

ORDINANCE NO. 1123

AN ORDINANCE OF THE BOROUGH OF EMMAUS, LEHIGH COUNTY, PENNSYLVANIA, REGULATING THE ACTIVITIES OF TRANSIENT MERCHANTS; DEFINING RELEVANT WORDS AND PHRASES; ESTABLISHING A LICENSING PROGRAM; PROVIDING FOR EXEMPT PERSONS AND ACTIVITIES AND PROVIDING FOR PENALTIES FOR VIOLATION THEREOF

Legislative Findings

WHEREAS, Section 1006, of the Borough Code (hereinafter “Code”), titled “Duties of Council,” grants to Borough Council (hereinafter, “Council”) the power to adopt ordinances as it deems beneficial to the Borough; and

WHEREAS, Section 1202(20) of the Code authorizes the prohibition, licensing and regulation of business; and

WHEREAS, Section 1203 of the Code authorizes Council to make and adopt lawful ordinances, rules and regulations as may be expedient or necessary for the maintenance of the peace, good government, safety and welfare of the Borough and its trade, commerce and manufactures; and

WHEREAS, Section 2901 of the Code, titled “Licensing Transient Retail Business,” authorizes Council to license and regulate certain, transient merchants doing business or conducting regulated activities within the Borough; and

WHEREAS, Section 2901 of the Code further authorizes the establishment of a licensing program and imposition of fees in connection with regulated business activities, including penalties for the violation thereof; and

WHEREAS, Council acknowledges the requirements of the Solicitation of Funds for Charitable Purposes Act (10 P.S. 162.1 et. seq., hereinafter, “Act”); and

WHEREAS, Section 202 of the Act authorizes the Borough to further regulate the solicitation of contributions, provided that such regulation does not alter any obligations set forth in the Act; and

WHEREAS, Council finds that certain, transient business and other activities involving the use of streets, sidewalks, rights-of-way and other public areas of the Borough, as well as door-to-door solicitations and sales and the entry upon private property without permission, create hazards for motorists and pedestrians, unwanted intrusions and invasions of the privacy and the possibility of bodily harm and property damage; and

WHEREAS, Council finds that that door-to-door solicitations may encourage or give rise to practices involving fraud, misrepresentation, deception and the like, both as to the nature of the product or service promoted and the identity and reputation of the provider; and

WHEREAS, Council is aware of incidents involving the unlawful entry upon and into private property through deceptive and criminal means thus creating the potential for bodily harm and property damage; and

WHEREAS, Council finds that a reasonable licensing program should be established to require that persons engaged in sales and solicitations in the Borough act safely, honestly, fairly and lawfully in the promotion of goods and services and respect the privacy and security of residents, while providing proper and necessary identification to the Borough and its residents; and

WHEREAS, the Borough requires that non-transient businesses pay a business privilege tax, and accordingly Council finds that transient merchants which utilize many of the same services should contribute a reasonable sum to the cost of providing such services.

NOW THEREFORE, the Council of Borough of Emmaus hereby enacts and ordains the following:

1. Purpose and Scope.

(a). This Ordinance establishes a licensing system to regulate the conduct of persons and individuals falling generally within the classification of transient merchants, including without limitation transient merchants operating generally from door-to-door, and to that end, entering upon private property without the express permission of the owner or occupant, and merchants operating in and on the streets, sidewalks, rights-of-way and other public areas of the Borough. By their very nature these merchants operate in locations which, as a general matter, are neither fixed nor established, and they are therefore movable, transient and temporary. Unless exempt, transient merchants, as well as persons and individuals soliciting or securing contributions to various causes and organizations, regardless of profit and non-profit status and conducting regulated activities in the Borough, are subject to the requirements of this Ordinance.

(b). The permitting system established hereunder is two-tiered and includes a licensing program for transient merchants whose activities do not include door-to-door activities or the entry upon private property and a permitting system for those who desire to conduct door-to-door activities or enter upon private property in the furtherance of their transient business.

2. Definitions.

(a). The following words and phrases are defined as follows:

(1). **Borough.** The Borough of Emmaus, Lehigh County, Pennsylvania.

(2). **Class 1 License.** A License authorizing the conduct of regulated activities in the Borough by a transient merchant on a door-to-door basis or on private property without the permission of the property owner.

(3). Class 2 License. A License authorizing the conduct of regulated activities in the Borough by a transient merchant operating on the streets, sidewalks, rights-of-way and other public areas of the Borough.

