

ORDINANCE NO. 3 OF 2009

AN ORDINANCE REGULATING SOLITICTORS AND CANVASSERS IN THE  
BOROUGH OF LUZERNE

BE IT ORDAINED AND ENACTED and it is hereby ordained and enacted by the Council of the Borough of Luzerne, Luzerne County, Pennsylvania, that the above ordinance is hereby enacted as follows:

Section 1: Definitions

A. As used in this Ordinance, the following terms shall have the meanings indicated:

LEGAL HOLIDAY – New Year’s Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve, Christmas, New Year’s Eve.

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

TRANSIENT MERCHANT:

- (1) Engaging in peddling, soliciting, or taking orders, either by sample or otherwise, for any goods, wares, merchandise or services upon any street, alley, sidewalk or public ground from house to house within the Borough of Luzerne; or
- (2) Selling, soliciting or taking orders for any goods, wares, merchandise or services, from a fixed location within the Borough of Luzerne, on a temporary basis, which shall include but not be limited to such activities conducted at the time of special occasions or celebrations, for seasonal purposes or for or in advance of specific yearly holidays.

TRANSIENT RETAIL BUSINESS – Any person engaging in the activities commonly referred to as “transient merchant” or “itinerant vendor” who merchandise or sells with the intent to close out or discontinue such business within a period of three months from the date of commencement and who occupies a room, building, tent, lot or other premises for the purpose of selling merchandise or services.

CODE ENFORCEMENT OFFICER – The Borough’s Code Enforcement Officer or any other duly charged employee of the Borough.

B. The singular shall include the plural; the plural shall include the singular; and the masculine shall include the feminine and the neuter, and vice versa.

Section 2: License Required; conditions of issuance; fees

- A. No person shall engage in any transient retail business or transient merchant business within the Borough of Luzerne without first having obtained from the Code Enforcement Officer, or any other duly charged employee of the Borough, a license for which a fee shall be charged for the use of the Borough as specified in Section 9 herein.
- B. No person who is employed by, work for, soliciting for on behalf of, who is an independent contractor for or on behalf of any transient retail business or transient merchant business shall solicit within the Borough of Luzerne without first having obtained from the Code Enforcement Officer, or any other duly charged employee of the Borough, a license for which a fee shall be charged for the use of the Borough as specified in Section 9 under the Heading "Solicitor".

Section 3: Exceptions

- A. No license fee shall be charged for the following:
  - (1) To farmers selling their own produce;
  - (2) For the sale of goods, wares, merchandise and/or services donated by the owners thereof, the complete proceeds whereof are to be applied to any charitable or philanthropic purpose.
  - (3) To children under the age of eighteen (18) years of age who take orders for and deliver newspapers, greeting cards, candy, bakery products and the like or who represent the Boy Scouts, Girl Scouts or similar organizations.
  - (4) To any honorably discharged member of the armed services who complies with the Act of 1867, April 8, P.L. 50, 60 P.S. §61 (1982), hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, and who procures from the Prothonotary a certificate in pursuance of the Act of 1867.
  - (5) To any person who has complied with the provisions of the Solicitation of Charitable Funds Act, August 9, 1963, P.L. 628, 10 P.S. §61 (1982), hereafter amended, supplemental, modified or reenacted by the General Assembly of Pennsylvania.
  - (6) For taking orders for merchandise or services, by sample, from dealers or merchants for individuals or companies who pay a mercantile or business privilege tax to the Borough of Luzerne.
- B. All persons exempted hereby from the payment of the license fee shall be required to register with the Code Enforcement Officer and obtain a license without fee, provided

that any person dealing in one or ore of the above-mentioned exempted categories and dealing with other goods, wares or merchandise not so exempted shall be subject to the payment of the license fee for the sale of goods, wares, merchandise, and services not in such exempted categories; provided, further, the Code Enforcement Officer may similarly exempt from payment of the license fee, but not from registering with him, persons working without compensation and selling goods, wares, merchandise or services for the sole benefit of any nonprofit corporation. Every license issued under the provisions of this chapter shall be issued on an individual basis to any person engaging in such business; every individual shall obtain a separate license issued to him in his name, and the license fee hereby imposed shall be applicable to every such individual license, except that a representative of a charitable organization may obtain licenses for the applicants therein.

Section 4: License Application:

- A. Every person desiring a license under the Ordinance shall first make application to the Code Enforcement Officer for such license. He shall, when making such application, exhibit a valid license from any state or county officer.
- B. The applicant shall state:
  - (1) Name and Address;
  - (2) Phone Numbers;
  - (3) Date of Birth;
  - (4) Social Security Number;
  - (5) Criminal Record, if any;
  - (6) Name and Address of the person by whom he is employed;
  - (7) Type of goods, wares, merchandise and services he wishes to deal;
  - (8) Length of time license is to be issued;
  - (9) Make, model and license number of vehicle to be used, if any;
  - (10) The location to be utilized, if a fixed location.
- C. The Applicant shall provide:
  - (1) A valid photo identification or driver's license;
  - (2) A social security card;
  - (3) The names, addresses and telephone numbers of two (2) reputable citizens who will vouch for the applicant's good character.
- D. The applicant shall submit to taking a photograph by an employee or an agent of the Borough prior to the issuance of any license if so requested by the Code Enforcement Officer.

