

ORDINANCE NO. 2009-04-333

AN ORDINANCE ADOPTING TITLE XI, CHAPTER 116 OF THE CODE OF ORDINANCES FOR THE CITY OF TONTITOWN, ARKANSAS, REGULATING RESIDENTIAL DOOR-TO-DOOR SALES AND SOLICITATIONS WITHIN THE CITY OF TONTITOWN, DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

WHEREAS, the City of Tontitown, Arkansas, is a municipality under the laws of the State of Arkansas and is authorized to define, license, tax and regulate transient or itinerant dealers or vendors under A.C.A. § 14-54-1407; to license, tax, and regulate peddlers, solicitors, etc., A.C.A. § 14-54-103(10); and to legislate matters relating to municipal affairs, A.C.A. § 14-43-601 et seq; and

WHEREAS, the City Council of Tontitown, Arkansas has determined it is in the best interest of the citizens of Tontitown for regulate and restrict the use of residential door-to-door selling or soliciting;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS, FOR THE PURPOSE OF ADOPTING THE FOLLOWING RESIDENTIAL DOOR-TO-DOOR SALES AND SOLICITATION REGULATIONS THAT:

SECTION 1: The Code of Ordinances for the City of Tontitown, Arkansas, is hereby amended by adding Title XI, Chapter 116, to read as follows:

"CHAPTER 116"

Residential Door-to-door Selling and Solicitation Regulations

- 116.01 Short Title: This Chapter shall be known as the "Tontitown Residential Door-to-door Selling and Solicitation Regulations"
- 116.02 Purpose: The purpose of this Chapter is exercise the City of Tontitown's right to regulate certain "door-to-door" sales and solicitation activities and to collect appropriate fees to compensate the City of Tontitown for costs incurred due to such sales and solicitations.

116.03 Definition

- (A) For the purposes of this ordinance, "residential door-to-door selling or soliciting," shall mean the activity or practice of traveling by foot or by any other means from one place to another, from house to house, from street to street, or from door to door to residential living units for the purpose, whether express or implied, of selling or attempting to sell goods or services, including those immediately delivered and those delivered at a subsequent time, or for the purpose of soliciting, requesting, or attempting to request donations, contribution, or remittance by a person who has not been invited by the resident to call on the residential unit on a specific date.
- (B) The following activities are explicitly excluded from the definition:
  - (1) Activities of members of recognized religious groups, if their actions are directly incident to the exercise of the members' freedom of religion rights under the Constitution of the United States;
  - (2) The activities of persons selling newspapers in accordance with the exercise of their freedom of the press rights under the Constitution of the United States;
  - (3) The activities of organizations classified as tax exempt under the provisions of Section 501 of the 1954 Internal Revenue Service Code, and amendments and regulations pertaining thereto; and
  - (4) The activities of local educational organizations, schools and civic organizations that are located in Washington and Benton Counties.
  - (5) Activities authorized, requested or directed by officials of the Tontitown Grape Festival in the conduct of the business of the Tontitown Grape Festival.

- (C) The term "City Clerk" shall mean the City Clerk of Tontitown, Arkansas, or if there is no City Clerk, then the Recorder/Treasurer or his or her designee.

116.04 Penalties.

- (A) Any person who is found guilty of violating any provisions of this Section shall be punished as provided in Section 10.99 of this Code.
- (B) Any person who is found guilty of violating any provisions of this Section shall also have his/her registration hereunder revoked by the City Clerk

116.05 Compliance.

No person, business, or other legal entity shall engage in the activity of residential door-to-door selling or soliciting within the city without first complying with the provisions of this Section.

116.06 Hours of operation.

It shall be unlawful for any person, whether their registration has complied with the registration requirements of this Section or not, to engage in residential door-to-door selling or soliciting before 9:00 a.m. or after 6:00 p.m. of each day of the week.

- (A) It shall be unlawful for any person to engage in the activity of selling or attempting to sell goods or services or requesting or attempting to request donations or contributions at a residential unit, where the owner or lawful occupant has refused permission for entry by verbal notice or by posting a written notice in plain view.
- (B) The City Clerk is hereby directed to prepare and maintain a list of all residents of the city who desire no soliciting or selling of wares or services on their property.
  - (1) Residents of the city who desire to have their name placed on the list may do so by contacting the City Clerk in person or by phone.

- (2) A person seeking registration hereunder must obtain a copy of the current list from the City Clerk. It shall be unlawful for any person engaged in residential door-to-door selling or soliciting to entry upon a property, where the owner or lawful occupant is included on the City Clerk's list.

#### 116.07 Registration.

- (A) It shall be unlawful for any person to engage in the activity of residential door-to-door selling or soliciting within the city limits unless the person has a current registration on file with the city, and has paid the applicable fee.
- (B) Said registration shall be in a form approved by the City Clerk. The City Clerk shall not accept the registration unless all of the required information is provided. Each form must include:
  - (1) The name of the person who is selling or soliciting and, if applicable, the name of the entity for which the person is selling or soliciting;
  - (2) Satisfactory identification. The City Clerk may require that a photocopy of the applicant's identification be made and kept on file with the registration form;
  - (3) What the person is selling or soliciting;
  - (4) A statement of the anticipated period during which such sales and solicitations shall be conducted within the city; and
  - (5) The legal name, address, telephone number, and agent for service of process of the person selling or soliciting and for the entity on whose behalf the person is selling or soliciting.
- (C) The monthly fee will be determined by the City Council and will be required in advance for each month during which the person will be selling or soliciting within the city limits, as stated on the person's registration.


#### 116.08 Duration and Revocation.

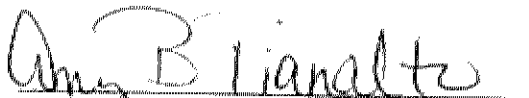
- (A) The registration provided for in this Section shall be effective for the shorter of the following:
- (1) From the date of registration to the end of the period of time listed on the registration during which the legal entity anticipates engaging in such activities; or
  - (2) From the registration to the time the registration is revoked as provided in this Section; or
  - (3) One month. Registrants may register for consecutive months, not to exceed six consecutive months.
- (B) The City Clerk may revoke the registration of any person upon any of the following grounds:
- (1) Violation of any provision of this section; or
  - (2) Failure to pay the required monthly fee; or
  - (3) Any violation of City Ordinances, state or federal law in the conduct of the selling or solicitation allowed under this Section; or
  - (4) In the judgment of the City Clerk based upon the receipt of complaints by citizens that the registrant is selling or soliciting in an offensive, rude or inappropriate manner. If registration is revoked for this reason, the registrant may appeal the decision within thirty days to the City Council which shall hear the appeal and decide whether to uphold or reverse the revocation.
  - (5) Failure to collect, report and remit any appropriate sales tax.
- (C) Upon revocation, the City Clerk shall provide written notification of revocation by hand delivery to the registrant or by mailing notice of revocation to the registrant's address provided on the registration form. Notice is effective upon receipt or, if mailed, upon mailing. Notice of expiration of registration is not required.

SECTION 2: EMERGENCY CLAUSE: The City Council of Tontitown, Arkansas, has determined that an emergency exists in that there is currently no regulation of door-to-door solicitations within the City, and careful regulation of such activity is required for the safety of the citizens. Thus, being necessary for the safety, health, peace and welfare

of the citizens, this Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this 7<sup>th</sup> day of April, 2009.

  
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Mayor

  
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Recorder-Treasurer