(4). Licensee. A person who submits an application to, and is approved by, the Borough, for either a Class 1 or 2 License pursuant to the requirements of this Ordinance.

(5). Person. Any individual, partnership, limited liability partnership, firm, company, limited liability company, corporation, association, club, or any other legal entity and with respect to each, its agents, servants and employees. This definition shall include for profit and not for profit entities.

(6). Regulated Activity. Except as otherwise exempted by this Ordinance, any activity conducted by a transient merchant and involving in whole or in part the conduct of a retail business, including without limitation the selling or offering for sale, canvassing, peddling, soliciting or the taking of orders, either by sample or otherwise, of any goods, wares, products, services or merchandise, including but not limited to: subscriptions for magazines and other printed material, the obtaining of contracts for home or building services, repairs or improvements, and the securing of contributions to various causes or organizations, upon any of the streets, sidewalks or rights-of-way of the Borough or by house to house or visitation to private residences in the Borough.

(7). Transient Merchant. A person engaged in a transient retail business for the sale of personal property, whether the business is conducted from a fixed location within the Borough or by an individual engaged in peddling, soliciting or the taking of orders from house to house. Residency within the Borough shall not effect transient merchant status. A transient merchant shall include a person who solicits or secures contributions for various causes and organizations regardless of the profit or non-profit status of the cause or organization.

(b). Construction and interpretation.

(1). As used in this Ordinance and unless the context clearly indicates to the contrary, words in the singular include the plural and vice versa and words in one gender include all genders and the neuter.

(2). Any headings appearing in connection with sections, subsections or any parts of this Ordinance are for convenience only, are not intended to be full or precise descriptions of the text to which they refer and are not be considered part of this Ordinance.

3. License Required.

(a). Every person desiring to undertake a regulated activity shall first apply to, and obtain from, the Borough either a Class 1 or Class 2 License in accordance with the requirements of this Ordinance.

(b). If the regulated activity of the transient merchant involves a door-to-door activity and/or the entry upon private property without the prior, express permission of the occupant, then the transient merchant shall apply for a Class 1 License in accordance with the requirements of this Ordinance.

(c). If the regulated activity of the transient merchant involves other than door-to-door contact and/or the entry upon private property without the prior, express permission of the owner or occupant, then the transient merchant shall apply for a Class 2 License in accordance with the requirements of this Ordinance.

4. License Application and Renewal.

(a). Unless exempt pursuant to Section 8, below, any person desiring to engage in a regulated activity shall complete and file with the Borough for review and approval an application for an appropriate License on a form to be provided by the Borough.

(b). The application shall contain at a minimum the following information:

(1). If the applicant is an individual, he shall supply his full name; his business, home and temporary addresses (exclusive of post office boxes) and all telephone numbers to be used in the course of sales and solicitations in the Borough;

(2). If the applicant is a person other than an individual, the agent completing the application shall supply the applicant's full name, business address (exclusive of post office boxes) and telephone number to be utilized in the course of sales and solicitations in the Borough, together with the full name and home and business addresses (exclusive of post office boxes) of each agent, servant or employee conducting or expected to conduct regulated activities on behalf of the applicant in the Borough, as required by subsections (3), (5), (6) and (8) below;

(3). The applicant's address(es) for service and receipt of notices or process (exclusive of post office boxes) in connection with the License application and the performance of subsequent activities in connection therewith;

(4). A detailed description of the nature of the applicant's business, the regulated activities proposed to be conducted in the Borough and the specific products, services, solicitations or other activities to be conducted, together with the requested, effective date of the License;

(5). Proof of compliance with all licensing, permitting, or certification requirements applicable to the applicant's business or the proposed activity;

(6). A description of each conviction involving a non-summary offense, the date of each conviction and the jurisdiction in which the conviction occurred;

Ordinance No. 1123

Page 5

(7). A warning that the applicant's responses, statements and submissions are subject to 18 Pa. C.S.A. Section 4904, relating to "Unsworn Falsification to Authorities;" and

(8). A criminal history background check provided by the applicant.

(c). The applicant or its authorized agent, servant or employee shall submit in person to the Borough an application, and at such time he shall provide for inspection and photocopying by the Borough a lawful driver's license or other official form of identification, containing his picture. In addition, he shall pay the application fee as set forth in Section 9 of this Ordinance.

