

ORDINANCE NO. 2016-002

AN ORDINANCE AMENDING TITLE XI (BUSINESS REGULATIONS) OF THE CITY OF WIMBERLEY'S CODE OF ORDINANCES TO ADD A NEW CHAPTER 114, PROVIDING HOURS FOR DOOR-TO-DOOR SALES AND "NO SOLICITING" PROPERTIES; AND PROVIDING FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Wimberley, Texas (the "City") seeks to promote the public health, safety, morals, and general welfare of its citizens; and

WHEREAS, the City Council finds that the provisions of this ordinance will promote the public health, safety, morals, and general welfare; and

WHEREAS, the City Council finds that the operation of peddlers and solicitors within the City of Wimberley, except as provided by this ordinance, creates a public nuisance; and

WHEREAS, the City is authorized by virtue of sections 215.031 and 217.042 of the Texas Local Government Code to define and prohibit nuisances;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, HAYS COUNTY, TEXAS

**SECTION I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**SECTION II. AMENDMENTS**

Title XI (Business Regulations), is hereby amended to create a new Chapter 114 as follows:

**"CHAPTER 114: DOOR-TO-DOOR SOLICITATION**

**§ 114.01 HOURS FOR DOOR-TO-DOOR SALES AND 'NO SOLICITING' PROPERTIES.**

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 6:00 p.m. of any day Monday through Friday, or prior to 10:00 a.m. or

after 6:00 p.m. on Saturday, on Sunday, or on any federal, state, or city holiday, except by specific appointment with or invitation from the prospective customer.

B. Exclusion by residents. Any resident of the city who wishes to exclude peddlers, solicitors, or handbillers from premises occupied by him may place upon or near the usual entrance to such premises or in another conspicuous place on the property a printed placard or sign bearing the following notice: "Peddlers and solicitors prohibited." Such placard shall be at least 3 3/4 inches long and 3 3/4 inches wide and the printing thereon shall not be smaller than 48-point type. No peddler, solicitor, or handbill distributor shall enter in or upon any premises, or attempt to enter in or upon any premises, where placard or sign is placed and maintained. No person other than the person occupying such premises shall remove, injure, or deface such placard or sign.

C. Exclusion by subdivision. A homeowners association, property owners' association, tenants' association, or similar organization that is duly authorized to represent its members may elect to exclude peddlers, solicitors, or handbillers from premises within the geographical boundaries of the subdivision or other area that the association is authorized to represent. The association must adopt a resolution of its board of directors designating the subdivision as a no solicitation area and must file a certified copy of the resolution with the City Secretary. The association shall then place a printed sign at the entrance(s) to the subdivision that bears the following notice: "Peddlers and solicitors prohibited." The sign must be large enough to be visible and legible from inside a vehicle entering the subdivision while the vehicle is in motion but must otherwise comply with all requirements of the City's sign regulations. No peddler, solicitor, or handbill distributor shall enter in or upon any premises, or attempt to enter in or upon any premises, within a subdivision where such a sign is placed and maintained. No person other than the duly authorized representative of the association shall remove, injure, or deface such placard or sign. The City will maintain a list of no solicitation areas created under this subsection and may provide the list to members of the public and post it on the City's Internet website.

D. For purposes of this section, "peddler" is defined to mean any individual, whether a resident of this city or not, traveling by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house, or from street to street, for the sale of, as well as the selling, offering for sale, or taking or attempting to take orders for the sale of goods, wares, and merchandise, personal property of any nature whatsoever for future or immediate delivery, or for services to be performed immediately or in the future, whether or not such individual had, carries, or exposes for sale a sample of the subject of such sale or not or whether he is collecting advance payments on such sales or not. The word "peddler" shall not include individuals traveling to businesses, houses, or other property at the invitation of the tenant, resident or owner."

### SECTION III. SAVINGS

The repeal of any ordinance or part of ordinances effectuated by the enactment of this Chapter shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue,

or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this Chapter.

#### SECTION IV. SEVERABILITY

Should any sentence, paragraph, subdivision, clause, phrase, or section of this Chapter be adjusted or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Chapter in whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

#### SECTION V. REPEALER

The provisions of this Chapter shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Chapter are hereby expressly repealed to the extent that such inconsistency is apparent. This Chapter shall not be construed to require or allow any act that is prohibited by any other ordinance.

#### SECTION VI. EFFECTIVE DATE

This Chapter shall take effect immediately from and after its passage and publication as may be required by law.

#### SECTION VII. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Chapter was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**FIRST READING OF ORDINANCE PASSED AND APPROVED** this 7<sup>th</sup> day of January, 2016, by 5 (Ayes) to 0 (Nays) 0 (Abstain) of the City Council of the City of Wimberley, Texas.

**SECOND AND FINAL READING OF ORDINANCE PASSED AND APPROVED** this 21<sup>st</sup> day of January, 2016, by 5 (Ayes) to 0 (Nays) 0 (Abstain) of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

  
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Steve Thurber, Mayor

**ATTEST:**

Cara McPartland  
Cara McPartland, City Secretary

**APPROVED AS TO FORM:**

Catherine Fryer  
Catherine Fryer,  
City Attorney

