

BOROUGH OF TOPTON
BERKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 1 of 2019

AN ORDINANCE OF THE BOROUGH OF TOPTON, BERKS COUNTY, PENNSYLVANIA, ESTABLISHING REGULATIONS GOVERNING PEDDLING AND SOLICITING FOR BUSINESS OR OTHER PURPOSES WITHIN THE BOROUGH.

BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of Tipton, Berks County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of same as follows:

Section 1. Definitions and Interpretation. The following words, when used in this Ordinance, shall have the following meanings:

BOROUGH- The Borough of Tipton, Berks County, Pennsylvania.

LEGAL HOLIDAY -New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas.

PEDDLER- Any person with no fixed place of business, who goes from house to house, from place to place, or from street to street, by any means, carrying or transporting goods, wares, or merchandise and offering or exposing the same for sale, or making sales and deliveries for purchase.

PERSON - Any natural person, partnership, association, corporation, or other legal entity.

SOLICITOR- Any person who goes from house to house, from place to place, or from street to street, soliciting or taking or attempting to take orders for any goods, wares, or merchandise, including but not limited to books, periodicals, magazines, or personal property of any nature whatsoever for future delivery, or services, including but not limited to lawn care, alarm system service, energy services or suppliers, or cleaning services. A solicitor is not a peddler.

TRANSIENT RETAIL BUSINESS- Any business conducted in the Borough for the sale of goods, wares or merchandise whatsoever for a period of less than ninety (90) calendar days. Transient retail business includes peddlers and solicitors, and any person engaged in transient retail business from a fixed location on private property.

Section 2. License Required; Conditions of Issuance; Fee.

No person shall engage in any transient retail business within the Borough without first having obtained from the Borough a license. For a for-profit entity, there shall be a license fee paid in the amount of Fifty Dollars (\$50.00) per person, per day or One Hundred Fifty Dollars (\$150.00) per person per week of solicitation and/or peddling in the Borough. For a non-profit entity, there shall be a license fee paid in the amount of Twenty Five Dollars and 00/100 (\$25.00) per person per day or Seventy Five Dollars (\$75.00) per person per week of solicitation and/or peddling in the Borough. The license fee, which shall be for the use of the Borough, shall be charged and paid to the Borough. Said fee amount may be amended from time to time by resolution of the Borough Council. At the expiration of any license, if the person holding the license shall desire to continue the transient retail business, he or she shall be required to file a new application for a license and pay the license fee then in effect.

Section 3. Exemptions.

No permit or fee is required as it applies under this Section:

- (1) To religious speech, political speech, and the distribution of handbills, so long as the principal purpose of solicitation activities is the expression of religious, political or other philosophical beliefs, as opposed to the sale or distribution of goods and merchandise..
- (2) For the sale of goods, wares, and merchandise, donated by the owners thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose.
- (3) To children under the age of eighteen (18) years who take orders for and deliver newspapers, greeting cards, candy, bakery products and the like, or who represent the Boy Scouts or Girl Scouts or similar organizations.
- (4) To a person who has registered with the Department of State for the Commonwealth under the provisions of the Solicitation of Funds for Charitable Purposes Act, 10 P.S. §162.1, et seq., as hereafter amended, supplemented, modified or re-enacted by the General Assembly of Pennsylvania, or who is expressly exempted from such registration under such Act.
- (5) For taking orders for merchandise, by sample, from dealers or merchants for individuals or companies who pay a license and business privilege tax to the Borough at their chief place of business.
- (6) To itinerant vendors and temporary vendors operating in the Borough with

a permit pursuant to the other Borough ordinances, rules or regulations.

Any person claiming any exemption outlined above shall provide the Borough with documentation demonstrating that person qualifies for said exemption.

Section 4. Restrictions of Licensee.

(1) No person, licensed under this Ordinance, shall park any vehicle upon any of the streets or alleys of the Borough in order to sort, rearrange or clean any of his goods, wares or merchandise; nor may any such person place or deposit any refuse upon any of such streets or alleys; nor may such person maintain or keep a street or curbside marked by parking any vehicle upon any street or alley in the Borough for longer than necessary in order to sell or distribute therefrom to persons residing in the immediate vicinity.

(2) No person, licensed under this Ordinance, shall occupy any fixed location upon any of the streets, alleys, sidewalks or public grounds, with or without any stand or counter.

(3) Persons licensed under this Ordinance shall not solicit sales or other businesses the addresses which are included on the "No Solicitation" List, a copy of which will be provided to the licensee.

(4) Persons licensed under this Ordinance shall not solicit at any residence or business which has a posted "No Solicitors" or "No Solicitation" sign.

