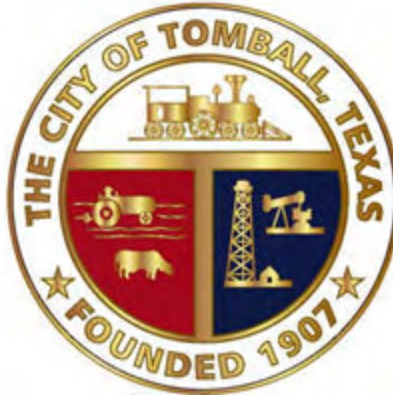


**NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, JANUARY 3, 2011

7:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, January 3, 2011 at 7:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

- 1.0 Call to Order
- 2.0 Invocation
- 3.0 Pledges to U.S. and Texas Flags
 - Led by Members of the Tomball High School Student Council
- 4.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*
- 5.0 Presentations:

- Plaque to Virginia Young, Municipal Court Clerk – 34 Years of Service
- Plaque to Debbie Owens, Betsy Gates, and Wendy Torres, City Secretary's Office, for 2010 Five-Star Local Registrar Vital Registration Award from the Texas Department of Health; Master Registrar Certificates to Debbie Owens and Betsy Gates, City Secretary's Office,

6.0 Reports and Announcements

- January 8, 2011 – **2nd Saturday at the Depot** – 5:00 p.m.
- January 8, 15, 22, and 29, 2011 – **Walk Tomball!** – Depot Plaza – 9:00 a.m.
- January 10 and/or 17, 2011 – **Special Meeting with Planning and Zoning Commission** – 5 p.m.
- January 15, 2011 – **Re-Grand Opening of MLK, Jr. Park** – 11:30 a.m.
- January 16, 2011 – **Memorial Tree Planting** at the Depot Plaza – 2:00 p.m.
- January 25, 2011 – **Annual Boards and Commission Recruitment Reception** – 5:30 p.m.-7:00 p.m.
- Appointments to Board of Adjustments will be on February agenda (terms expiring 3/2/11)
- Reports by City staff and members of council about items of community interest on which no action will be taken

7.0 Approve the Minutes of the following Meetings:

- December 20, 2010 Special Tomball City Council and Tomball Planning and Zoning Commission Meeting
- December 20, 2010 Regular City Council Meeting

8.0 Old Business:

- 8.1 Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

Section 551.071 Consultation with Attorney regarding the following matters:

- Possible Civil Action to Enforce Ordinances regarding Construction of Building and Use of Land at 30702 State Highway 249

- 8.2 Authorize City Attorney to File Civil Action to Enforce City Ordinances regarding Construction of Building and Use of Land at 30702 State Highway 249

- 8.3 Discussion and Possible Direction to City Attorney and City Staff regarding Chapter 54, Peddlers and Solicitors, of the Code of Ordinances of the City of Tomball, Texas

9.0 New Business:

- 9.1 Approve Request from Oilfield Helping Hands to use Depot Area and Close

Streets for Oilfield Helping Hands 3rd Annual Classic Car Show and
Motorcycle Rally to be held on Saturday, March 12, 2011

10.0 Adjournment

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 29th day of December 2010 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer

Doris Speer

City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: January 3, 2011

Topic:

- Plaque to Virginia Young, Municipal Court Clerk – 34 Years of Service
- Plaque to Debbie Owens, Betsy Gates, and Wendy Torres, City Secretary's Office, for 2010 Five-Star Local Registrar Vital Registration Award from the Texas Department of Health; Master Registrar Certificates to Debbie Owens and Betsy Gates, City Secretary's Office,

Background:

Virginia Young

Tomball's Employee No. 1, Virginia "Ginny" Young, is retiring effective January 14, 2011, with 34 years of service. Ginny joined the City in 1977 as the Assistant to the City Secretary. In April 1981, she became the first full-time Municipal Court Clerk and served over the years with Judge James O. Lovett, Judge George W. Covington, and Judge Andrea Walker. Congratulations and best wishes to Ginny upon her retirement!

2010 Five-Star Local Registrar Award

The City of Tomball is one of only fifteen cities in the State of Texas to receive the 2010 Five-Star Vital Registration Exemplary Service Award.

Exemplary status is awarded by the Texas Department of Health Services to honor those cities who average less than 12 days' time for death registrations entered in the Texas Electronic Registrar system from January 1, 2010 through September 30, 2010. The Tomball City Secretary Office's average is less than 10 days for death registrations.

The Five-Star Vital Registration Exemplary Service Award is an exceptional honor and the direct result of the efforts of the members of the City Secretary's Office - Debbie Owens, Registrar, Betsy Gates, Deputy Registrar, and Wendy Torres, Deputy Registrar. Additionally, Debbie Owens and Betsy Gates have completed the requirements to become Master Registrars for the State and are involved in projects with the State. As the City Secretary, I am extremely proud of the members of my department.

Origination:

Recommendation:

N/A

Funding:

Party(ies) responsible for placing this item on agenda:

Doris Speer, City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Virginia Young Plaque

5-Star Plaque and Master Certificates

Presented to
Virginia Young



In recognition of
34 Years of
Exemplary Service
to the City of Tomball.
Congratulations
on your Retirement!

2011



Five Star Vital Registration 2010

Exemplary



City of Tomball

David L. Lahey, M.D.

DAVID L. LAKEY, M.D.
COMMISSIONER, DSHS



Geraldine R. Harris

GERALDINE R. HARRIS
STATE REGISTRAR



TEXAS

Department of State Health Services

2010 Five-Star Service Award Winning Local Registrars

Congratulation To This Year's Winners!



Exemplary Five Star Award Winning Local Registrars

City of Arlington	City of Austin - HHSD	City of Baytown
City of Beaumont	City of Bedford	City of Canyon
City of Dallas	City of Harlingen	City of Lewisville
City of North Richland Hills	City of San Marcos	City of Tomball
City of Victoria	City of Waco/McLennan County PHD	City of Wichita Falls/Wichita County PHD
Collin County Clerk	Comel County Clerk	Cooke County Clerk
Denton County Clerk	Ector County Clerk	Grayson County Clerk
Guadalupe County Clerk	Harris County Clerk	Hill County Clerk
Hood County Clerk	Hunt County Clerk	Kaufman County Clerk
Kerr County Clerk	Midland County Clerk	Navarro County Clerk
Polk County Clerk	Rusk County Clerk	San Antonio Metro Health District
Tarrant County Clerk	Tom Green County	Washington County Clerk
Williamson County Clerk		Wise County Clerk

Five Star Award Winning Local Registrars

--	--	--

2010 Five-Star Criteria for Local Registrars

Timeliness:

Average no more than 20 days for death registrations entered in Texas Electronic Registrar (TER), including manual, drop-to-paper and fully electronic, from the date of death to filing in the state office between January 1, 2010 to September 30, 2010.

Local registration offices averaging less than 12 days will be considered for an Exemplary Five-Star designation.

Improvement:

Have filed better than the state average of all death records fully electronically in your registration district from January 1, 2010 through September 30, 2010.

Training:

Attend the 2009 Annual Vital Statistics Conference or one of the 2010 Regional Vital Statistics Conferences, and complete the on-line Texas Electronic Registrar (TER)-Death Registration Training at Texasvsu-ed.org

Timely Electronic Death Registration:

Register 98% fully electronic death records filed locally within one business day of receipt.

Managing Registration:

Complete the [online self-assessment survey](#).

Texas Department of State Health Services
Vital Statistics

2010 Five-Star Local Registrar Vital Registration Award

Criteria for Qualification

- **Timeliness:**
Average no more than 20 days for death registrations entered in Texas Electronic Registrar (TER), including manual, drop-to-paper and fully electronic, from the date of death to filing in the state office between January 1, 2010 to September 30, 2010.

Local registration offices averaging less than 12 days will be considered for an Exemplary Five-Star designation.
- **Improvement:**
Have filed better than the state average of all death records fully electronically in your registration district from January 1, 2010 through September 30, 2010.
- **Training:**
Attend the 2009 Annual Vital Statistics Conference or one of the 2010 Regional Vital Statistics Conferences, and complete the on-line Texas Electronic Registrar (TER)-Death Registration Training at texasvsu-ed.org
- **Timely Electronic Death Registration:**
Register 98% fully electronic death records filed locally within one business day of receipt.
- **Managing Registration:**
Complete the online self-assessment survey. The online self-assessment will be available via the website; www.texasvsu.org this summer.

No application for the Five-Star Award is necessary. Winners will be awarded at the 2010 Vital Statistics Annual Conference.

Certificate of Appreciation

IS HEREBY AWARDED TO

Debbie Owens

in recognition of your participation and vital role with the

Vital Statistics Unit

Local Registrar Handbook

As part of the 2010 Master Registrar Course Annual Project

Given this 8th day of December 2010

Thank you for your commitment to the Vital Statistics Unit.



Beraldine L. Harris
State Registrar



Texas Department of State Health Services

In Recognition & Gratitude



Honors

Debbie Owens, City of Tomball
2006 Master Registrar



Geraldine R. Harris
Geraldine R. Harris
State Registrar



Texas Vital Statistics
Texas Department of State Health Services
recognizes

Betsy Gates

For completion of the
Master Registrar Certification Course
March 26, 2010



Regular City Council

Agenda Item

Data Sheet

Meeting Date: January 3, 2011

Topic:

- January 8, 2011 – **2nd Saturday at the Depot** – 5:00 p.m.
- January 8, 15, 22, and 29, 2011 – **Walk Tomball!** – Depot Plaza – 9:00 a.m.
- January 10 and/or 17, 2011 – **Special Meeting with Planning and Zoning Commission** – 5 p.m.
- January 15, 2011 – **Re-Grand Opening of MLK, Jr. Park** – 11:30 a.m.
- January 16, 2011 – **Memorial Tree Planting** at the Depot Plaza – 2:00 p.m.
- January 25, 2011 – **Annual Boards and Commission Recruitment Reception** – 5:30 p.m.-7:00 p.m.
- Appointments to Board of Adjustments will be on February agenda (terms expiring 3/2/11)
- Reports by City staff and members of council about items of community interest on which no action will be taken

Background:

Origination:

Various

Recommendation:

N/A

Funding:

Party(ies) responsible for placing this item on agenda:

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

2nd Saturday at the Depot

Draft - Special Council/Planning and Zoning Meeting

Invitation - 2nd Annual Board and Commission Recruitment Reception

The WIZARD of OZ

at

2nd SATURDAY AT THE DEPOT

January 8—TOMBALL, TX



Special Visit from

Dorothy and

Glenda the Good Witch!

Music By:

John Amour

HISTORIC TOMBALL DEPOT PLAZA

201 South Elm ~ One block south of Main Street

Opens at 5:00 PM ~ Movie begins at dark

Free family entertainment for all ages

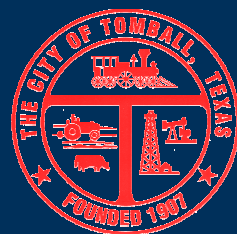
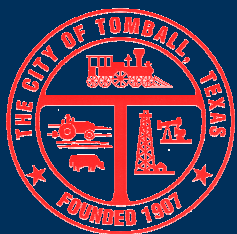
Bring your lawn chairs

No Glass Containers!

For more information, please call

Rosalie Dillon at 281-610-2595

In case of rain, event will be held at the Tomball Community Center—221 Market Street



**NOTICE OF SPECIAL TOMBALL CITY COUNCIL AND
TOMBALL PLANNING AND ZONING COMMISSION MEETING
CITY OF TOMBALL, TEXAS**



**MONDAY, JANUARY 10, 2011
5:00 P.M.**

draft

Notice is hereby given of a meeting of the Tomball City Council and the Tomball Planning and Zoning Commission, to be held on Monday, January 10, 2011 at 5:00 p.m., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council and the Tomball Planning and Zoning Commission reserve the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

- 1.0 Call to Order
- 2.0 Public Comments and Receipt of Petitions *(At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Commission discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.)*
- 3.0 Workshop Session:
 - 3.1 The Tomball City Council and the Tomball Planning and Zoning Commission members will enter into a Workshop session for the following purpose:
 - A. Discussion of the Development Review Process and current codes
 - B. Review of Roles and Responsibilities of the Development Review Committee
 - C. Discussion of possible changes to the Zoning Ordinance (Ordinance 2008-01)
- 4.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 7th day of January 2011 by 4:00 p.m., and remained posted for at least 72 continuous hours proceeding the scheduled time of said meeting.

