

BOROUGH OF CLARKS SUMMIT

LACKAWANNA COUNTY, PENNSYLVANIA

ORDINANCE NO. 2015-04

AN ORDINANCE OF THE BOROUGH OF CLARKS SUMMIT PROVIDING FOR THE HEALTH, SAFETY AND WELFARE OF ITS RESIDENTS AND VISITORS, BY ESTABLISHING CERTAIN REGULATIONS AND LICENSE FEES REGULATING THE ESTABLISHMENT AND OPERATION OF TRANSIENT RETAIL BUSINESSES WITHIN THE BOROUGH OF CLARKS SUMMIT INCLUDING FOOT PEDDLERS, VEHICLE PEDDLERS, FOOD CARTS/TRUCKS, DOOR-TO-DOOR SALESPERSONS, SOLICITORS AND TRANSIENT RETAIL OR WHOLESALE BUSINESSES.

WHEREAS, pursuant to the provisions of the Borough Code of the Commonwealth of Pennsylvania, Act of February 1, 1966, as amended to date, the Clarks Summit Borough Council is empowered to enact, ordain, and enforce suitable ordinances and regulations to provide for the general health, safety and welfare of the residents and visitors to the Borough of Clarks Summit; and

WHEREAS, after receiving public comment regarding concerns about the manner and operation of transient retail business including foot peddlers, vehicle peddlers, food carts/trucks, door-to-door salespersons, solicitors and transient retail or wholesale businesses within the Borough of Clarks Summit and after review and recommendation by Borough Council, Clarks Summit Borough Police Department and the Office of the Mayor, it has been deemed appropriate and advisable by Clarks Summit Borough Council to establish regulations, procedures and license fees governing the establishment and operation of such businesses and/or persons within Clarks Summit Borough's borders.

NOW, THEREFORE, be it ENACTED and ORDAINED by the Borough of Clarks Summit, County of Lackawanna and Commonwealth of Pennsylvania and it is hereby ENACTED and ORDAINED by authority of same as follows:

SECTION 100. LEGISLATIVE INTENT.

This Ordinance is adopted and intended to regulate the establishment and operation of transient retail and wholesale business including foot peddlers, vehicle peddlers, food carts/trucks, door-to-door salespersons, solicitors and transient retail or wholesale businesses within the Borough of Clarks Summit, Lackawanna County, Pennsylvania by imposing certain appropriate time, place and manner regulations and license fees to provide for the health, safety and welfare of Clarks Summit Borough residents and visitors thereto.

SECTION 101. DEFINITIONS AND INTERPRETATIONS.

A. Definitions.

- (1) Foot Peddler. Any person engaged in the peddling, selling, or taking of orders, either by sample or otherwise, of any personal property or services within the Borough, with or without the use of a pushcart or carried display tray, while standing, walking or otherwise on foot.
- (2) Vehicle Peddler. Any person engaging in the peddling, selling or taking of orders, either by sample or otherwise, of any goods, wares, food or other merchandise or services in the Borough using a vehicle either in a stationary position on private or public property or in a moving position on the public streets. Food cart/truck operators are included in this definition.

- (3) Food Cart/Truck Operator – A type of vehicle peddler who owns and/or uses a vehicle which is self-propelled and driven, which is towed by another vehicle or which is pushed by a person and is used to prepare and/or sell food to pedestrians.
- (4) Door-to-Door Salesperson. Any person engaging in the peddling, selling, soliciting or taking of orders, either by sample or otherwise, of any personal property or services in the Borough when the activity involves the movement of the salesperson from building to building, whether by vehicle or on foot and the sales activity is proposed to any occupant of such building.
- (5) Solicitor. Any person engaging in the solicitation of money as a donation or tickets and coupon books or similar material with or without distribution by such solicitor of literature, samples, free gifts or other materials within the Borough, whether on foot or within a structure, or by use of the vehicle or by use of telephone or in any other manner. Included within this definition are all persons engaged in such activities as members of religious organizations or charitable groups.
- (6) Transient Retail or Wholesale Business. Any person operating or conducting a business enterprise within the Borough of Clarks Summit by selling, soliciting or taking orders for any goods, wares or merchandise from either a fixed location within the Borough of Clarks Summit on a temporary or seasonal use basis; and/or engaging in such endeavor upon any street, alley, sidewalk, or public grounds within the Borough of Clarks Summit, except for established generally recognized charitable endeavors or similar undertakings hereinafter accepted from the provisions of this Ordinance.

