ORDINANCE NO. 372

AN ORDINANCE OF THE CITY OF TIOGA, GRAYSON COUNTY TEXAS, REPEALING ORDINANCE NUMBER 353; REQUIRING A PEDDLER, SOLICITOR OR ITINERANT VENDOR, TO OBTAIN A PERMIT, SETTING A FEE FOR THE PERMIT; ALLOWING THE REVOCATION OF PERMITS; SETTING HOURS WHEN PEDDLING IS PROHIBITED; PROVIDING FOR EXEMPTIONS; ESTABLISHING A PENALTY FOR VIOLATION OF THE CONDITIONS OF THIS ORDINANCE; AND DECLARING AN EMERGENCY .

WHEREAS, many citizens of this community expect their local government to assist them is preserving their privacy and avoiding petty annoyances that disrupt their quiet enjoyment of their homes, and

WHEREAS, other persons often desire to interrupt the quiet enjoyment on one's home to solicit donations for causes believed to be worthy of support, or for canvass for support for particular religious, ideological, or political causes or for prompting commerce, and

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference, and

WHEREAS, the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved, and

WHEREAS, it is the responsibility of all units of government to balance these competing interests in a manner consistent with the Constitution of the United States and of Texas, while attempting to minimize fraud, prevent crimes, and protect the privacy of our citizens.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS, AS FOLLOWS:

Section 1. Definitions.

A. "Peddler" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service.
B. "Solicitor" is a person who attempts to make personal contact with a resident at his/her residence, for the primary purpose of (1) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service, or (2) distributing a handbill or flyer advertising a commercial event or service.

C. "Itinerant Vendor" is a 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. A temporary business is one that continues for forty-five days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding.

Section 2. Exceptions.

This ordinance shall not apply to:

A. A federal, state, or local government employee or a public utility employees in the performance of his/her duty for his/her employer.
B. Insurance salespersons, real estate salespersons, and other professionals licensed by the state, except that insurance salespersons shall personally solicit only at the specific request of the owner or occupant of the business or residence at which the solicitation is being made.
C. Schools, Churches, Girl Scouts, Boy Scouts and other such organizations distributing information for the purpose of communicating issues of interest to the public.
D. Persons making regular delivery of newspapers or other items which have been subscribed to by the person receiving these items.

Section 2. Permit Required.

It shall be unlawful for any person, partnership, firm, or corporation to peddle, sell, solicit, exhibit, or take orders or offer to take orders for any goods, wares, merchandise, foodstuffs, services, and subscriptions to magazines or publications without first having obtained a permit to do so from the City Secretary.

Section 3. Permit Fees.

A. Each applicant for a permit under this ordinance shall be charged a permit fee of $25.00 for the first day and $5.00 for each additional day for the term of the permit. All fees shall be paid by the person desiring such permit and are payable at the time of application. The fee shall not be prorated nor refunded regardless of whether a permit is issued.
B. No fee shall be charged to any bona fide charitable, religious, educational, or philanthropic organization.

Section 4. Application for permit.

A. Any person desiring to obtain a permit as required by this ordinance shall make written application to the City Secretary. The permit shall be issued promptly after application but in all cases within twenty-four business hours of completion of an application, unless if it is determined within that time that:
   1. The applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years,

2. With respect to a particular license, the individual for whom a card is requested has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven years, or
3. Any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

B. The application shall show at least the following:
1. Full legal name and home address of applicant.
2. The applicant's home and business telephone number.
3. Date and place of birth for applicant.
4. Physical description and photograph of applicant. In lieu of this information, a driver's license, state identification card, passport, or other government-issued identification card (issued by a government within the United States) containing this information may be provided and a photocopy taken.
5. A list of all infractions, offenses, misdemeanors, and felony convictions for the seven years immediately prior to the application.
6. Year motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used.
7. Whether the person represents a partnership, corporation or association and all members of the partnership, corporation, or association.
8. The name and address of the person or firm the applicant represents.
9. The product or service offered or to be offered for sale.

Section 5. Revocation of permit.

After such permit has been issued and the municipality finds that the permit was obtained by false representation in the application or that the permit holder has committed any act or practice that violates Tex. Business & Commerce Code § 17.46 et seq., otherwise known as the Texas Deceptive Trade Practice Act, or has committed any crime or misdemeanor involving moral turpitude or any violation of this ordinance or any other municipal ordinance or state or federal law, the municipality may revoke such permit by giving written notice to the holder and holding a hearing. Such notice shall be given by depositing same in the United States mail, certified or registered mail return receipt requested, addressed to the permittee at the address stated on the license application. Such hearing shall be held not less than ten days after the service of such notice.

Section 6. Validity of permit.

A permit shall be valid within the meaning of this ordinance beginning from the day of issuance through the term requested, unless revoked.

Section 7. General prohibitions.

No peddler or solicitor shall:

A. Enter upon any private property where the property has clearly posted in the front yard a sign visible from the right of way indicating a prohibition against peddling or soliciting.
B. Remain upon any private property where a notice in the form of a sign or sticker which contains the words "no solicitors" is placed upon any door or entrance way leading into the residence or dwelling at which guests would normally enter.
C. Enter upon the property of another except between the hours of 8:00 a.m. and 9:00 p.m.
D. Refuse to leave any private property when asked to do so.

Section 8. Violation.

Any person violating any part of this ordnance or failing to observe any provision of this article shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00) Every day the violation continues shall be deemed as a separate offense.

Section 9. Severability.

If any Section or part of any Section or paragraph of the Ordinance is declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other Section or Sections or part of a Section or paragraph of this Ordinance.

Section 10. Declaration of Emergency.

The City Council having determined that there is an immediate need for the public welfare, the maintaining of the law and order of Tioga, Texas, that an emergency exists and that this Ordinance shall be in full force and effect upon passage.

Passed and approved this the 10th day of September, 2018.

Craig Jezek, Mayor
City of Tioga, Texas

Attest:

Donna Carney, City Secretary