Doris Speer
City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

ALL ABOARD!

FREE REGISTRATION & FOOD

Please join us for our 2nd Annual Boards and Commissions Recruitment Reception. Come meet and greet current Board members and register to be a potential member of a Tomball Board!

Date: Tuesday, January 25, 2011

Time: 5:30—7:30 P.M.

*Location: Tomball Community Center
221 Market St.*

*Be sure not to miss your opportunity to
“Get on a Board” or Commission and serve on
your community “train”!*



ONE TICKET PER PASSENGER

Regular City Council Agenda Item Data Sheet

Meeting Date: January 3, 2011

Topic:

Approve the Minutes of the following Meetings:

- December 20, 2010 Special Tomball City Council and Tomball Planning and Zoning Commission Meeting
- December 20, 2010 Regular City Council Meeting

Background:**Origination:****Recommendation:****Funding:****Party(ies) responsible for placing this item on agenda:**

Doris Speer, City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Draft Minutes - 12/20/2010 Special Council and Planning and Zoning Commission Meeting

Draft Minutes - 12/20/2010 Regular Council Meeting

**MINUTES OF SPECIAL CITY COUNCIL AND
TOMBALL PLANNING AND ZONING COMMISSION MEETING
CITY OF TOMBALL, TEXAS**

MONDAY, DECEMBER 20, 2010



5:00 P.M.

1.0 Call to Order

The meeting was called to order by Mayor Gretchen Fagan. Other members present were:

Councilman Quinn
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Planning and Zoning Commission members present:

Chair – Lori Wallace
Commissioner – John Mottershaw
Commissioner – Barbara Tague

Planning and Zoning Commission members absent:

Vice Chair – Tom Crofoot – excused absence

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Kliever
City Secretary – Doris Speer
City Attorney – Scott Bounds
Assistant to the City Manager – Shawn Cox
Director of Engineering and Planning – Mark McClure
City Planner – Kelly Violette
Assistant City Planner - Rodney Schmidt
E&P Administrative Assistant – Brandy Pate

Draft

2.0 Public Comments and Receipt of Petitions *(At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Commission discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.)*

3.0 Workshop Session:

3.1 The Tomball City Council and the Tomball Planning and Zoning Commission members entered into a Workshop session for the following purpose:

- Discussion of the Downtown Specific Plan Proposal.

Kelly Violette presented an introduction to the Tomball Downtown Specific Plan, providing information regarding the purpose and objectives of a zoning ordinance and plan designed for and applicable to the downtown area, specifically.

Kelly Violette presented the proposed Tomball Downtown Specific Plan, advising Council that the original proposal received from Partnerships for Strategic Action had been reviewed by Engineering and Planning, reduced in scope, and revised by Partnerships for Strategic Action for presentation to Council.

The proposed budget for the Tomball Downtown Specific Plan is estimated to be \$177,400. An advisory committee for the TDSP will be appointed by City Council; focus groups would also provide input to the City. Upon completion of the study for the TDSP, a zoning ordinance for the downtown area will be prepared for Council consideration and adoption. Upon adoption of a zoning ordinance specific to the Tomball Downtown Specific Plan, the City will begin implementing the zoning requirements to the downtown area.

3.0 Motion was made by Councilman Stoll, second by Councilman Dodson to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 3rd day of January 2011.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

**MINUTES OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, DECEMBER 20, 2010

7:00 P.M.

1.0 Call to Order

The Council meeting was called to order by Mayor Gretchen Fagan at 7:00 p.m.; the TEDC meeting was called to order by Vice Chair Steven Vaughan, who announced a quorum of the TEDC board and recessed the TEDC meeting at 7:01 p.m.

Other Council members present:

Councilman Quinn
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Tomball Economic Development Corporation members present:

Vice Chair – Steven Vaughan
Gary Smith
William Sumner, Jr.
Vincent O'Donnell
Executive Director – Betty Reinbeck

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Kliever
City Secretary – Doris Speer
City Attorney – Scott Bounds
Finance Director – Glenn Windsor
Fire Chief – Randy Parr
Assistant to City Manager – Shawn Cox
Director of Public Works – David Kauffman

Draft

Director of Engineering and Planning – Mark McClure
City Planner – Kelly Violette
Assistant City Planner – Rodney Schmidt

2.0 The invocation was led by Pastor Kenny Rodgers, Anointed Faith Family Church

3.0 Pledges to the U. S. and Texas flags were led by Mayor Fagan.

4.0 The following public comments were received:

Rosalie Dillon 14166 Turnervine, 77375	- Expressed her appreciation for City support in holding a very successful German Christmas Market and Second Saturday at the Depot.
---	--

5.0 Presentations:

- Mayor Fagan presented a proclamation proclaiming Monday, December 20, 2010 as ***“Tomball High School Junior Varsity Red Team Football Day”*** prior to the Council meeting.

6.0 Reports and Announcements:

- December 23-24, 2010 – **Christmas Holiday – City offices will be closed**
- December 31, 2010 – **New Year’s Day Holiday – City offices will be closed**
- January 8, 2011 – **2nd Saturday at the Depot – 5:00 p.m.**
- January 25, 2011 – **Annual Boards and Commission Recruitment Reception – 5:30 p.m.-7:00 p.m.**
- ***Walk Tomball!*** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of Council about items of community interest on which no action will be taken
 - Mark McClure provided an update on the Quinn Road Sidewalks project.
 - Glenn Windsor provided an update regarding modest increases in sales tax revenues during the last three months, a 5.51% increase for the first quarter of fiscal year 2010-2011.

7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the following minutes:

- December 6, 2010 Regular City Council Meeting
- December 13, 2010 Special Tomball City Council and Tomball Planning and Zoning Commission Meeting

Motion carried unanimously.

8.0 Old Business:

- 8.1 Doris Speer provided information regarding provisions enacted by other cities regarding peddlers and solicitors, for consideration by City Council. No action was taken.

9.0 New Business:

- 9.1 Betty Reinbeck presented an overview of the proposed Agreement. Motion was made by Councilman Quinn, second by Councilman Stoll, to approve, as a Project of the Corporation, an Agreement with the City of Tomball to Make Direct Incentives to, or Expenditures for, the Expansion and Development of Medical Complex Drive in the City of Tomball; the estimated amount of Expenditures for such Project is \$850,000.

Motion carried unanimously.

- 9.2 Betty Reinbeck presented an overview of the proposed Agreement. Motion was made by Councilman Townsend, second by Councilman Brown, to approve, as a Project of the Corporation, an Agreement with the City of Tomball to Make Direct Incentives to, or Expenditures for, the Improvements to MLK Park located on Chestnut Street in the City of Tomball; the Estimated Amount of Expenditures for Such Project is an Amount not to exceed \$6,500.

Motion carried unanimously.

- 9.3 Betty Reinbeck presented an overview of the proposed Agreement. Motion was made by Councilman Dodson, second by Councilman Brown, to approve, as a Project of the TEDC, an Agreement with Hole Specialists Inc. to Make Direct Incentives to, or Expenditures for, the Creation or Retention of Primary Jobs and that are found by the Board of Directors to be Required or Suitable for the Development, Retention, or Expansion of Manufacturing and Industrial Facilities: to wit: Hole Specialists Inc.'s Expansion and Development of its Manufacturing Facility located at 27950 Commercial Park Road, Tomball, Texas; the Estimated Amount of Expenditures for Such Project is \$75,000.

Motion carried unanimously.

- 9.4 Betty Reinbeck presented an overview of the proposed Amendment. Motion was made by Councilman Brown, second by Councilman Townsend, to approve a Grant Funding Amendment to the Albers Properties, LP - TEDC Agreement which was Approved by the TEDC Board on December 1, 2009, Regular Board Meeting.

Motion carried unanimously.

- 9.5 Executive Session: Steven Vaughan reconvened the TEDC meeting at 7:35 p.m.; the City Council recessed at 7:36 p.m. to meet with the Tomball Economic Development Corporation in Executive Session, as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Section 551.072 Deliberation regarding the Purchase of Real Property where Deliberation in Open Session would have a Detrimental Effect on the Position of the City in its Negotiations

Upon reconvening Council and the Tomball Economic Development Corporation into regular session at 8:25 p.m., no action was taken regarding the executive session.

Motion was made by TEDC Member Smith, second by TEDC Member O'Donnell, to adjourn the TEDC meeting.

Motion carried unanimously; TEDC meeting adjourned.

The regular City Council meeting continued and the following items were considered:

- 9.6 Councilman Quinn recused himself from discussion and action regarding this item and stated that he had filed a Conflict of Interest Affidavit with the City Secretary. George Shackelford presented information regarding the proposed request from the Klein family. Motion was made by Councilman Dodson, second by Councilman Brown, to approve the request from the Klein Family to abandon a Portion of Klein Drive and to authorize the City Manager to provide a Letter from the City of Tomball to the Veterans Administration, Expressing the City's Willingness to Abandon and Close a Portion of Klein Road. City's willingness to abandon a portion of Klein Drive will be contingent upon the Veterans Administration selecting the Klein tracts for the VA clinic. Vote was as follows:

Councilman Quinn	<u>Abstain</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

Motion carried unanimously.

- 9.7 Doris Speer presented the request from Tomball Sports Association and the proposed Resolution. Motion was made by Councilman Townsend, second by Councilman Stoll, to Approve Resolution No. 2010-23, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Annual Baseball Parade, to be held in Tomball on Saturday, March 5, 2011

Motion carried unanimously.

- 9.8 Mayor Fagan presented recommendation regarding the proposed appointment to an unexpired term on the Planning and Zoning Commission. Motion was made by Councilman Townsend, second by Councilman Dodson, to appoint Field Hudgens to fill the vacancy and complete the unexpired term on the Planning and Zoning Commission.

Motion carried unanimously.

- 9.9 Kelly Violette presented information regarding the proposed agreement with Partners for Strategic Action. Motion was made by Councilman Stoll, second by Councilman Brown, to approve the Professional Services Agreement with Partners for Strategic Action (PSA) for the Preparation of a Downtown Specific Plan (DSP), in an amount not to exceed \$177,400. Motion was made by Councilman Stoll, second by Councilman Brown, to amend the motion to include the following paragraph in the proposed agreement and in future City of Tomball contracts:

“The Company further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An “undocumented worker” shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized by law to be employed in that manner in the United States.”

Motion, as amended, carried unanimously.

- 9.10 Mark McClure presented an overview of the proposed Agreement. Motion was made by Councilman Quinn, second by Councilman Brown, to approve Professional Services Agreement with Kimley-Horn and Associates, Inc. in the amount of \$20,000 for Consulting Services related to the Feasibility Study of the Capital Improvements Project titled, “Parking - Three Downtown Parking Lots”. Request was made by George Shackelford to reduce the 90-day timeframe to a 60-day timeframe; Joe Wilhite, Kimley-Horn representative, agreed to the 60-day timeframe. Motion was made by Councilman Townsend to ‘Call the Question’ (Motion to End Debate and Vote); no vote was taken to support motion to end debate and vote. Vote to approve the agreement with Kimley-Horn and Associates was as follows:

Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Nay</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Nay</u>
Councilman Dodson	<u>Nay</u>

Motion FAILED, 2 votes Ayes to 3 votes Nay.

- 9.11 Mark McClure presented the proposed Plat. Motion was made by Councilman Dodson, second by Councilman Dodson, to approve the **FOUR CORNERS SUBDIVISION FINAL PLAT**; being a subdivision of 15.7493 acres of land including a partial replat of reserve "E" of Tomball Park, Vol. 335, Pg. 109 M.R.H.C. and being out of the John M. Hooper Survey, Abstract No. 375 in Tomball, Harris County, Texas.

Motion carried unanimously.

- 9.12 Mark McClure presented the proposed Plat. Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the **PARTIAL REPLAT OF TOMBALL REGIONAL HOSPITAL NO. 1**; being 12.8478 acres located in the William Hurd Survey, A-378, Harris County, Texas, City of Tomball, Texas; being a Replat out of Tomball Regional Hospital Reserve "A", Block 4, Vol. 424, Pg. 128, M.R.H.C.T.

Motion carried unanimously.