B. Interpretations.

- (1) Applicability. The foregoing definitions apply equally to all persons, whether a resident or non-resident of the Borough, whether such person is engaged in another business or not.
- (2) Exceptions. None of the foregoing definitions shall be deemed to include either of the following activities:
 - (a) any sale or the solicitation thereof or the taking of orders for personal property or services at a prearranged appointment on the property of the customer, but not intended to serve the general public.
 - (b) the collection of money for payment for previously sold property or services by a salesperson with or without a pre-arranged appointment.

SECTION 102. LICENSE REQUIRED.

Every person defined herein as a foot peddler, vehicle peddler, food cart/truck operator, door-to-door salesperson, solicitor or transient retail or wholesale business, whether acting on his own behalf as principal or as the employee or agent of another, shall obtain a license as hereinafter provided.

- A. Application. Application for a license shall be on forms provided by the Borough and available at the Municipal Building. The application shall be completed and signed by the applicant and shall be filed with the Clarks Summit Municipal Police Department and the Borough Manager, Borough Secretary or Designated Borough Representative, together with two photographs of the face of the applicant, accurately depicting the applicant's appearance, approximately 2 x 3 inches in size. Each person who wishes to actively engage in peddling or door-to-door sales shall file a separate application, provide photographs and obtain a license. Group or joint applications or licenses shall not be permitted except as provided in Section 102.G.

- B. Information Required on Application. The application for a license shall contain the following information:
- (1) Name. The name of the person making application for peddling or door-to-door sales within the Borough.
 - (2) Address. The permanent address and local address, if any, of the applicant.
 - (3) Other Information. The identifying physical features of each applicant, date of birth, social security number, together with information of any previous convictions of criminal offenses. The description of any motor vehicle(s) proposed to be used by any person referred to in this Section together with the license plate number and the names of the registered owners thereof. *It is now the responsibility of the applicant to apply for a "Criminal History Report" from the Pennsylvania State Police. This PSP "Criminal History Report" must accompany any and all applications. Any application not including this report will be considered incomplete and will be rejected.* A Criminal History Report shall not be required for any activity that does not involve door-to-door sales or other activity involving movement from building to building.
 - (4) Nature of Sales Activity. A complete and accurate description of the nature, type and location of activity to be conducted including procedures and methods to be used in contacting persons, the hours and days of the activity and the lengths of time for which the license is being requested.
 - (5) Insurance Coverage.
 - (a) Proof of general comprehensive liability policy with limits of no less than \$2 million combined single limit coverage issued by an insurer licensed to do business in Pennsylvania and which names the Borough of Clarks Summit as an additional insured.
 - (b) Proof of public liability and property damage motor vehicle policy with limits of no less than \$1 million issued by an insurer licensed to do business in Pennsylvania.
- C. Waiting Period for Action on the Application. A 3-day waiting period not including weekends or holidays shall be required between the submission of the application for a temporary peddlers/salespersons license and action on it by the Police Department, Borough Secretary or Designated Borough Representative. This waiting period may only be waived by Borough Council.
- D. Responsibility of the Chief of Police and/or Police Representative. During the 3-day waiting period specified in Section C, the Chief of Police and/or Police Representative shall cause a determination to be made concerning previous convictions of crimes, if any, of the applicant and shall transmit such information to the Borough Manager, Borough Secretary or Designated Borough Representative. The Chief of Police and/or Police Representative shall also investigate the organization/applicant to confirm it is doing business from the address listed on the application and shall advise the Borough Manager, Borough Secretary or Designated Borough Representative of the results of his investigation in writing.
- E. Responsibility of the Applicant Where Goods or Items are Proposed to be Sold for Human Consumption. Where goods or items are proposed to be sold for human consumption, it shall be the responsibility of the applicant to provide proof of Pennsylvania Department of Agriculture approval and proof of compliance with all applicable federal, state and local health regulations at the time of submission of the application on such goods.