Section 5. Application for License. Each person intending to engage in peddling or soliciting must first obtain a license at least ten (10) business days in advance of the beginning of the time period for which the intended peddling or soliciting will occur. A person desiring a license under this Ordinance shall first make application to the Borough for such license, and shall appear in person at Borough Hall to make the written application. If such person shall also be required to obtain a license from any state or county officer, he shall, when making such application, exhibit a valid license from such state or county officer. The applicant shall state to the Borough the following:

A. Applicant's permanent address, Social Security Number, telephone number and cell phone number;

B. Applicant's criminal record, including whether he or she has ever been convicted of a crime or municipal ordinance other than a summary traffic violation, the location of the arrest; crime(s) for which there was a conviction; type and length of sentence; and probation/parole status, and consent to a background check for the same, with application to be denied for convictions for violent felony offenses less than ten (10) years prior to the date of the Application;

C. The name and address of the person by whom he is employed together with his supervisor's or contact person's name and telephone number;

D. The type of goods, wares, and merchandise he wishes to deal with in such transient retail business;

E. The location on private property where sales will be conducted, if a fixed location is to be used. Compliance with all applicable zoning and building code regulations is required.

F. The length of time for which the license is to be issued;

G. The type and license number of the vehicle to be used, if any; and

H. Applicant shall produce a valid State driver's license or other State or government issued picture identification card.

I. Applicant shall produce a photo identification badge for his or her employer.

Section 6. Issuance of License; Custody, Display or Exhibit. Upon receipt of such application and the prescribed fee, the Borough shall issue the license required under this Ordinance if such license application is in order. Such license shall contain the information required to be given on the application. Every license holder shall carry such license upon his person if engaged in transient retail business from house to house or upon any of streets, alleys, sidewalks or public grounds. He shall exhibit such license, upon request, to all police officers, municipal officials and citizens or residents of the Borough. Applicant's employer's photo identification badge shall be visibly worn at all times. The license holder shall only be entitled to carry said license for the length of time for which the license is issued. When the time period for the license has expired, the license holder shall apply for a new license and pay a new license fee then in effect.

Section 7. Prohibited Acts. No person in any transient retail business shall:

A. Sell any product or type of product not mentioned in his or her license.

B. Hawk or cry his or her wares upon any of the streets, alleys, sidewalks or other public grounds in the Borough.

C. When operating from a vehicle, stop or park such vehicle upon any of the streets or alleys in the Borough for longer than necessary in order to sell therefrom to

persons residing or working in the immediate vicinity.

D. Park any vehicle upon any of the streets or alleys in the Borough for the purpose of cleaning any goods, wares, or merchandise or of disposing of any carton, wrapping material or of any stock or wares or food stuffs which have become unsaleable through handling, age or otherwise.

E. Enter or attempt to enter any dwelling without the invitation or permission of the occupant and shall immediately leave any premises upon request of the occupant.

F. Permit any person to have possession of his or her license and shall immediately report its loss to the Borough Manager.

G. No permittee shall make any untrue statements or misrepresentations in the course of soliciting, or omit to state any material fact necessary to prevent any statement made from being misleading. No permittee shall utilize any unfair or deceptive acts or practices in the course of soliciting. In determining whether or not a practice is unfair or deceptive under this section, definitions, standards, or interpretations relating thereto under the Pennsylvania Unfair Trade Practices and Consumer Protection Law as amended from time to time, shall apply. (73 P.S. §201-1 et seq.)

Section 8. Hours of Operation. Transient Retail Businesses may not engage in any business activity, except by prior appointment with the owner of a property, at any time on a Sunday or legal holiday; or at any time before 12:00 p.m. or after 7:00 p.m. on any other day.

Section 9. Suspension and Revocation of License; Appeal. The Borough Manager is hereby authorized to suspend or revoke any license issued under this Ordinance when he or she deems such suspension or revocation to be beneficial to the public health, safety, or morals, for violation of any provision of this Ordinance, or if false information is given in any application for a license hereunder. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked. Any person whose license is suspended or revoked shall immediately surrender his or her license to the Borough Manager. If a company or other entity has more than one person engaging in solicitation in the Borough, and the permit issued to any one such person is revoked, the permits for all solicitors working for that company may be revoked.

Section 10. Violations and Penalties. Any person, firm or corporation who shall violate any provision of this Ordinance, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than One Thousand and 00/100 Dollars (\$1,000.00) plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed ninety

(90) days. Each day that a violation of this Ordinance continues or each Section of this Ordinance which shall be found to have been violated shall constitute a separate offense.

Section 11. Nonliability of Borough. All peddlers and solicitors, including nonprofit corporations and agencies, shall hold harmless the Borough from any liability, damage or injury which is causally related to an act of negligence on the part of such peddler or solicitor.

Section 12. Severability. If any sentence, clause, section or part of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared, as the intent of the Borough Council of the Borough of Topton, that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section 13. Repealer. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed.

Section 14. Effective Date. This Ordinance shall become effective on the earliest date allowed by law after enactment.

DULY ENACTED AND ORDAINED this 11th day of February, 2019.

BOROUGH OF TOPTON
BERKS COUNTY, PENNSYLVANIA

By: _____
(Vice) President of Council

Attest: _____
(Assistant) Secretary

Approved as an Ordinance this ____ day of _____, 2019:

By: _____
, Mayor

I certify that this is a true and correct copy of an Ordinance adopted by the Borough of Topton, Berks County, Pennsylvania on _____, 2019.

Secretary