- 9.13 Mayor Fagan postponed and moved consideration of item 9.13, Approval of Maintenance Agreement for North Star Estates Soldier Pile Improvements in the Public Right of Way of the J133-00-00, Ditch M with Partners in Building, L.P., to follow the executive session.
- 9.14 Executive Session: The City Council recessed at 9:14 p.m. to meet in Executive Session, as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Section 551.071 Consultation with Attorney regarding the following matters:
 - A. Demands related to a slope failure at 31422 Rigel Court
 - B. Status of land acquisition for lift station from Peter Hildreth
 - C. Possible civil action to enforce ordinance regarding construction of building and use of land at 30702 State Highway 249

Councilman Dodson recused himself from discussion and action regarding items B and C and stated that he had filed a Conflict of Interest Affidavit with the City Secretary.

Upon reconvening into regular session at 10:40 p.m., no action was taken regarding item 9.13 or 9.14; Scott Bounds requested, with regard to item 9.13, that Council table this matter until 1) Council receives plans approved by the City Engineer with regard to the proposed improvements adjacent to Mr. Smith's property and the adjacent property, 2) the City Engineer provides City Council an estimate of the nature and costs of the maintenance of the proposed

improvements, and 3) the City Attorney provides to City Council a revised proposed maintenance agreement. Motion was made by Councilman Townsend, second by Councilman Dodson, that item 9.13 be tabled in accordance with that request.

Motion to table consideration of item 9.13 carried unanimously.

- 9.15 Motion was made by Councilman Townsend, second by Councilman Brown, to Table consideration to authorize City Attorney to File Civil Action to Enforce City Ordinances regarding Construction of Building and Use of Land at 30702 State Highway 249. Councilman Dodson recused himself from discussion and action regarding item 9.15 and stated that he had filed a Conflict of Interest Affidavit with the City Secretary. Vote was as follows:

Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Abstain</u>

Motion to table consideration of item 9.15 carried unanimously.

- 10.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 3rd day of January 2011.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Data Sheet

Meeting Date: January 3, 2011

Topic:

Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

Section 551.071 Consultation with Attorney regarding the following matters:

- Possible Civil Action to Enforce Ordinances regarding Construction of Building and Use of Land at 30702 State Highway 249

Background:**Origination:**

George Shackelford, City Manager

Recommendation:

N/A

Funding:**Party(ies) responsible for placing this item on agenda:**

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council

Agenda Item

Data Sheet

Meeting Date: January 3, 2011

Topic:

Authorize City Attorney to File Civil Action to Enforce City Ordinances regarding Construction of Building and Use of Land at 30702 State Highway 249

Background:**Origination:**

George Shackelford, City Manager

Recommendation:

N/A

Funding:**Party(ies) responsible for placing this item on agenda:**

Doris Speer, City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council

Agenda Item

Meeting Date: January 3, 2011

Data Sheet

Topic:

Discussion and Possible Direction to City Attorney and City Staff regarding Chapter 54, Peddlers and Solicitors, of the Code of Ordinances of the City of Tomball, Texas

Background:

During previous Council meetings, Council has requested additional information regarding possible amendments to Tomball's Code of Ordinances, Chapter 54, Peddlers and Solicitors. The handout of possible amendments presented at the December 20 Council meeting are attached, along with Scott Bounds' emails regarding door-to-door solicitation and hours of solicitation and Attorney General Opinion JC-0145. Input received from Councilmembers regarding the list and other informational items will be provided at the Council meeting for discussion and possible direction by Council to the City Attorney and/or City staff.

Possible changes to Chapter 54 presented on December 20, 2010 but not included on the handout were:

1. Adding to Section 54-32 or 54-33 a requirement that the applicant provide "a copy of the applicant's Texas sales tax permit, if applicable."
2. Possibly restricting the hours of solicitation from 9:00 a.m. to 7:00 p.m. or 8:00 p.m. on weekday evenings, possibly allowing solicitation from 9:00 a.m. to 9:00 p.m. on the weekends, with the realization that this time limitation may be successfully challenged in court as a violation of the First and Fourteenth Amendments to the U. S. Constitution (12/15/2010 email from Scott Bounds).
3. As a tie-in to the Zoning ordinance, deleting the following language in Section 54.1: "and also means and includes any person transacting a temporary business within the city at an established place of business" and adding a requirement that a person or persons transacting a temporary business within the city at an established place of business (for instance, in Lowe's or HEB's parking lot, not going door-to-door), must obtain a permit from the City's zoning administrator approving the site. The zoning administrator shall require the person/persons to establish the temporary business in a zoning district that permits such use and to submit a site plan in accordance with Section 12 of the Zoning Ordinance to ensure that the proposed use meets the City's zoning regulations and that the proposed use does not place the established place of business in non-compliance with the City's zoning regulations. If the zoning administrator rejects the application, no permit will be issued.

Summary

Cities' regulations must be 'reasonable', protect the constitutional rights of all parties involved, and "may not, broadly speaking, unreasonably discriminate against persons, infringe on personal fundamental rights, or interfere with interstate commerce when regulating street vending" (A.G. Opinion JC-0145 (1999), attached). Tomball may attempt to control the 'nuisance' aspects of a particular type of business but may not outlaw the activity completely. Tomball's regulations should seek to protect residents' privacy rights in their homes and on their property and to protect residents from fraud and other crimes, without impacting other individuals' (including solicitors) constitutional rights. Tomball's current ordinance appears to balance the rights of its citizens against the rights of individuals involved in door-to-door solicitations by restricting hours of solicitation, prohibiting solicitors from entering posted properties, and requiring solicitors to obtain, carry, and produce their permit and to leave private property upon request.

Origination:

City Council request.

Recommendation:

N/A

Funding:

Party(ies) responsible for placing this item on agenda:

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

- Possible Amendments, based on Other Cities' Codes
- Chapter 54 - Current Code
- Email from S. Bounds re Hours of Solicitation
- Atty General Opinion JC-0145
- Email from S. Bounds re Door-to-Door Solicitation
- L. Williams Paper re Regulation of Evening Solicitation

Possible amendments to Chapter 54 (from other Texas Cities):

1. amend **Sec. 54-6. Hours of operation** to state, “no person shall 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 for the purpose of engaging in or attempt to engage in a charitable solicitation or a home solicitation transaction, prior to 9:00 a.m. or after 8:00 p.m. of any day Monday through Saturday, or at any time on a Sunday or a Federal or State holiday, except by specific appointment with or invitation from the prospective customer”;
2. specify that the provisions of Chapter 54 shall not apply to noncommercial purposes of fundraising or generating profits by religious or charitable organizations, political organizations, conservation organizations, Tomball civic organizations, or 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;
3. add a provision to **Sec. 54-3. Refusing to leave**, stating that entering a property posted with a “No Peddlers Allowed” or “No Solicitations Allowed” notice or refusing to leave when requested by the homeowner is a Class C misdemeanor violation of the ordinance that could result in a fine up to \$500.00 per violation;
4. add a provision that property owners, tenants or lessees wishing to allow peddlers to utilize their private property are responsible, along with the peddler, for compliance with the adopted zoning codes of the City of Tomball and that approval by the zoning administrator must be obtained before a permit may be issued;
5. under **Sec. 54-31. Required.**, amend (12) to state “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” and add “(13) the limited sales tax permit number issued by the state comptroller of public accounts, if any”;
6. amend **Sec. 54-37. Fee** to increase the fees for permits and/or add a non-refundable application fee of \$5.00 or \$10.00, in addition to the permit fee, to offset the cost of a background check by the police department;
7. to **Sec. 54-41. Contents of permit**, add a provision that the permit, when issued, must contain a photo of the individual permit holder (we currently issue permits with a photo of the individual, but it is not required);
8. add a provision to **Sec. 54-8. Misrepresentation** to state that, if, after the permit has been issued, the City 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 Texas business and Commercial Code, Section 17.46 35 seq., otherwise known as the State Deceptive Trade Practice Act, or any crime or misdemeanor involving moral turpitude or any violation of Chapter 54 or any other city ordinance of state or federal law during the term of the permit, the permit shall be revoked by the Chief of Police;

9. amend **Sec. 54-39. Issuance** to:

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

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

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) working 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.

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

10. add a provision that all peddlers or solicitors shall provide to the consumer, in writing, the right to cancel a solicitation transaction made in person or by telephone until midnight of the third business day after the day on which the customer signs an agreement or offer to purchase any goods, wares, merchandise, food, photographs, publications or services;
11. **Sec. 54-40. Limitation** already requires individual permits – add provision that the permit is not assignable and may not be transferred to another individual.
12. amend **Sec. 54-43. Duration** to limit the duration of permits issued to peddlers/vendors (currently, permits may be issued for no more than 12 months, essentially allowing a ‘permanent’ temporary vendor, i.e., snow cone, mobile food, windshield repair, etc., vendors)

13. for mobile food units, possible requirements might include:
- a. no sales shall be made on any street or roadway where posted speed limits are in excess of 30 miles per hour;
 - b. no mobile food unit shall be parked within 30 (40-50) feet of any street corner or crosswalk;
 - c. no mobile food unit shall be parked within 1,000 feet of any public or private school between the hours of 9:00 a.m. and 4:00 p.m.
 - d. no mobile food vendor shall sell or solicit sales from a mobile food unit in any public park.

Chapter 54

PEDDLERS AND SOLICITORS*

* **Cross References:** Offenses and miscellaneous provisions, ch. 50.

Article I. In General

Sec. 54-1. Definitions.
Sec. 54-2. Exceptions to chapter.
Sec. 54-3. Refusing to leave.
Sec. 54-4. Use of public places.
Sec. 54-5. Entrance to premises restricted.
Sec. 54-6. Hours of operation.
Sec. 54-7. Soliciting at intersections.
Sec. 54-8. Misrepresentation.
Secs. 54-9--54-30. Reserved.

Article II. Permit

Sec. 54-31. Required.
Sec. 54-32. Application.
Sec. 54-33. Driver's license.
Sec. 54-34. False information.
Sec. 54-35. Fingerprints, photographs.
Sec. 54-36. Bond required.
Sec. 54-37. Fee.
Sec. 54-38. Service of process.
Sec. 54-39. Issuance.
Sec. 54-40. Limitation.
Sec. 54-41. Contents of permit.
Sec. 54-42. Display.
Sec. 54-43. Duration.
Sec. 54-44. Revocation.
Sec. 54-45. Special event permit.

ARTICLE I.

IN GENERAL

Sec. 54-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Peddler means any person, whether a resident of this city or not, traveling from house to house, or from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state; and also means and includes any person transacting a temporary business within the city at an established place of business. The word "peddler" includes the terms "solicitor," "transient or itinerant merchant or vendor," or "transient or itinerant photographer."

(Code 1978, § 17-1)

Cross References: Definitions generally, § 1-2.

Sec. 54-2. Exceptions to chapter.

The provisions of this chapter shall not apply to the following:

- (1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business.
- (2) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.
- (3) Bona fide residents of the state selling fruits, vegetables, dressed meats, fowl or farm products which were produced on land within the state, owned or controlled by such vendor.
- (4) Solicitations, sales or distributions made by charitable, educational or religious organizations which have their principal place of activity within this city.

(Code 1978, § 17-2)

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, shall be deemed guilty of criminal trespass and may be punished as provided in V.T.C.A., Penal Code § 30.05.

(Code 1978, § 17-3)

Sec. 54-4. Use of public places.

It shall be unlawful for any peddler to sell or solicit or take orders for or offer to sell or take orders for or display any goods, wares, merchandise, photographs, newspapers or magazines on any public square, park, street, road, highway or alley within the city without having first obtained a special events permit as provided in section 54-45.

(Code 1978, § 17-4)

Sec. 54-5. Entrance to premises restricted.

It shall be unlawful for any peddler to enter upon any private premises when the same are posted with a sign stating "No Peddlers Allowed" or "No Solicitations Allowed" or other words to such effect.

(Code 1978, § 17-5)

Sec. 54-6. Hours of operation.

It shall be unlawful for any peddler to engage in the business of peddling within the city between the hours of 9:00 p.m. and 8:00 a.m. the following morning, except by specific appointment with or invitation from the prospective customer.

(Code 1978, § 17-6)

Sec. 54-7. Soliciting at intersections.

(a) *Prohibition.* It shall be unlawful for any person to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at any intersection or crossing of streets within the city limits, where, in the opinion of the police chief, such solicitation or distribution would cause the blocking of traffic so as to create a traffic hazard.