F. Responsibility of the Borough Manager, Borough Secretary or Designated Borough Representative. After the 3-day waiting period but within five (5) days of submission of an application, the Borough Manager, Borough Secretary or Designated Borough Representative shall grant approval or disapproval of the issuance of a peddler's or door-to-door salesperson's license after receiving a written report from the Police Department confirming the aforementioned background check. The Borough Manager, Borough Secretary or Designated Borough Representative shall have the right to disapprove any application for any reason, including the following:

- (1) If the applicant has been previously convicted of a felony.
- (2) If the applicant has given false information on the application.
- (3) If the applicant proposes to sell goods or items for human consumption and has not received approval from the Health Officer or designated agency.
- (4) If the applicant has violated the terms of this Ordinance or the Municipal Ordinance regulating temporary retail dealers or soliciting within one year prior to this application.

G. License Issuance. When the Police and Borough Representatives have approved the issuance of a license, the applicant shall be issued a license. The license shall contain the information required on the application, the expiration date and one of the photographs which was submitted with the application shall be attached. The license shall be carried by each peddler or door-to-door salesperson at all times when engaged in such activity and shall be exhibited for inspection to any person approached for purposes of peddling or selling.

The Police or Borough Representative shall have the right to permit a group application for a peddler's or door-to-door salesperson's license under the following conditions:

- (1) The applicant is an organization exempt from the payment of license fees;
- (2) The organization has a permanent location or address within the Borough or within five miles of the Borough;
- (3) The peddling or sales will be conducted during a period of time not to exceed one month; and
- (4) Each individual participating in such peddling or sales is a resident of the above described area.

Examples may be Girl Scout cookie sales and similar types of activity. In such cases, an application shall be made on behalf of the organization and the peddlers or salespersons indicated by general description.

SECTION 103. LICENSE TERM AND LICENSE FEES.

A. License Term. The term of each license issued per Section 102 shall be specified on the license issued and shall not exceed one year.

B. Fees.

- (1) Borough Council Resolution. The fees for a peddler's or door-to-door salesperson's license shall be established by resolution of Borough Council.

(2) Exemption. No fee shall be charged for a license which is a charitable, religious or educational organization. Exemption from taxation by the United States Treasury Department to such organization shall be sufficient to establish exemption from payment of fees set forth in this Section.

(3) Transfers. A license shall not be transferrable from person to person or from vehicle to vehicle.

SECTION 104. LIMITATIONS.

The license issued per Section 102 shall be valid in all districts within the Borough subject to the following limitations for certain days, districts and activities:

A. Civil Events. No foot peddler, vehicle peddler, door-to-door salesperson, solicitor or transient retain or wholesale business shall conduct such activities upon the grounds of any organized civic event unless such activity is authorized by the civic organization sponsoring such event.

B. Hours of Operation. Any activity involving door-to-door sales or other movement from building to building shall only be conducted between the hours of 9:00 a.m. and 7:00 p.m. All other licensed activities shall only be conducted between the hours of 7:00 a.m. and 7:00 p.m.

C. Special Requirements.

(1) Physical Contact. There shall be no physical contact by the licensee with anyone being approached for sales purposes without the person's consent. This shall be deemed to include not only physical force or restraint, but also the act of placing objects on the person or the person's clothing.

