

C I T Y O F E N G L E W O O D

IN

MONTGOMERY COUNTY, OHIO

ORDINANCE NO: 18-11

PASSED: August 14, 2018

**AN ORDINANCE: TO AMEND CHAPTER 660 SAFETY, SANITATION AND
HEALTH OF THE ENGLEWOOD CODIFIED ORDINANCE BY
ADDING SECTION 660.19, TITLED UNSOLICITED WRITTEN
MATERIALS**

WHEREAS, the Constitution of the State of Ohio, in Article XVIII, Section 3, grants municipalities the authority to exercise all powers of local self-government and to enforce local police, sanitary, and other similar regulations as are not in conflict with the general laws; and

WHEREAS, pursuant to this constitutional home rule authority, the people of the City of Englewood have adopted a Charter and Codified Ordinances to exercise the powers of local self-government and enforce local police power regulations; and

WHEREAS, a local police power regulation only conflicts with a general law if it prescribes a rule of conduct that permits that which the state law expressly forbids, or vice versa, and does not conflict with general laws if it merely imposes a greater penalty for conduct that is prohibited by the general law, or regulates activity that is not expressly permitted by general law; and

WHEREAS, the City has substantial, legitimate interests in preserving and maintaining a high level of sanitation throughout the city by reducing visual blight and litter and preventing damage to and interference with private property; and

WHEREAS, the City has experienced ongoing problems with the delivery of unsolicited written materials to areas of private property such as yards and driveways, commonly resulting in materials remaining in such locations for extended periods of time, causing visual blight, and materials being blown and scattered onto neighboring property and public roads; and

WHEREAS, the City has received many resident complaints related to unsolicited written materials being delivered to locations on the residents' property which, in addition to causing visual blight and the spread of litter, cause hardship on residents forced to collect these materials from various portions of their or neighboring property; and

WHEREAS, the City wishes to reduce visual blight, littering, and the interference with private property associated with the delivery of unsolicited written materials while at the same time protecting the First Amendment rights of the persons and organizations delivering those materials.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ENGLEWOOD, OHIO AS FOLLOWS:

SECTION 1. That Codified Ordinance Section 660.19 is hereby added to read as follows:

660.19 UNSOLICITED WRITTEN MATERIALS

(A) As used in this section:

Front door: means the street-facing entrance(s) to a principal structure. In the event no door faces the street, then any other door of a principal structure nearest the street shall be considered a front door for purposes of this section. Person: means any person, firm, corporation, association, club, society or other organization. Porch: means an exterior appendage to a principal structure leading to a doorway, including any stairway attached thereto. Premises: means a lot, plot, or parcel of land including any structures, driveways, or other impervious surfaces thereon. Principal structure: means a structure, or combination of structures of primary importance on the premises, and that contains the primary use associated with the premises. The primary use is characterized by identifying the main activity taking place on the premises. Unsolicited written materials: means any written materials delivered to any premises without the express invitation or permission, in writing or otherwise, by the owner, occupant, or lessee of such premises.

(B) Person shall not deliver, place, or distribute unsolicited written materials to any premises other than in the following locations and manners:

- (1) On a porch, if one exists, nearest the front door; or
- (2) So that such materials are securely attached to the front door; or
- (3) Through a mail slot on the front door or principal structure, if one exists, as permitted by the United States Postal Service Domestic Mail Manual; or
- (4) Between the exterior front door, if one exists and is unlocked, and the interior front door; or
- (5) Where permitted, in a distribution box located on or adjacent to the premises; or
- (6) Securely attached to a hook or within some other receptacle used for the delivery of non-U.S. Mail packages or materials, attached to the mailbox post for the premises, if it exists; or
- (7) Personally to the owner, occupant, and/or lessee of the premises, unless the property is identified on the Do Not Solicit list, in accordance with Chapter 854.

- (C) Notwithstanding subsection (B), an owner, lessee, or occupant maintains the right to restrict entry to his or her premises.
- (D) Organizational Liability: Pursuant to Section 660.08(A)(2), it is the intent to impose organizational liability for violation of this section committed by an officer, agent, or employee of a business or organization while acting on behalf of the business or organization and within the scope of the officer's, employee's or agent's office or employment.
- (E) Unsolicited written materials placed at a premises creates a rebuttable presumption that the materials were placed at the premises by the owner, officer, agent, or employee of the business, product, good, service, or message which is being advertised, promoted, endorsed, or conveyed in such materials. Where the materials are delivered as a package and relate to multiple businesses, products, goods, services, or messages, the presumption shall apply to the identified distributor of the package of materials, if any.
- (F) The provisions of this section do not apply to the United States Postal Service.
- (G) Violation of this section shall be an unclassified misdemeanor punishable by a fine of Two-Hundred Fifty Dollars (\$250) per violation.

SECTION II All provisions of Chapter 660 not specifically amended herein shall remain the same.

SECTION III It is hereby found and determined that all formal actions of this City Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION IV That this Ordinance shall be in full force and effect at the earliest date allowed by law.

PASSED this 14th day of August 2018

Thomas E. Franz Jr.

Patricia Burnside, Mayor

Thomas E. Franz, Jr., Vice Mayor

ATTEST:

Kerry Norman

Kerry Norman, Clerk of Council

C E R T I F I C A T E

I, Kerry Norman, Clerk of Council of the City of Englewood, Montgomery County, Ohio, do hereby certify the foregoing is a true and correct copy from the *Record of Proceedings* of said City. **WITNESS** my signature this 14th day of August, 2018.

Kerry Norman

Kerry Norman, Clerk of Council

CERTIFICATE OF POSTING

I, Kerry Norman, Clerk of Council of the City of Englewood, Montgomery County, Ohio, do hereby certify publication of the foregoing **ORDINANCE** was made as designated by Sections 224.01 and 24.02 of the Englewood Code.

Kerry Norman

Kerry Norman, Clerk of Council