(b) *Exceptions.* If, in the opinion of the police chief, it would not create a traffic hazard for solicitation of funds and advertising at an intersection of streets within the city, the person desiring to solicit funds or to advertise, or to distribute any item at such intersections, shall first make an application for permission to do so by making the application at the city hall. The application shall set forth the name of the organization, the location of the intersection where such solicitation shall transpire and the length of time the proposed solicitation shall take place, not to exceed 48 consecutive hours. If the solicitation is to be done by a person under the age of 18 no such permit shall be issued unless such person shall have proper adult supervision as to be determined by the police chief. Any permit for the solicitation of funds shall be acquired prior to any actual solicitation and any such permit shall be good for one such solicitation period only and any further solicitation shall require an additional permit. Such permit should be signed by the police chief.
(Code 1978, § 17-7)

Sec. 54-8. Misrepresentation.

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.
(Code 1978, § 17-8)

Secs. 54-9--54-30. Reserved.

ARTICLE II.

PERMIT*

* **Cross References:** Businesses generally, ch. 18.

Sec. 54-31. Required.

It shall be unlawful to engage in business as a peddler within this city without first obtaining a permit to do so unless such person is lawfully engaged in interstate commerce, in which case, such peddler shall obtain a license prior to engaging in business as a peddler within this city and such license shall be obtained by registering with the city secretary and providing information under oath to the city secretary. Prior to the issuance of the license to the peddler engaged in interstate commerce, the city secretary shall obtain all of the following information and any other information deemed pertinent and necessary by the city secretary. The information to be obtained shall be as follows:

- (1) Date of registration;

- (2) Name of registrant;
 - (3) Driver's license number;
 - (4) Date of birth;
 - (5) Social security number;
 - (6) Home address;
 - (7) Local address (if any);
 - (8) Name of the person represented, or through which orders to be solicited are cleared;
 - (9) Nature of items or services to be sold or solicited;
 - (10) Will payment or deposit be received in advance of final delivery;
 - (11) Has registrant ever been convicted of a felony of any nature or any other crime of moral turpitude in this state or any other state; if so, give place, date, and crime of which convicted; and
 - (12) Facts showing explicitly that the registrant is engaged in interstate commerce.
- (Code 1978, § 17-20)

Sec. 54-32. Application.

The application for a permit required by the provisions of this article shall state or contain the following:

- (1) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed therefor, if previously convicted; and the place of conviction.
- (2) A written certificate of a practicing physician in the county, dated not more than five days prior to the date of filing the application, certifying that the physician has examined the applicant and has found him to be free of infectious, contagious or communicable diseases.
- (3) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.
- (4) The period of time the applicant wishes to engage in business within this city.
- (5) The local and permanent address of the applicant.
- (6) The local and permanent address and the name of the person, if any, that the applicant represents.

(7) The kind of goods, wares, merchandise or services in which the applicant wishes to engage in such business within the city.

(8) The last five cities or towns wherein the applicant has worked before coming to this city.

(9) Such other relevant information as may be required for the investigation of the applicant.

(Code 1978, § 17-21)

Sec. 54-33. Driver's license.

At the time of filing his application for a permit or a license required by this article, the applicant shall present his driver's license, if he has one, to the city secretary.

(Code 1978, § 17-22)

Sec. 54-34. False information.

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit or a license required by this article.

(Code 1978, § 17-23)

Sec. 54-35. Fingerprints, photographs.

At the time of making application for a permit required by this article, the applicant shall submit to fingerprinting and photographing by the chief of police.

(Code 1978, § 17-24)

Sec. 54-36. Bond required.

The application for a permit required by the provisions of this article shall be accompanied by a bond in the penal sum of \$1,000.00 signed by the applicant and signed, as surety, by some surety company authorized to do business in this state, conditioned for the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 30 days after delivery, and which bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of such principal.

(Code 1978, § 17-25)

Sec. 54-37. Fee.

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

(1) Per day \$ 5.00

(2) Per week 10.00

(3) Per month 25.00

(4) Per three months 50.00

(5) Per six months 75.00

(6) Per 12 months 100.00

(Code 1978, § 17-26)

Sec. 54-38. Service of process.

Before any permit shall be issued under this article, there shall also be filed with the city secretary an instrument in writing, signed by the applicant under oath, nominating and appointing the city secretary his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on behalf of such applicant, and service of summons in any action brought upon the applicant's bond shall be deemed made when served on the city secretary.

(Code 1978, § 17-27)

Sec. 54-39. Issuance.

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.

(Code 1978, § 17-28)

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.

(Code 1978, § 17-29)

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.

(Code 1978, § 17-30)

Sec. 54-42. Display.

Every peddler having a permit or license issued under the provisions of this article and doing business within the city shall display his permit or license upon the request of any person and failure to do so shall be deemed a misdemeanor.

(Code 1978, § 17-31)

Sec. 54-43. Duration.

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 12 months.

(Code 1978, § 17-32)

Sec. 54-44. Revocation.

Any permit or license issued under the provisions of this article may be revoked for the violation by the permittee or licensee of any applicable provision of this Code, state law or city ordinance. Upon such revocation, such permit or license shall immediately be surrendered to the city secretary and failure to do so shall be a misdemeanor.

(Code 1978, § 17-33)

Sec. 54-45. Special event permit.

(a) Special event means an activity which makes a significant contribution to the cultural, economic, or social welfare of the city.

(b) Notwithstanding other provisions of this Code, the city secretary may issue a special event permit to enable the holder to sell or distribute services or goods on public property during special events.

(c) A special event permit shall be issued for one day only. Events lasting more than one day shall require a separate permit for each day. An applicant or his agent shall be issued no more than five special event permits during any 12-month period. The time and location for which the permit is in effect shall be transcribed on the permit.

(d) An applicant for a special event permit shall file with the city secretary a written application upon a form provided for that purpose.

(e) An applicant for, or the holder of, a special event permit shall pay as a fee for the permit, which fee shall be used as rental for the use of public property, the sum of \$25.00 per day.

(f) After inspection or investigation, the city secretary shall approve or deny an application for a special event permit. If such application is approved, the city secretary shall issue a special event permit which shall state on its face the name of the person to whom it is granted and the expiration date. The city secretary shall designate on such permit the location or locations in which the special event permit holder is allowed to do business.

(g) The holder of a special event permit who fails to comply with the ordinances of the city or who violates any applicable laws, ordinances, or regulations of the city shall have the special event permit immediately revoked and such holder shall immediately return such special event permit to the city secretary.

(h) Except for the permitting requirements, the applicant for a special event permit and/or the holder

of a special event permit shall comply with all of the sections of this chapter.
(Code 1978, § 17-34)

Doris Speer

From: Scott Bounds [SBounds@OlsonOlson.com]

Sent: Monday, December 13, 2010 6:49 PM

To: Doris Speer

Cc: Scott Bounds

Subject: hours of solicitation

Solicitors will argue that the most productive hours of canvassing are from 5:30 or 6:00 p.m. until 9:00 p.m. on weekday evenings, since the greatest number of people are home during those hours. One court has upheld a 6:00 pm restriction. *Westfall v. Board of Commissioners of Clayton County*, 477 F.Supp. 862 (ND GA 1979) (upheld an ordinance which prohibited soliciting and canvassing of private residences except between the hours of 9:00 a.m. and 6:00 p.m.) That court rested its decision in part on its finding that the plaintiffs were allowed to solicit during the weekend, and that public solicitation of those away from their homes on weekdays was available to the plaintiffs.

Other courts have, however, courts have struck down time limitations before 9:00 pm. See *City of Watseka v. Illinois Public Action Council*, 479 U.S. 1048, 107 S.Ct. 919 (US. 1987) (memo opinion affirming Court of Appeals for the Seventh Circuit decision that a city ordinance limiting door-to-door soliciting to the hours between 9 a.m. and 5 p.m., Monday through Saturday, violated the First and Fourteenth Amendments to the United States Constitution. 796 F.2d 1547 (1986)).

From Am Jur Peddlers Section 9:

The interpretation of the requirement that an ordinance be narrowly tailored to serve the government's legitimate interest has led to a split in the courts regarding the proper standard to apply to restrictions on the hours of door-to-door solicitation.[\[FN1\]](#) The position has been taken in one federal circuit that the requirement that an ordinance be narrowly tailored is merely a part of the second inquiry on the manner in which the regulation serves the government interest rather than a separate requirement, and therefore, a content neutral hours restriction on door-to-door solicitation or canvassing that serves a legitimate governmental interest need only leave open ample alternative channels for communication in order to be valid.[\[FN2\]](#)

Some courts have taken the position, however, that the analysis of whether a regulation is narrowly tailored requires a showing that there is both a significant relationship between the regulation and the governmental interest and that less restrictive alternatives are inadequate to protect the governmental interest.[\[FN3\]](#) This "least restrictive means" approach does not abrogate the requirement of ample alternative means, but rather adds the requirement that the means used in the regulation constitute the least restrictive alternative for achievement of the governmental interest.[\[FN4\]](#) In cases applying the "least restrictive means" approach, alternatives such as requiring a canvasser or solicitor to apply for a permit and provide identification, the enforcement of existing penal laws, the enforcement of trespass laws after a homeowner has indicated that a peddler is not welcome, and the requirement that solicitors obey "No Solicitation" signs, are often cited as less intrusive means of achieving legitimate governmental interests in crime prevention and protection of residents' privacy.[\[FN5\]](#)



Office of the Attorney General - State of Texas
John Cornyn

November 16, 1999

The Honorable Bob Turner Chair, Committee on Public Safety Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910	Opinion No. JC-0145 Re: Authority of a municipality to regulate or prohibit street vendors (RQ-0070-JC)
---	--

Dear Representative Turner:

On behalf of the City of Camp Wood, you request an opinion from this office with respect to a city's authority to regulate or prohibit street vendors. You inform us that the city desires a ruling on the legality of a city ordinance on vendor permits, and you specifically ask us the following questions:

Is it legal for a city to pass a city ordinance that restricts street vendors from selling in a city without a permit? If not, what restrictions can they impose?

May a city pass a city ordinance that requires a vendor to construct a permanent building with restrooms and parking?

May a city impose the above restrictions on a street vendor if he or she is state licensed and has a state tax number?

May a city pass a city ordinance that restricts a vendor from selling on private property?

Letter from Honorable Bob Turner, Chair, Committee on Public Safety, Texas House of Representatives, to Elizabeth Robinson, Office of the Attorney General (May 20, 1999) (on file with Opinion Committee) [hereinafter "Request Letter"]. You state: "Basically, I would like an opinion . . . as to what a city can do in regards to vendors on public and private property." *Id.* We limit our discussion and answers in this opinion to the general law relating to itinerant vendor regulation insofar as a Type A general-law city is concerned, keeping in mind the issues with which your questions apparently are concerned. We cannot in the opinion process determine the legality of any city ordinance regulating street vending or of any particular restriction on street vending.

Municipal Authority

The scope of a city's authority in general is determined by its organization as a

home-rule city or a general-law city. Unlike a home-rule city that possesses all powers not denied to it by statutes or the constitution so long as the city has incorporated those powers in its home-rule charter, a general-law city possesses only those powers expressly given to it by statutes or those necessarily implied therefrom. *See* Tex. Att'y Gen. Op. No. [JM-169](#) (1984) at 1-2; Tex. Att'y Gen. LO-90-14, at 1. The City of Camp Wood, we understand, is a Type A general-law city.⁽¹⁾

A Type A city has the general authority to prohibit or regulate the sale of all or certain merchandise on all or certain parts of its city streets and sidewalks by ordinance based on its statutory authority to pass ordinances or police regulations, control streets and public places, and prohibit or regulate hawkers and peddlers. Section 51.001(1) of the Local Government Code, applicable to all cities, authorizes a city to adopt an ordinance, rule, or police regulation that is for good government, peace, or order of the municipality or for the trade and commerce of the municipality. *See* Tex. Loc. Gov't Code Ann. § 51.001(1) (Vernon 1999). Section 215.028 of the Local Government Code specifically authorizes a Type A city to designate and regulate market places, *see id.* § 215.028, and section 215.031 authorizes such a city to license, suppress, prevent, or otherwise regulate hawkers, peddlers, and pawnbrokers, *see id.* § 215.031. Further, section 311.002 of the Transportation Code gives all general-law cities exclusive control over their streets and alleys. *See* Tex. Transp. Code Ann. § 311.002 (Vernon 1999).

