under the provisions of this article shall be signed by the city secretary; shall be dated as of the date of its issuance; and shall state the duration or term of such permit or license on the face thereof. Any permit or license not dated and signed as herein provided, or which was issued in violation of this section, shall be void. A permit, when issued, must contain a photo of the individual permit holder.”

**Section 13.** The Code of Ordinances of the City of Tomball is hereby amended by deleting Section 54-43 and substituting a new Section 54-43, to read as follows:

**“Sec. 54-43. Duration and renewal.**

Every permit or license issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit or license be issued for a period of time in excess of six (6) months. A peddler shall only be allowed one renewal of a permit in any given twelve (12) month period from the date of issuance of the permit.”

**Section 14.** All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 15.** It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Section 16.** Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$500.00) dollars for each offense.

**Section 17.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's home rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7<sup>TH</sup> DAY OF MARCH 2011.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21<sup>ST</sup> DAY OF MARCH 2011.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

Gretchen Fagan  
Gretchen Fagan, Mayor

ATTEST:

Doris Speer  
Doris Speer, City Secretary