Section 5: Issuance of license; custody, display and exhibit.

Upon receipt of such application and the prescribed fee, the Code Enforcement Officer, if he shall find such application in order, shall issue the license required under this Ordinance. Such license shall contain the information required to be given on the application therefore. Every license holder shall carry such license upon his person, if engaged in transient retail business from house to house or upon any of the streets, alleys, sidewalks or public grounds, or shall display such license at the location where he shall engage in such business if doing so at a fixed location. he shall exhibit such license upon request to all police officers, Borough officials and citizens of the Borough of Luzerne.

Section 6: Prohibited Acts.

No person in any transient retail business shall;

- A. Sell any product, type of product or service not mentioned in his license.
- B. Hawk or cry his wares upon any streets, alleys, sidewalks or public grounds in the municipality. An ice cream truck may play its chimes, bells, music, etc. between the hours of 11:00 AM and 8:00 PM; all other times it is prohibited.
- C. When operating 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 there from 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 sorting, rearranging or cleaning any of his goods, wares or merchandise or of disposing of any carton, wrapping material or stock, wares or foodstuffs which have become unsalable through handling, age or otherwise.
- E. Engage in any door-to-door business activity, except by prior appointment, at any time on a Sunday or legal holiday or at any time before 9:00 AM or after 8:00 PM on any day of the week other than a Sunday or legal holiday.
- F. Engage in any business activity at a fixed location at any time before 7:00 AM or after 8:00 PM between Monday through Saturday and before 8:00 AM or after 7:00 PM on a Sunday or legal holiday.
- G. Engage in any business activity along Borough streets without first contacting the Chief of Police or Officer-in-Charge in order to determine if adequate and safe off-street parking with proper sight distance at the point of ingress and egress is available and without first obtaining permits from Pennsylvania Department of Transportation for state thoroughfares.

Section 7: Supervision, enforcement; records and reports.

- A. The Code Enforcement Officer and Police Department shall supervise the activities of all persons holding licenses under this Ordinance.
- B. The Police Department shall enforce all articles of this Ordinance.
- C. The Code Enforcement Officer shall keep record of all licenses issued hereunder and shall make a report thereof each month to Borough Council.

Section 8: Suspension and revocation of license; appeal.

The Code Enforcement Officer is hereby authorized to suspend or revoke any license issued under this Ordinance when he deems such suspension or revocation to be beneficial to the public health or safety for violation of any provision of this Ordinance or for giving false information upon any application for a license hereunder. Appeals from any suspension or revocation may be made to the Borough Council at any time, by writing, within ten (10) days after such suspension or revocation. A suspension or revocation may be overturned by the Chairman of Council on a temporary basis, until Council meets a regularly scheduled meeting to vote on the suspension or revocation. A suspension or revocation may be overturned by Borough Council with a majority vote. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked.

Section 9: Fees.

- A. The following fees shall be applicable to this Ordinance:
  - (1) Transient Retail Business License – Fixed Location - \$175.00
  - (2) Transient Merchant License – \$50.00
  - (3) Solicitor’s License - \$15.00
- B. The fee to be paid for a Transient Retail Business License shall be paid at the rates listed above for each month or fractional part thereof and shall be collected by the Code Enforcement Officer before he shall issue any license under provisions of this Ordinance. Such license shall be renewed monthly by the Code Enforcement Officer upon payment of the license fee as herein provided.
- C. The fee to be paid for a Solicitor’s License shall be \$15.00 for each month or fractional part thereof and shall be collected by the Code Enforcement Officer before he shall issue any license under provisions of this Ordinance. Such license shall be renewed monthly by the Code Enforcement Officer upon payment of this license fee as herein provided.

Section 10: Severability.

The provisions of this Ordinance shall be severable, and if any of the provisions of this Ordinance shall be declared unconstitutional or illegal by a court of competent jurisdiction, the decision of such court shall not affect the validity of the remaining provisions or sections of this Ordinance or the validity of this Ordinance as a whole. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such illegal or unconstitutional provisions not been included therein.

Section 11: Violations and penalties.

Any person, firm or corporation who shall violate any provision of this Ordinance shall pay a fine of \$500.00, plus Court costs when applicable and, in default thereof, be sentenced to a term of imprisonment of not more than thirty (30) days. Each day that a violation occurs or continues shall constitute a separate offense.

Section 12: Repealer

All other Resolutions or Ordinances relating to inconsistent with the provisions of this Ordinance are hereby repealed and any other Ordinance or part of any other Ordinance conflicting with the provisions of this Ordinance are hereby repealed.

ADOPTED this 8<sup>th</sup> day of April 2009 at a regular meeting of the  
Borough Council of Luzerne held this 8<sup>th</sup> day of April 2009.

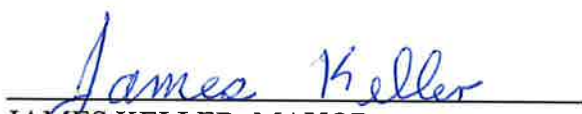
ATTEST:

BOROUGH OF LUZERNE

  
\_\_\_\_\_  
GLORIA KIJEK, SECRETARY

  
\_\_\_\_\_  
MICHAEL JANCUSKA,  
CHAIRMAN OF COUNCIL

APPROVED:

  
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JAMES KELLER, MAYOR