A Type A city may not prohibit the occupation or business of street vending, but it may, in general, prohibit or reasonably regulate by ordinance the sale of merchandise on its city streets and other public places by itinerant vendors. Under its statutory powers to pass ordinances and police regulations for good government, control streets and public grounds, and to control and regulate market places and hawkers and peddlers, in *Ex parte Hogg*, 156 S.W. 931 (Tex. Crim. App. 1913), the Court of Criminal Appeals held that the City of Weatherford could pass an ordinance prohibiting peddlers from selling articles in all or a portion of the city's public streets and squares. *See Hogg*, 156 S.W. at 932-33. Significantly, the court emphasized that the ordinance did not prohibit persons from following the occupation of peddling, but simply denied them the right to follow that occupation in the public streets and squares of the city. *See id.* at 933. Furthermore, the court said the ordinance did not discriminate against peddlers, but merely classified peddlers in a different category than other merchants, "which is perfectly proper and legitimate." *Id.* A long line of Texas cases have followed *Hogg*. *See, e.g., Ex parte Killam*, 162 S.W.2d 426 (Tex. Crim. App. 1942); *City of Waco v. O'Neal*, 33 S.W.2d 205 (Tex. Civ. App.-Waco 1930, writ ref'd) (upholding City of Waco's ordinance prohibiting barter and sale of farm products based on city's statutory and special charter powers to control its city streets and other public property) (and cases cited therein); *see also* Annotation, *Authorization, Prohibition, or Regulation by Municipality of the Sale of Merchandise on Streets or Highways, or Their Use for Such Purpose* 14 A.L.R. 3d 896, 908-09 (1967) (discussing Texas cases).

You ask whether a Type A city may pass an ordinance that (1) requires a

vendor to construct a permanent building with restrooms and parking and (2) that restricts a vendor from selling on private property. *See* Request Letter, *supra*, at 1. First, we conclude that a city may not require street vendors to construct permanent buildings with restrooms and parking facilities because that would be, in our opinion, tantamount to prohibiting the occupation of street vending. Second, to the extent you ask whether a city may generally restrict the sale of goods on private property, we conclude in the negative given that a city's authority to regulate itinerant vendors extends to city streets and other public places, excluding, by definition, private property.

We note that because of the particular items sold or the particular area involved, a city under its zoning authority might be able to require that the items be sold in a permanent structure or restrict sales from private property. *See, e.g.*, Tex. Loc. Gov't Code Ann. §§ 211.003(a)(5) (Vernon 1999) (city may regulate location and use of buildings, other structures, and land for business, industrial, residential, or other purposes); 211.005 (governing body may divide city into districts and regulate construction and use of buildings, other structures, or land). A city might also be able to restrict sales from private property under its authority to abate nuisances. *See id.* § 217.002 (Type A city's authority to abate nuisance). We do not, however, understand you to ask about particular sales or regulating in particular areas.

Licensing Authority

You also ask whether a Type A general-law city may pass an ordinance that restricts street vendors from selling in a city without a permit.⁽²⁾ We conclude in the affirmative.

A Type A city has the authority to require vendors to obtain a license as a condition to selling merchandise on its city streets. It is expressly authorized to license, tax, suppress, prevent, or otherwise regulate hawkers and peddlers. *Id.* § 215.031(1), (2). *But see Houston Credit Sales Co. v. City of Trinity*, 269 S.W.2d 579, 581 (Tex. Civ. App.-Waco 1954, writ ref'd n.r.e.) (questioning whether "hawkers and peddlers" includes itinerant vendors, specifically door-to-door salesmen of household goods). The city's governing body may direct the manner of issuing a license and set the fees to be paid for the licenses, but the license may not be for more than a year. *See* Tex. Loc. Gov't Code Ann. § 215.033 (Vernon 1999); *see also* Tex. Tax Code Ann. § 302.101(b) (Vernon 1992) (license required by Type A city may not extend to more than one establishment or apply to more than one occupation, business, or calling).

Although you do not ask, we understand that the City of Camp Wood is concerned about the amount it may charge for a vendor permit.⁽³⁾ A city may charge an amount reasonably necessary to cover its administrative and regulatory costs or reasonably related to its legitimate licensing objective. *See* Tex. Loc. Gov't Code Ann. § 215.033 (Vernon 1999); *Houston v. Harris County Outdoor Adver. Ass'n*, 879 S.W.2d 322, 326-27 (Tex. App.-Houston [14th Dist.] 1994, writ denied); *Houston Credit Sales*, 269 S.W.2d at 581.

A Type A general-law city may charge a reasonable license fee for the primary

purpose of regulation. *See Harris County Outdoor Adver.*, 879 S.W.2d at 326 (if primary purpose of exaction is regulation, then it is a license fee). A reasonable license fee "*cannot be excessive nor more than reasonably necessary to cover the cost of granting the license and of exercising proper police regulation, or it must bear some reasonable relationship to the legitimate object of the licensing ordinance.*" *Id.* at 326-27 (emphasis in original); *see also Johnson v. City of Austin*, 674 S.W.2d 894, 897 (Tex. App.-Austin 1984, no writ) ("A 'license' has the purpose of regulation under the police power.").

The authority under section 215.031 to suppress or prevent hawkers and peddlers does not allow a city to charge fees that are so excessive as to preclude an itinerant vendor from engaging in that occupation, although what is excessive depends on the particular facts and circumstances. For instance, in *Houston Credit Sales*, the court concluded that an annual "licensing" vendor fee of \$1200, irrespective of whether characterized as a tax or license fee, was so large and excessive as to render the ordinance imposing it invalid. "[S]uch oppressive exaction by a town of less than 2,500 population," the court said, "is manifestly prohibitive and confiscatory in its application to the business of appellants." *Houston Credit Sales*, 269 S.W.2d at 581. The trial court had found that the vendor -- a door-to-door salesperson of household goods -- collected approximately \$22 per week in the city. The court rejected the city's argument that because the city had the statutory power, under the predecessor provision to section 215.031, to prohibit the activity of peddling and hawking, it had the power to do anything less than that in the way of regulation. *See id.*

Notwithstanding the section 215.031 authority to license, *tax*, suppress, prevent, or otherwise regulate hawkers and peddlers, a city is not authorized to levy an occupation tax on street vendors, given that the state does not levy such tax. *See* Tex. Const. art. VIII, § 1(f) (implicitly prohibiting city from levying occupation tax where no such tax is levied by state); *Ex parte Stevenson*, 169 S.W.2d 175 (Tex. Crim. App. 1943) (invalidating city ordinance levying city occupation tax given 1931 repeal of state occupation tax on foot peddlers). In contrast to license fees, an occupation tax is designed primarily to raise revenues. *See Harris County Outdoor Adver.*, 879 S.W.2d at 326 (if primary purpose of exaction to raise revenue, then it is occupation tax).

Going on Private Property

You next ask whether a Type A general-law city may pass an ordinance that restricts a vendor from selling on private property. To the extent your question concerns vendors going to private residences to sell goods, we conclude that a city may regulate but not prohibit such activity.

Again, notwithstanding the broad statutory authority to "license, tax, suppress, prevent, or otherwise regulate hawkers and peddlers" discussed above, a city may *regulate* but not *prohibit* the going in and on private property by persons to sell merchandise. *See Ex parte Luehr*, 266 S.W.2d 375 (Tex. Crim. App. 1954); *Ex parte Faulkner*, 158 S.W.2d 525 (Tex. Crim. App. 1942); *Houston Credit Sales*, 269 S.W.2d 579. In other words, a city may impose conditions,

selectively restrict, or prohibit certain solicitations based on considerations related to the city's regulatory objective; it cannot simply prohibit all such solicitations regardless of such considerations. *See Faulkner*, 158 S.W.2d at 527.

In *Faulkner*, the court, while acknowledging a city's power to prohibit hawkers and peddlers, and solicitors on its city streets and other public places, invalidated as going beyond that authority an ordinance prohibiting any uninvited person from going in and upon private residences to solicit the sale of goods or sell any goods as a nuisance. *See id.* at 526-27. The court questioned that a city could justifiably determine that all goods presented or sold in this manner should not be so sold or are always a nuisance. Although the court did not expressly delineate what it meant by "regulation" and "prohibition," its statement regarding a city's appropriate authority is telling:

It is sufficient that the municipality be given the power to establish an available agency with facilities for looking into the merits of all goods to be sold and the responsibility and methods of the parties selling them, and, therefore, be able to say whether or not they should be permitted to operate within the bounds of such municipality.

Id. at 527; *see also Luehr*, 266 S.W.2d at 377 (city without authority to prohibit solicitors going in and on private residences without regard to goods sold and responsibility and method of parties). The *Faulkner* court concluded that although the legislature has delegated to a municipality the authority to regulate, "we are . . . unable to find that our legislature has, or may, delegate to the municipality the right to prohibit solicitors from going in and upon private property for the purpose of selling their wares." *Faulkner*, 158 S.W.2d at 527. The *Faulkner* court did not discuss the predecessor to section 215.031 of the Local Government Code. But the court in *Houston Credit Sales*, following *Faulkner*, specifically stated that a city could regulate but not prohibit the going in and upon private residences notwithstanding the statutory authority to "license, tax and regulate or suppress and prevent hawkers, peddlers." *Houston Credit Sales*, 269 S.W.2d at 581.

State Law Preemption

Lastly, you ask whether a Type A general-law city may impose restrictions on a street vendor if he or she is state licensed and has a state tax number. We conclude that it depends on the authorizing or licensing state statute.

A city may not adopt an ordinance regulating a business activity that is in conflict with a state statute. *See Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993) (city ordinance that attempts to regulate subject matter preempted by state statute is unenforceable to extent it conflicts with statute); *Utter v. State*, 571 S.W.2d 934, 936 (Tex. Crim. App. [Panel Op.] 1978) (generally discussing cases dealing with city's authority to regulate and license buses, taxis, taxi drivers, or ambulances also regulated or licensed by state). Thus, when a state statute provides that a person holding an operator's, commercial operator's, or chauffeur's license from the state shall not

be required to obtain any other license to operate a motor vehicle, a city may not license those drivers. *See Reed v. City of Waco*, 223 S.W.2d 247 (Tex. Civ. App.-Waco 1949, writ ref'd); *City of Corpus Christi v. Gilley*, 458 S.W.2d 124 (Tex. Civ. App.-Corpus Christi 1970, writ ref'd n.r.e.).

No statute specifically authorizes or licenses "street vending." But, if the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from requiring a permit as a condition of engaging in that activity within the city. *See Combined Am. Ins. Co. v. City of Hillsboro*, 421 S.W.2d 488 (Tex. Civ. App.-Waco 1967, writ ref'd n.r.e.). For instance, in *Combined American Insurance*, the court held invalid an ordinance as it related to insurance sales by a state licensed insurance company and its state licensed salesmen prohibiting any person from going house-to-house or from place-to-place in the city to sell goods unless the person had obtained a license from the city and paid the required license fees. *See Combined Am. Ins.*, 421 S.W.2d at 491. The court stated that the insurance company had complied with the relevant state insurance licensing laws, had been issued a certificate of authority from the State Board of Insurance evidencing such compliance, and that the company was accordingly "authorized to transact the business of life, health and accident insurance in the State of Texas, and that the City of Hillsboro . . . [is] without authority to interfere with it in the soliciting of its business." *Id.*

Although you do not specify, the City of Camp Wood is apparently concerned that it may be precluded from licensing street vendors who have a sales tax permit from the state.⁽⁴⁾ A person engaged in the business of making sales of taxable items subject to the sales and use tax under chapter 151 of the Tax Code must obtain a permit from the Comptroller of Public Accounts for each place of business in the state. *See* Tex. Tax Code Ann. §§ 151.008 (Vernon 1992) (defining "Seller" and "Retailer"); 151.201 (issuance of sales tax permits); 151.202 (application for permit). This permit simply allows the seller to collect the sales tax on the items sold, which is required to be remitted to the Comptroller. *See, e.g., id.* §§ 151.052 (collection by seller of tax as part of sale price), 151.251 (applicant for permit must file adequate security for taxes due); *id.* § 151.401 (Vernon Supp. 1999) (taxes imposed payable to Comptroller).

The sales tax permit provisions do not license or authorize street vending and, therefore, cannot present a conflict with a city ordinance regulating by permit such activity. *See Utter*, 571 S.W.2d at 936 (city's power to regulate by requiring permit for operation of wrecker not limited since no conflicting statute found); *see also City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990) ("[T]he mere fact that the legislature has enacted a law addressing a subject does not mean that the subject matter is completely preempted. When there is no conflict between a state law and a city ordinance, the ordinance is not void.").

In short, if the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from regulating that activity by requiring a permit as a condition of engaging in it within the city. Issuance of a sales tax permit to a vendor, however, is not such

state authorization or license as to preclude a city from requiring the vendor to obtain a permit in order to sell in the city.