(d). Upon submission of the application and the payment of a fee, the Borough shall accept the application for review and processing, which may include an investigation into the history or business of the applicant, his employer or his principal. Any application deemed incomplete shall be rejected and returned to the applicant with the fee.

(e). Within ten (10) business days of the date of submission of the application, the Borough Manager, or his designee, shall either approve the application and issue the license or permit, or deny the application and state the reasons therefore. Grounds for denial shall include, but are not limited to, those acts or omissions specified in Sections 4 and 5, below.

(f). The approval of the application and the issuance of the License to conduct the regulated activity(ies) shall apply only to those activities expressly described in the application. A Class 1 License shall be for a period of seven (7), consecutive days from commencing with the effective date thereof, and a Class 2 License shall be effective for a period of one (1) year, commencing with the effective date thereof.

(g). A License may be renewed, provided that the applicant shall file and submit for review and approval an application following the procedure set forth above. The Borough Manager, or his designee, may utilize a short form application for renewal. It shall be grounds for denial of any renewal application that the applicant has violated or is in violation of the law or any of the requirements of this or any other Borough Ordinance. A denial shall be made by the Borough Manager in writing which shall set forth the specific reasons for the denial. In determining whether to deny the application the Borough Manager shall consider the past history of the applicant as reflected in the information provided or obtained in the application process as well as any prior experience with the applicant as a transient merchant in the Borough.

(h). Every License issued hereunder shall be considered personal to the applicant if an individual, or if other than an individual, personal to the agents, servants or employees specifically identified in the application. No License issued hereunder shall be transferable or assignable.

(i). At all times while conducting or engaging in a regulated activity, a Licensee shall maintain in his or her possession the original License issued by the Borough or a true and correct copy thereof and shall produce the same for inspection together with picture identification, upon request. The Licensee shall display any and all identifications issued by the Borough in a conspicuous place or manner, so as to be easily viewed by members of the public.

5. Prohibited Acts.

It shall be a violation of this Ordinance for any Licensee to:

- (a). Engage in regulated activities on legal holidays or on Sundays;
- (b). Engage in regulated activities between the hours of 5:00 p.m. and 8:00 a.m., prevailing time on Monday through Saturday, from November through March, and between the hours of 7:00 p.m. and 8:00 a.m. prevailing time on Monday through Saturday, from April through October;
- (c). Disregard any sign prohibiting soliciting, sales, peddling or the like;
- (d). Conduct or engage in any activities beyond the express scope of the application or license or permit;
- (e). Fail to have on his person at all times while engaged in regulated activities the original, or true and correct copy of, the license or permit and an official form of picture identification;
- (f). Fail or refuse to produce upon request for inspection the original, or true and correct copy of, the license or permit and an official form of picture identification;
- (g). Obstruct, be or present a hazard to pedestrian or vehicular traffic on the public streets, roads, sidewalks or other rights of way within the Borough;
- (h). Erect or use any structure, whether temporary or permanent, in connection with any regulated activities;
- (i). Fail or refuse to leave or exit the premises of another upon request;
- (j). Engage in any acts or practices prohibited by the laws of this Commonwealth relating to unfair trade practices and consumer protection;
- (k). Solicit or attempt to solicit at any property identified on the "Do Not Solicit List"; and
- (l). Violate any of the provisions of this Ordinance.

6. License Suspension, Revocation or Non-Renewal.

- (a). The following shall constitute grounds for suspension, revocation or non-renewal of a License issued hereunder:

- (1). The making of any false statement by an applicant in connection with the application process described in 4, above;

(2). The commission of a prohibited act in the Borough by the Licensee or any of its agents, servants or employees;

(3). The conviction of the Licensee or any of his agents, servants or employees of any offense involving a violent crime, a crime of *crimen falsi* or a crime which is punishable by a term of incarceration of one (1) year or more, regardless where committed;

(4). A judicial determination that the Licensee has violated any law or regulation relating to unfair trade practices, consumer protection or the solicitation of charitable contributions regardless where committed; and

(5). With respect to the Licensee's employer or principal, any of the acts or omissions described in (1) through (4), above.

(b). The decision to suspend (including length of suspension), revoke or refuse to renew a License shall in the first instance be made by the Borough Manager who shall state with specificity the grounds thereof to the applicant or Licensee, as the case may be, in writing. In making his decision, the Borough Manager shall consider whether there has occurred any violations of this Ordinance, the number, type and severity of the violations and the past history of the applicant/Licensee as reflected in the information provided or obtained in the application process described in Section 4, above. The applicant/Licensee shall have a right of appeal as more particularly described in Section 10, below,

7. “Do Not Solicit List”.