Constitutional Limits

In addition to the parameters discussed above, a city's authority to adopt an ordinance regulating street vending is subject to state and federal constitutional constraints. We limit our discussion to those most commonly addressed by the courts in this context.

An ordinance regulating street vending must comport with the equal protection provisions of the state (article I, section 3) and federal (Equal Protection Clause of the Fourteenth Amendment) constitutions. It may, consistently with these provisions, reasonably classify persons according to their business and apply different rules to different classes -- as long as persons in the same class are treated the same -- to further legitimate purposes of the city. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297 (1976); *Hixon v. State*, 523 S.W.2d 711 (Tex. Crim. App. 1975); *Rucker v. State*, 342 S.W.2d 325 (Tex. Crim. App. 1961); *Houston Chronicle Publ'g Co. v. City of Houston*, 620 S.W.2d 833, 838 (Tex. App.-Houston [14th Dist.] 1981, no writ). For example, in *City of New Orleans v. Dukes*, the United States Supreme Court upheld a City of New Orleans ordinance prohibiting all vendors from selling food from pushcarts in the French Quarter, except those that had "continuously operated the same business . . . for eight or more years prior to January 1, 1972," *Dukes*, 427 U.S. at 298, stating: "The city's classification rationally furthers the purpose which . . . the city had identified as its objective in enacting the provision, that is, as a means 'to preserve the appearance and custom valued by the Quarter's residents and attractive to tourists.'" *Id.* at 304 (citation omitted). Allowing the continued operation of some vendors, the Court continued, was not an arbitrary or irrational method of achieving the city's purpose because the city could rationally choose to initially eliminate only recent vendors rather than all vendors; reasonably determine that newer businesses were less likely to have built up substantial reliance on continued operation; and that the vendors excepted under the grandfather clause who had operated for over twenty years had themselves become part of the distinctive part of the charm of the French Quarter. *Id.* at 305; *see also Hixon*, 523 S.W.2d 711 (upholding city ordinance prohibiting sale of all merchandise on city streets except flowers and ice cream).

But an ordinance regulating street vending may not, as a general matter, impinge on fundamental personal rights or classify persons based on inherently suspect distinction such as race, religion, or alienage. *See Dukes*, 427 U.S. at 303. A different test is applied by the courts under the equal protection analysis when a regulatory ordinance's classification affects fundamental rights such as the rights of free speech and free press. If such rights are affected, the classification becomes suspect, and the city must show that the classification is necessary to promote a compelling interest. *See Houston Chronicle Publ'g Co.*, 620 S.W.2d at 838 (citing *Dunn v. Blumstein*, 405 U.S. 330 (1972)). For example, in *Houston Chronicle Publishing Co.* the court struck down an ordinance that prohibited the sale of newspapers to any occupant of a motor

vehicle on a city street or other public place, but allowed such sales of frozen desserts and flowers. The court observed that the three classes of street vendors established by the ordinance -- those selling flowers, those selling frozen desserts, and those selling newspapers -- were similarly situated as sellers of merchandise on the city's streets and sidewalks. *See Houston Chronicle Publ'g Co.*, 620 S.W.2d at 838. The reasons offered by the city, the court concluded, for the differential treatment of newspaper vendors were insufficient to justify the selective exclusion of newspaper vendors from the city streets: "While traffic control and vendor safety are compelling interests, access to the street cannot be denied on those bases to those who would there exercise fundamental rights, yet allowed to those involved in purely commercial endeavors." *Id.*

Further, a regulatory ordinance affecting fundamental rights such as those of free speech or free press may violate the First Amendment of the United States or article I, section 8 of the Texas Constitution, as well as the due process clause of the Fourteenth Amendment of the United States or article I, section 19 of the Texas Constitution. If a regulation impinges on First and Fourteenth Amendment rights, the city must show the validity of its asserted interest *and* the absence of less intrusive alternatives to achieving that interest. *See id.* at 836-37. For instance, the court in *Houston Chronicle Publishing Co.* also invalidated the City of Houston ordinance prohibiting newspaper sales to motor vehicle occupants as violating those rights, stating: "The . . . ordinance is unreasonably restrictive. While the ends are permissible [preventing traffic hazard and congestion], [in] the means of achieving those ends the ordinance sweep[s] too broadly, unnecessarily invading appellant's protected freedom." *Id.* at 837.

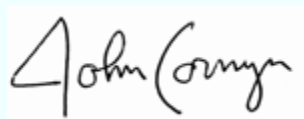
Lastly, an ordinance regulating street vending may not interfere with interstate commerce. A regulatory ordinance violates the Commerce Clause of the federal constitution (article I, section 8) if it (1) affirmatively discriminates against out-of-state merchants, or (2) regulates evenhandedly but incidentally burdens interstate commerce and the burden is clearly excessive in relation to the local benefits. *See Hispanic Taco Vendors v. City of Pasco*, 994 F.2d 676, 678-79 (9th Cir. 1993). In *Hispanic Taco Vendors v. City of Pasco*, the court upheld a city ordinance that imposed licensing fees on street vendors, made the licenses nontransferable, banned sales from vacant lots, and imposed setback requirements against the contention, among others, that it imposed unreasonable burdens on interstate commerce. *See id.* at 677. The court determined the burden on interstate commerce -- decreased sales of out-of-state products to the vendors' state assuming the vendors went out of business -- to be slight and not clearly excessive in relation to the benefits to the city in adopting the ordinance, *i.e.*, "reduction in urban blight, the potential development of vacant lots with permanent structures, and a heightened ability to police the vendors' operations." *Id.* at 679.

In short, a city may not, broadly speaking, unreasonably discriminate against persons, infringe on personal fundamental rights, or interfere with interstate commerce when regulating street vending.

S U M M A R Y

A Type A general-law city may not prohibit the occupation or business of street vending, but it may, in general, prohibit or reasonably regulate by ordinance the sale of merchandise on its city streets, sidewalks, and other public places. It may also require by ordinance that a vendor obtain a permit as a condition to selling merchandise in the city and charge a reasonable fee. The city may regulate but not prohibit street vendors from going on private residences to sell their goods. If the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from requiring a permit as a condition of engaging in that activity within the city. Issuance of a sales tax permit to a vendor, however, is not such state authorization or license as to preclude the city from requiring a city permit. An ordinance regulating street vending may not, broadly speaking, unreasonably discriminate against persons subject to the ordinance, infringe on personal fundamental rights, or interfere with interstate commerce.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

James E. Tourtelott
Assistant Attorney General - Opinion Committee

Footnotes

1. Telephone Conversation with Honorable Jim Blakeney, Mayor, City of Camp Wood (Aug. 22, 1999). A Type A general-law municipality is one that has incorporated as a Type A under subchapter A of chapter 6 of the Local Government Code, has changed to a Type A under subchapter B of chapter 6, or operated under chapters 1 through 10 of title 28 of the Revised Civil Statutes

immediately preceding September 1, 1987. *See* Tex. Loc. Gov't Code Ann. § 5.001 (Vernon 1999).

2. The terms "license" and "permit" are essentially the same, although legally "license" ordinarily refers to the privilege of conducting a continuing activity while "permit" ordinarily refers to an activity of limited duration on whose completion the privilege expires. *See Johnson v. City of Austin*, 674 S.W.2d 894, 897 (Tex. App.-Austin 1984, no writ).

3. Telephone Conversation with Honorable Jim Blakeney, Mayor, City of Camp Wood (Aug. 22, 1999).

4. *See supra* note 3.

POST OFFICE BOX 12548, AUSTIN, TEXAS 78711-2548 TEL: (512) 463-2100 WEB: WWW.OAG.STATE.TX.US
An Equal Employment Opportunity Employer

[Home](#) | [Opinions](#)

From: Scott Bounds [mailto:SBounds@OlsonOlson.com]
Sent: Monday, November 15, 2010 7:12 PM
To: George Shackelford
Cc: Scott Bounds
Subject: Door to door solicitation.

Municipal ordinances which prohibit solicitors, peddlers, and itinerant merchants from calling on private residences for the purpose of peddling or soliciting without the request or the invitation of the occupant are sometimes referred to as "Green River" ordinances (from the case of *Town of Green River, Wyoming v. Fuller Brush Co.*, 65 F.2d 112 (10th Cir. 1933)). "Green River" ordinances entirely prohibit and declare the practice of uninvited house-to-house canvassing to be a nuisance and misdemeanor punishable by fine and imprisonment (Rhyne, *The Law of Local Government Operations*, pp 495-496). Such ordinances have been upheld in the past by the United States Supreme Court. These types of ordinances have been ruled unconstitutional when they prohibit religious or noncommercial door-to-door solicitation. The U.S. Supreme Court on June 17, 2002 by a vote of 8-1, invalidated a Stratton, Ohio ordinance that required canvassers to register and obtain a permit from the mayor's office before going door-to-door promoting any cause (*Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*). The Court held that the ordinance violated the First Amendment as it applied to religious proselytizing, anonymous political speech, and the distribution of handbills. See MRSC Web Page, [U.S. Supreme Court Says No Permit Required to Solicit for Religious Reasons](#).

Other decisions include *Breard v. Alexandria*, 341 U.S. 622, 95 L.Ed 1233, 71 S.Ct. 920 (1951). The Breard decision was decided at a time when "commercial speech" was thought to be outside the protection of the First Amendment. More recent Supreme Court Decisions question the analysis of the Breard case and suggest that a complete ban on door-to-door solicitation would be found unconstitutional today. See also McQuillin, *Municipal Corporations*, Â§24.378 (3rd Ed.).

Even though the 1951 United States Supreme Court decision has not been expressly overruled, more recent cases suggest that a total prohibition of door-to-door solicitation would be unconstitutional and unenforceable. In *Project 80's Inc. v. City of Pocatello*, 942 F.2d 635 (9th Cir. 1991), a city ordinance prohibiting door-to-door solicitation unless the homeowner places a "solicitors welcome" sign on the house was ruled an unconstitutional infringement of free commercial speech. The court concluded that the ordinance did not provide the least restrictive alternative available to accomplish the legitimate governmental interests of protecting residential privacy and preventing crime. The Federal Court decision invalidating the Cities of Pocatello and Idaho Falls' ordinances was the second time the Court had invalidated the ordinances. The 1991 decision was the result of a remand order by the United States Supreme Court of the earlier 1988 decision in *Project 80's Inc. v. City of Pocatello*, 876 F.2d 711 (9th Cir. 1991), vacated and remanded, *City of Idaho Falls v. Project 80's Inc.*, 493 U.S. 1013, 110 S.Ct. 709, 107 L.Ed.2d 730 (1990). Similar decisions have been reached by the Ohio Court of Appeals in *City of Tiffin v. Boor*, 109 Ohio App. 3d 337, 672 NE2d 200 (Ohio Ap. 1996), the Oregon Supreme Court in *City of Hillsboro v. Purcell*, 306 Or 547, 761 P.2d 510 (Ore., 1988) and an Illinois Federal District Court in *Green v. Village of Schaumburg*, 676 F.Supp. 870 (ND Ill., 1988).



LOCAL GOVERNMENT LAWYER'S R O U N D T A B L E

N67W34280 Jorgenson Court, Oconomowoc, WI 53066
(262) 966-7438 www.lgl-roundtable.com lani@lgl-roundtable.com

REGULATION OF EVENING SOLICITATION/CANVASSING

Regulating peddlers, solicitors, canvassers, and panhandlers is fraught with constitutional pitfalls. Common sources of litigation include code provisions dealing with the manner of the solicitation (e.g., aggressive panhandling, whether permits and identification are required); the place of the solicitation (e.g., streets, sidewalks, parks), and the time during which these activities can occur (e.g., between the hours of 9:00 a.m. and 9:00 p.m.). While there are many reported opinion on these and other solicitation topics, this article deals only with the regulation of evening solicitation in residential areas.

Some municipalities prohibit solicitation as early as after 5:00 p.m. More commonly, some municipalities prohibit solicitation after 7:00 p.m. Unfortunately, it is *highly unlikely* that prohibiting evening solicitation earlier than 9:00 p.m. is constitutional. To survive a constitutional challenge, a city would have to supply two kinds of information. First, a city should collect crime data and statistics regarding in-home assaults, burglaries, and robberies, and correlate these by hour. State-wide statistics can be helpful, but ultimately a city must show the existence of a problem within its borders during the time that solicitation is prohibited. In addition, numerous and specific affidavits from citizens attesting to the intrusion and apprehension caused by solicitors after the desired pre-9:00 p.m. hour may be necessary to support any claim that the citizens of the city desire not to be bothered after a certain hour. Even with such affidavits, the court might inquire why the posting of “no soliciting” or similar signs could not protect individual residents adequately. If citizens are finding such notices are being violated routinely, cities should be prepared to provide evidence in the form of affidavits

The Cases

In general, municipalities have the power to regulate the activities of solicitors within their borders to lessen the opportunities for crime against residents and their property. A municipality also may regulate activities in the interest of preventing undue annoyance of its residents. *See, e.g., Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976); *Kovacs v. Cooper*, 336 U.S. 77 (1949); *Citizens for a Better Environment v. Village of Olympia Fields*, 511 F. Supp. 104 (N.D. Ill. 1980); *Connecticut Citizens Action Group v. Town of Southington*, 508 F. Supp. 43 (D. Conn.1980).

© Lani L. Williams, Local Government Lawyer's Roundtable, Inc. (October 4, 2006)
N67W34280 Jorgenson Court, Oconomowoc, WI 53066, (262) 966-7438, www.lgl-roundtable.com

You may disseminate this document in its original form without further permission.

1 of 8

The Supreme Court has never specifically considered the constitutionality of time-of-day restrictions on door-to-door solicitation. Three courts of appeal have considered the question, with two finding prohibitions before 9:00 to be unconstitutional and one court of appeal producing two opinions with opposite results. The courts also differ with respect to the tests which they apply. The Eighth Circuit in *ACORN v. City of Frontenac*, 714 F.2d 813, 817 (8th Cir.1983), invalidating an hours provision, held that where regulations infringe on First Amendment freedoms, the government has the burden of proving that its objectives could not be achieved by *less restrictive means*. The Seventh Circuit in *City of Watseka v. Illinois Public Action Council*, 796 F. 1547 (7th Cir. 1986), *aff'd without opinion*, 479 U.S. 1048, *reh. denied*, 480 U.S. 926 (1987), and *Wisconsin Action Coalition v. City of Kenosha*, 767 F.2d 1248 (7th Cir. 1985), invalidated prohibitions on solicitation before the 9:00 p.m. hour as not being justified by the evidence produced by the local governments..

The Third Circuit, in upholding an hours restriction, rejected the *Frontenac* “less restrictive alternative” standard in favor of a more generous approach – whether ample alternative means of communication remained open. *See, Pennsylvania Alliance for Jobs and Energy v. Council of the Borough of Munhall*, 743 F.2d 182 (3d Cir.1984), (“time, place, and manner restrictions are reasonable if they are imposed ‘without reference to the content of the regulated speech, ... serve a significant governmental interest, and ... leave open ample alternative channels of communication....”). However, two years later the Third Circuit invalidated a very similar ordinance because the city failed to produce adequate evidence to support the need for the restriction on First Amendment activity. *See, New Jersey Citizen Action v. Edison*, 797 F.2d 1250 (3d Cir.1986).

Why 9:00 p.m.?

There is nothing magical about 9:00 p.m. as the cut-off time for solicitation. It is simply the time courts have latched onto as being an appropriate time for the reasonable restriction of solicitation without the need for further supporting evidence. Groups that solicit often provide data that most of their contributions are collected between 5:00 and 9:00 p.m. and that the 8:00 pm. to 9:00 p.m. hour is one of the most profitable.

On the other hand, why not 10:00 p.m. instead of 9:00 p.m.? While not addressed specifically in any opinion, the principle that municipalities can protect the safety and privacy of their residents seems sufficient in its own right to support a prohibition on solicitation after 9:00 p.m.

Why not sunset?

A restriction which prohibits solicitation to within a period shortly after the setting of the sun, on the theory that activities after dark cause greater apprehension in residents, might seem like a good alternative. However, several cases disapprove of prohibitions related to the setting of the sun and at least one case has specifically found the term “sunset” to be

vague. *See, West Virginia Citizens Action Group v. Daley*, 324 S.E.2d 713 (W.Va.1984). This is because “sunset” varies from day to day and its precise time can only be determined through mathematical calculations. As such, “sunset” is especially susceptible to interpretation by government officials and leads to “unfettered discretion” as to when sunset has occurred.

Why is this relevant to me today?

City attorneys, council members, mayors, and the like may wonder why they should be concerned about this issue when so many pressing issues exist. Certainly, changes can be made to ordinances after a lawsuit has been filed, and if a city has not yet been sued, there may seem to be little need to change an ordinance immediately. And there is no guarantee that the city won’t be sued regardless of what the ordinance says. But, it is worth noting that there exist organizations which are actively looking for plaintiffs to sue government over charitable solicitation regulations.

In 2005, American Charities for Reasonable Fundraising Regulation, Inc. (“ACFRFR”) posted a call for plaintiffs to sue the State of Alabama regarding its requirement that nonprofit fundraising consultants register with the state. They are currently seeking plaintiffs after successfully challenging registration requirements in Pinellas County, Florida. ACFRFR also plans to file other suits “when it serves the overall interests of the nonprofit community” The “main ACFRFR agenda . . . is to eliminate the most egregious, unnecessary, excessive and burdensome state and local regulations of charitable fundraising.” *See*, <http://www.charity-reg.org/qanda.htm>. Why give such organizations a reason to come to town? If the city is already engaged in revising ordinances, perhaps today is a good time to make a small change to something which is constitutionally defensible.

Cases that have invalidated solicitation hours restrictions

Association of Community Organizations for Reform NOW v. City of Frontenac, 714 F.2d 813 (8th Cir. 1983) (ordinance prohibiting solicitation after 6:00 p.m. enjoined from enforcement between 6:00 p.m. and 9:00 p.m. on weekdays because it was not the least restrictive alternative, cessation at 6:00 on Sat. and prohibition on Sunday and legal holidays seems to have survived)

City of Watseka v. Illinois Public Action Council, 796 F. 1547 (7th Cir. 1986), *aff’d without opinion*, 479 U.S. 1048, *reh. denied*, 480 U.S. 926, (1987) (prohibition on solicitation after 5 p.m. Monday through Saturday unconstitutional) - Watseka passed the ordinance for the following reasons 1) in response to citizen complaints that solicitors, specifically solicitors calling at hours other than 9 a.m. to 5 p.m., violated the quiet and peace of the citizens’ homes; 2) because solicitors had sought admittance to residences at hours other than between 9 a.m. to 5 p.m. “for illegal purposes or acts;” 3) because a substantial number of the residents home in the evening between 6 p.m. and 9 p.m. were elderly and feared evening crime; 4) because crime is more prevalent after 5 p.m.; and 6)

because solicitors coming door-to-door after 5 p.m. disturbed the enjoyment of Watseka residents' dinner hour. While Watseka submitted a copy of the ordinance preamble and several affidavits to support its position, the court found this evidence insufficient to support the ordinance's constitutionality. The affidavits were from the mayor, three persons "involved in law enforcement," a member of the Chamber of Commerce, and the person who oversaw the senior citizens' center. According to the court, a city must produce more than a few conclusory affidavits of city leaders which primarily contain unsubstantiated opinions and allegations. The only crime statistics submitted by Watseka were statewide, and no effort was made to tie them either to Watseka's own interests or to solicitation in general. In addition, most of the evidence concerned crime "after dark," and for a substantial portion of the year it is not dark between the hours of 5 p.m. and 9 p.m. A better solution for the purposes of protecting residents was a provision of the ordinance which allowed Watseka residents to protect themselves from all solicitors at all times simply by posting "no soliciting" or "no trespassing" signs.

Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248 (7th Cir. 1985) (city provided insufficient evidence to uphold time of day restriction prohibiting solicitation after 8:00 pm) ("Defendants must show that the ordinance relates with specificity to one or more legitimate governmental interests and does not intrude upon the rights of free speech.")

New Jersey Citizen Action v. Edison, 797 F.2d 1250 (3d Cir.1986), *cert. denied* 479 U.S. 1103 (1987), (ordinance provisions prohibiting solicitation after 5:00 or 6:00 p.m. or after sunset unconstitutional)

New Jersey Environmental Federation v. Wayne Township, 310 F. Supp.2d 681 (D.N.J. 2004) (unamended ordinance provision prohibited solicitation except between 10:00 a.m. and dusk, Monday through Sunday; amended version prohibited solicitation later than ½ hour after sunset; even the amended version was unconstitutional because in winter solicitors would be unable to solicit past 5:30 in the evening, making solicitation unfeasible for plaintiff which relied on financial contributions in order to fulfill its advocacy mission)

Ohio Citizen Action v. City Of Mentor-On-The-Lake, 272 F. Supp.2d 671 (N.D. Ohio 2003) (City's ordinance was overbroad and under-inclusive in addressing compelling governmental interest of promoting public safety.) Only some door-to-door activities were prohibited after 5:00 p.m., which was "hours before nightfall during much of the year." "Recognized" organizations could solicit until 8:00 p.m. or ½ hour after sunset. Regulations were not restricted to those areas which were poorly lit or without sidewalks, and was not restricted to foot traffic, and there were other less restrictive means, such as improving lighting and adding sidewalks, by which the city could address its public safety concerns. This case makes clear the need to treat solicitors equally. The city made an exception for certain kinds of solicitors including newspaper and diaper delivery

services. The court noted the disturbance caused by these solicitors is as burdensome as that caused by others. Further, the case focuses significantly on the city's purported safety argument – poorly lit streets and sidewalks – and the need to protect solicitors. While an original argument, the court seized on other avenues for ensuring solicitor safety such as improving lighting conditions on public streets.

Association Of Community Organizations For Reform Now v. City Of Dearborn, 696 F. Supp. 268 (E.D. Mich. 1998) (in preliminary injunction case, ordinance prohibiting solicitation after 7:00 p.m. likely unconstitutional) (“This Court finds that Dearborn’s 7:00 p.m. canvass restriction will not likely leave sufficient alternative avenues of communication open to plaintiffs. . . . In addition, the Court is extremely doubtful that the 7:00 p.m. canvass restriction is narrowly tailored to promote Dearborn's interests in crime prevention and the tranquility of its residents. Although it is conceivable that a hearing on the merits will demonstrate otherwise, it seems probable that canvassing between the hours of 7:00 p.m. and 9:00 p.m. will not significantly increase the incidence of burglary or other evening crime in Dearborn.”)

People v. Nassau/Suffolk Neighborhood Network Inc., 574 N.Y.S.2d 243 (Justice Court 1991) (ordinance allowing only between 9:00 a.m. and 5:00 p.m. unconstitutional) – “There is no showing that all of the Village residents demand freedom from all forms of solicitation. Yet, the impact of the present time restriction would effectively preclude defendant and others from exercising their rights of free speech at the homes of those residents who might be interested in receiving canvassers and who might be potential contributors.” This is an excellent observation by the trial court – certainly if a city wanted to bolster its position that citizens are annoyed by solicitors after a certain hour, it would be crucial to have in the record numerous instances of complaints and testimony from citizens regarding the intrusive nature of solicitors. With respect to the prohibition on weekend solicitation, the court stated “Protection of Village residents against crime cannot justify that portion of the local law that precludes canvassing or soliciting at any time on a Saturday or Sunday. There is no evidence that crime is somehow greater during the 9:00 A.M. to 5:00 P.M. hours on weekends than on weekdays. Accordingly, there is insufficient evidence to support a prevention of crime basis for sustaining the outright ban on soliciting on weekends.” The court also criticized the city for failing to produce crime statistics correlating the time of day with home burglaries and assaults experienced in the village. This was particularly critical as one of the bases for passing the ordinance was ostensibly the crime suffered by village residents.

Additional cases invalidating time of day restrictions:

Massachusetts Fair Share, Inc. v. Town of Rockland, 610 F. Supp. 682 (D.C. Mass. 1985) (prohibiting solicitation and canvassing after “sunset” and “daylight hours” unduly intruded upon First Amendment rights)

New York Community Action Network v. Town of Hempstead, 601 F. Supp. 1066 (E.D.N.Y. 1984) (prohibition on soliciting ½ hour before sunset or 7:00 p.m., whichever is earlier, is unconstitutional because the town failed to prove it was the least restrictive means for regulating First Amendment activity)

Connecticut Citizens Action Group v. Town of Southington, 508 F. Supp. 43 (D.Conn. 1980) (invalidating ordinance which restricted canvassing and solicitation to the hours of 8:00 a.m. to 6:00 p.m.)