The Borough Manager is hereby authorized to establish, publicize, and maintain a list of properties which, at the request of the owner or occupant, shall not be subject to any regulated activity, and the Borough shall provide a copy of the list to every person receiving a License under this Ordinance. The list shall identify only the properties and shall otherwise contain no personal information regarding the property owners or occupants. The property shall remain on the list for a period of not more than five (5) years, or until such time that the Borough is notified to remove the property from the list, or the property changes ownership. Property owners may request to remain on the list at the end of the five (5) year period.

8. Exempt Persons.

(a). The following persons shall be exempt from the requirements of this Ordinance:

(1). Farmers selling their own produce;

(2). Persons selling personal property if the proceeds of the sale are to be applied to a charitable or philanthropic purpose ;

(3). A manufacturer or producer of bread or bakery products, meat or meat products and milk or milk products, exclusive of ice cream or another frozen dessert;

Ordinance No. 1123

Page 8

- (4). Insurance companies and their agents or brokers authorized to transact business under the insurance laws of this Commonwealth;
- (5). Persons engaged in regulated activities on private property with the consent of the owner of the property;
- (6). Persons engaged in protected, speech under the First Amendment to the Constitution of the United States of America and Article 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania.

(b). The conduct of exempt activities as set forth in sub-section 1, above shall not relieve a person from obtaining a License hereunder if that person is also conducting a non-exempt, regulated activity.

9. Fees.

- (a). The application fee for a Class 1 License shall be Thirty Dollars (\$30.00) per individual.
- (b). The application fee for a Class 2 License shall be One Hundred Fifty Dollars (\$150.00) per person.
- (c). The following Licensees shall be exempt from the payment of a License fee:
 - (1). Charitable or non-profit organizations who are then acting in the course and scope of fund raising activities for and on behalf of such organizations; and
 - (2). Persons acting in full compliance with, and subject to, the Solicitation of Funds for Charitable Purposes Act of 1990, 10 P.S. Section 162.1 et. seq.
- (d). Council may, by Resolution, adopt a separate fee for the issuance of a transient merchant identification card.
- (e). Any fee authorized hereunder shall be subject to modification upon resolution of Council.

10. Appeals.

Any person who upon submission of an application to the Borough is denied a License (including a renewal thereof) or who has had his license suspended or revoked may appeal such action to Borough Council within 30 days of the date of such action by the Borough. Upon receipt of an appeal hereunder, the parties shall proceed in accordance with the Local Agency Act, 2 Pa. C.S.A. Section 102, et. seq., and the requirements of all current Borough Ordinances and resolutions or any successor ordinances or resolutions thereto.

11. Penalties for Violation.

Ordinance No. 1123

Page 9

Any person who shall violate any provision of this Ordinance shall, upon conviction thereof before a District Justice, be subject to a penalty or fine in an amount not less than \$100.00 and not more than \$1,000.00, together with the costs of prosecution and attorney fees; and in default of payment of such penalty, fine or costs, to imprisonment for a term not to exceed thirty (30) days for each such violation. Each day or portion thereof that such violation continues shall constitute a separate offense. The provisions of this Ordinance shall be enforced in the same manner as provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.

12. Repealer.

All existing Ordinances of the Borough or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed.

13. Severability.

If any section or provision of this Ordinance is declared by any Court of competent jurisdiction to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect the constitutionality, legality or validity of this Ordinance as a whole, nor the constitutionality, legality or validity of any other section or provision of this Ordinance other than the one so declared to be unconstitutional, illegal or invalid.

14. Effective Date.

This Ordinance shall become effective in accordance with Section 3301.3 of the Borough Code.

DULY ENACTED AND ORDAINED this 6th day of April, 2015, by the Council of the Borough of Emmaus, Lehigh County, Pennsylvania, by a lawful session duly assembled.

XXXXXXXXXXXXXXXXXX

Shane M. Pepe
Borough Manager

XXXXXXXXXXXXXXXXXX

Brian Holtzhafer
Acting Borough Council President

AND NOW, this 6th day of April, 2015, the above Ordinance is hereby **APPROVED** by the Mayor of the Borough of Emmaus in due course.

XXXXXXXXXXXXXXXXXX

Lee Ann Gilbert, Acting Mayor
Borough of Emmaus