West Virginia Citizens Action Group v. Daley, 324 S.E.2d 713 (W.Va. 1984) (failure to define term “sunset” in ordinance rendered the ordinance unconstitutionally vague)

Alternatives for California Women, Inc. v. County of Contra Costa, 145 Cal.App.3d 436, 449-51, 193 Cal.Rptr. 384, 392-93 (Cal. Ct. App. 1983) (invalidating county ordinance which prohibited solicitation between “sunset and sunrise”)

Cases upholding solicitation hours restrictions

Pennsylvania Alliance for Jobs & Energy v. Council of Munhall, 743 F.2d 182, 185 (3d Cir. 1984) (prohibition on solicitation after 5:00 p.m. Monday through Saturday upheld, towns provided adequate proof of link between crime and after dark soliciting) (criticized by *Watseka*, 796 F. 1547, and called into question by *New Jersey Citizen Action v. Edison*, 797 F.2d 1250 (3d Cir.1986), *cert. denied* 479 U.S. 1103 (1987)).

Westfall v. Board of Commissioners of Clayton County, 477 F. Supp. 862, 865 (N.D. Ga. 1979) (upholding ordinance which prohibited soliciting and canvassing of private residences except between the hours of 9:00 a.m. and 6:00 p.m. on the theory that the plaintiffs were allowed to solicit during the weekend, and that public solicitation of those away from their homes on weekdays was available to the plaintiffs) (this holding has been criticized by *Citizens for a Better Environment v. Village of Olympia Fields*, 511 F. Supp. 104 (N.D. Ill. 1980), *Association of Community Organizations for Reform NOW v. City of Frontenac*, 714 F.2d 813 (8th Cir. 1983) as not comporting with the constitutional principles of free speech elucidated by the Supreme Court.

McMurdie v. Douitt, 468 F. Supp. 766, 776 (N.D. Ohio 1979) (approving restriction of solicitation to between the hours of 9:00 a.m. to 6:00 p.m. without discussion)

Examples of Texas Codes with Hours Regulations

Longview

Sec. 67-3. Prohibited conduct.

No person, personally, by agent, or as the agent of another, may engage in, transact, or conduct the business or occupation of door-to-door soliciting, temporary outdoor vending, or charitable, political, or religious soliciting as herein defined, and:

(a) Make physical contact with the person being solicited unless that person grants permission;

(b) Misrepresent the affiliation of the vendor;

(c) Continue to sell to an individual once that individual gives notice to the vendor that they do not wish to be solicited by that vendor. Notice includes but is not limited to verbal communication that the individual does not wish to be solicited, or a sign or signs prominently displayed on or near the entrance to the business or residence conspicuously stating "NO SOLICITORS", "NO SOLICITING", or similar language of notice.

(d) Vend, sell, or solicit at a private residence at any time other than between the hours of **9:00 a.m. to 8:00 p.m.**, or such other hours posted by the occupant unless a prior invitation from the occupant has been received;

(e) Enter a private residence under false pretenses; or

(f) Remain in a private residence or on the premises thereof after the owner or occupant has requested such person to leave.

(Ord. No. 3192, § 3, 2-13-03) (emphasis added)

Flower Mound

Sec. 18-261. Regulations.

(a) Every solicitor shall identify himself as a solicitor upon approaching a citizen at a residence and explain his purpose, whether it be direct sales, solicitation of orders, or the demonstration of goods or merchandise, or any combination of such purposes.

(b) Solicitors shall conduct solicitation activities only on Monday through Saturday.

Solicitors shall not conduct solicitation activities (i) before 9:00 a.m. or (ii) after 5:00 p.m. or sunset on any day, whichever is earlier. "Sunset" means the time of day identified by the National Weather Service as the time for sunset on that day in the town. No solicitation, including solicitation or fundraising activities by any institution or group organized for a political, religious or charitable purpose, or individuals engaging in such activities on behalf of any such institution or group, shall be permitted between sunset and 9:00 a.m. the following day.

(c) Solicitors shall not engage in solicitation activities at any time on a Sunday, New Year's Day, July 4th, Labor Day, Thanksgiving Day, Christmas Eve Day or Christmas Day.

(d) Subsections (b) and (c) of this section shall not apply to a visit on the premises as a result of a request or an appointment made by the occupant.

(e) All solicitation, including solicitation or fundraising activities by any institution or group organized for a political, religious or charitable purpose, or individuals engaging in

such activities on behalf of any such institution or group, is strictly prohibited on premises with a posted notice indicating that any or all solicitors are not welcome or invited onto the premises.

(f) No person engaged as a solicitor shall remain or linger at a residence after having been verbally informed by the resident that they are not welcome.

(g) Persons engaged in delivering handbills or circulars door to door and who do not engage in home solicitation activities, may do so from 9:00 a.m. to sunset of any day excluding those listed in subsection (c) of this section.

(h) No solicitor, or any person working on his behalf, shall shout, make any outcry, blow a horn or whistle, ring a bell, or use any sound device, including any loud-speaking radio or sound amplifying system, upon any of the streets, avenues, alleys, parks or other public places of the town, or upon any private premises of the town where sound of sufficient volume is emitted or produced there from to be capable to be plainly heard upon the streets, avenues, alleys, parks or other places, for the purpose of attracting attention to the location or to any goods, wares or merchandise which any person permitted pursuant to this article proposes to sell. This subsection also prohibits the use of any audio device for the purpose of attracting customers to retail establishments or merchants.

(Code 1989, ch. 4, § 2.11; Ord. No. 03-03, §§ 5, 6, 1-23-2003) (Emphasis added)

Tyler

Sec. 4-51. Solicitations permitted only during certain hours.

No person shall 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 for the purpose of engaging in or attempting to engage in a charitable solicitation or home solicitation transaction, prior to 9:00 a.m. or after **8:00 p.m. of any day Monday through Saturday**, or at any time on a Sunday or Federal or State holiday. This section shall not apply to a visit to the premises as a result of a request by the occupant. (Ord. 0-97-71; 12/17/97) (Emphasis added)

Regular City Council

Agenda Item

Data Sheet

Meeting Date: January 3, 2011

Topic:

Approve Request from Oilfield Helping Hands to use Depot Area and Close Streets for Oilfield Helping Hands 3rd Annual Classic Car Show and Motorcycle Rally to be held on Saturday, March 12, 2011

Background:

In November 2010, staff was approached by Oilfield Helping Hands (OHH) to provide locations for their growing Classic Car Show fundraiser. Upon viewing the Tomball area, the organization would like to utilize the Historic Tomball Depot for this car show.

OHH has met with members of the City's Special Events team and have requested the following from the City of Tomball:

- City Sponsorship of the Event
- Street Closures in the Downtown area similar to that of the German Fest (Elm Street from 2920 to Market, Market St from Elm to Cherry, and Walnut from Fannin to 2920)
- Waiver of fees for the use of the Depot area
- Use of Tomball PD for escorting the Motorcycle Ride outside of the City
- Use of the Main Street Banner and waiver of the associated fees
- Permission to sell alcohol during the event (OHH is looking for a vendor to provide this service and is aware of the city's requirements).

OHH is expecting nearly 200 cars to participate in the Car Show and 100 motorcycle riders to participate in the rally. In staff discussions with OHH, they expect between 200 and 400 additional visitors to the event.

Additional information on OHH is available at <http://www.oilfieldhelpinghands.org/>. An OHH member will be available at the meeting to answer any questions about the event and the organization.

Origination:

City Manager's Office

Recommendation:

Funding:

Party(ies) responsible for placing this item on agenda:

Shawn Cox, Assistant to the City Manager

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

OHH Request Letter



Oilfield Helping Hands
P. O. Box 720235
Houston, Texas 77072-5206

Tomball City Council
Tomball City Hall
401 Market Street
Tomball, TX 77375

To the Distinguished Members of the Tomball City Council:

Hello! My name is Mitzi Flowers and I am here today representing Oilfield Helping Hands (OHH), a 501(c)(3) non-profit, charitable organization comprised of volunteers primarily from the oil & gas industry devoted to providing financial assistance to oilfield workers in crisis who live and/or work in Houston and the surrounding eight counties.

In the Fall of 2001, a 38+ year employee of Baroid developed a strep infection which destroyed the aortic valve of his heart. Surgeries in 2002 and subsequently suffering a series of strokes, left him totally incapacitated. From the onset of the strokes until his death, this man was in a series of hospitals and rehabilitation facilities in Houston, Austin and Conroe. Despite having long-term disability and insurance, the family savings were quickly exhausted as medical expenses not covered continued to rise.

In 2003, some friends got together and, by using their many contacts gained in the oil & gas industry, organized an impromptu sporting clays tournament to raise a little extra money to help their friend in need. They raised \$23,000. The little fundraiser was such a resounding success that this band of pioneering spirits wanted to carry the idea into the industry. Thus was born, Oilfield Helping Hands.

Since 2003, OHH has assisted more than 100 families with over \$1,000,000 in financial aid. The most recent OHH recipient, who lives in Magnolia, Texas was the pinnacle of OHH reaching our \$1M dollar landmark! Although we pray nothing bad happens to anyone, we are, at the same time, proud to be able to assist our oil & gas family members who live and work in Houston and surrounding towns!

In 2009, OHH received the Hunting Art Prize and has recently been recognized by World Oil Magazine and Gulf Publishing, and was named as recipient of the 2010 Best Outreach Program Award.

Today, OHH has over 400 individual volunteers and nine corporate members all possessing that same pioneering spirit and compassion for their oilfield family as the original group of friends. We have grown from one annual event to a Spring and Fall Sporting Clays Tournament, a Motorcycle Ride/Classic Car Show in the Spring, a two-day Fishing Tournament in Port O'Connor in the Summer, and a late-Summer Golf Tournament.



Oilfield Helping Hands
P. O. Box 720235
Houston, Texas 77072-5206

Our first fundraising event for 2011 is a Classic Car Show and Motorcycle Rally to be held on Saturday, March 12, 2011. This will be our 3rd annual event and having outgrown the location we've held for the first two years, we set out to find a new location to host our event. Having combed Houston and all outlying areas for just the right place, we narrowed it down to Humble at the Civic Center or Tomball at the Historic Train Depot. Given its rich history and ideal location, we believe that the City of Tomball possesses the best location to to "host" our event. Its location is not only ideal for the motorcycle ride, but possesses the character and represents the spirit of events such as ours.

This fundraiser attracts individuals and companies in the oil & gas industry from all over Houston and surrounding areas. We also have the support of such organizations such as the NiftyFiftees, RigRiders of Houston, and other car and motorcycle organizations who will travel from everywhere from Bellville to Conroe to Galveston to participate in the OHH 3rd Annual Classic Car Show and Motorcycle Rally.

The 3rd annual event boasts classic cars and motorcycles, cook teams from area oil and gas companies such as Tetra Tech in the Woodlands, Clampon Inc. from Houston, Halliburton to name a few; and live music from Steve Krase and the In Crowd who was named two time champion of the International Blues Challenge.

We need your help to make this year's event better than ever. We have chosen the historic Train Depot as our new event location because of its geographic location on the north-side of Harris County, and its rich history. This year, we expect to have nearly 200 classic cars participating in our event, and over 100 motorcycles riding in the rally. In order to accommodate all the participants we are asking the City of Tomball become a sponsor as host city, and allow for street closers of _____ . We are also asking that the City waive any fees associated with the rental of the depot as well as any incidental fees associated with providing electricity, water, police escort out of the City limits for the motorcycle riders to safely begin their ride. We would also like to be able to advertise our event using the Main Street sign.

Since we are a non-profit charity, we try and obtain as many sponsors as we can to cover certain costs associated with organizing an event like ours. This allows us to continue to use all funds raised for our recipients. We would respectfully ask that the City of Tomball waive the application and lease fees, as well as all incidental fees. In turn, we would gratefully acknowledge the City of Tomball as the host sponsor and give due acknowledgment in our signage, electronic billboards that are displayed at our event, recognition on the Oilfield Helping Hands website as well as the Registration and Sponsorship Opportunities Packet that is used to help recruit other sponsors. These packets are sent to our member database of over 400 individuals employed by over 80 companies in Harris and the surrounding eight counties.



Oilfield Helping Hands
P. O. Box 720235
Houston, Texas 77072-5206

We are very excited about our choice to hold our event in Tomball over Humble. We feel we have made the right decision and are grateful for your support.

With deepest gratitude,

Mitzi Flowers
Committee Chair
3rd Annual OHH Classic Car Show & Motorcycle Rally

Cell: 281-650-5613
Work: 281-668-2678