(2) Fixed Location. A licensee shall not occupy a fixed location on any public sidewalk and shall not occupy a fixed location on a public street except as specified in the license. There shall be no interference with or blocking of movement of any pedestrians or vehicles by the licensee. No vehicle or food cart/truck shall be left unattended. The issuance of a license does not grant or entitle the licensee to the exclusive use of any location or parking space.

(3) Property Owner Permission. Foot peddlers, vehicle peddlers and food carts/trucks may occupy a fixed location in the setback areas of a building or lot provided they have the permission of the affected property owner to do so. Such permission shall be in writing and must be carried by the foot peddler when in such a fixed location and available for inspection by the Municipal Officers. A property owner shall not permit such operation until a license has been obtained by the operator.

(4) Noise. Licensees shall not be permitted to make or cause to be made any loud noises to attract attention or for any other purpose. Such noises may include, but shall not be limited to, shouting, use of loud speakers, horns, drums, musical instruments or other sound devices.

(5) Residential District Prohibition. Vehicle peddling, food carts/trucks and/or transient retail or wholesale businesses from a fixed location in any residential district of the Borough is prohibited at all times.

(6) Streets/Thoroughfare Prohibition. Vehicle peddling, food carts/trucks and/or transient retail or wholesale businesses on or along the following streets or thoroughfares is prohibited at all times:

(a) Route 6 between Highland Avenue and Grove Street.

(b) Depot Street.

- (c) One-way streets or thoroughfares.
- (7) The following requirements shall apply to vehicle peddling, food carts/trucks and/or transient retail or wholesale businesses:
- (a) Customer Service Area. No customer service shall be provided on the driving lane side.
 - (b) Accessories. Tables and chairs, booths, stools, benches or stand up counters for customer use (except to serve a customer) shall not be permitted.
 - (c) Trash. Trash containers shall be required as necessary and all trash and garbage originating from the operation shall be collected and disposed of off-site by the operators each day. The discharge of any gray water is prohibited.
 - (d) Lights. No flashing or blinking lights shall be permitted. All exterior lights with over 60 watts shall contain opaque shields to direct the illumination downward.
 - (e) Power Supply. Any power required shall be self-contained and utilities shall not be drawn from the public right-of-way. Operations on private property may use electrical power from the property being occupied or an adjacent property, but only when the property owner provides written consent to do so. No power cable or equipment shall be extended on or across any street, alley or sidewalk.
- (8) Transient Retail or Wholesale Business.
- (a) Highway Occupancy Permit. A transient retail or wholesale business operating from a fixed location or within a temporary building, structure or tent, along or abutting any state highway or road shall first obtain all necessary highway occupancy permits and all other necessary permits from the Pennsylvania Department of Transportation and deliver evidence of the same to the Police and Borough representatives at the time the application for a license is made.
 - (b) Temporary Use Permit. A transient retail or wholesale business shall not engage in any business activity from a fixed location or within a temporary building, structure or tent without first securing from the designated Police or Borough representative a temporary use permit, certifying that any such fixed location or temporary building, structure or tent, conforms with all zoning regulations relating to the business use in the zone in which the business is located in specific respect to setback lines, yard area, requirements, sufficiency of off-street parking and permitted use within the zoning district.
- (9) Signs. Signs other than signs painted on or attached within the bounds of a vehicle or cart shall not be permitted.

SECTION 105. RESPONSIBILITY FOR PAYMENT OF TAXES.

It shall be the responsibility of every licensee under this Ordinance to pay the Borough the proper taxes for himself or any employee on income earned as a result of the sales.

SECTION 106. SUSPENSION OR REVOCATION OF LICENSES.

The Borough Manager, Borough Secretary, Borough Police Department or Designated Borough Representative is hereby authorized to revoke or to suspend, for a specific period of time, any license under this Ordinance under the following circumstances:

- A. If the licensee is convicted of a felony or misdemeanor during the license period.
- B. If the Borough Manager, Borough Secretary, Borough Police Department or Designated Borough Representative determines the goods or items being sold are unsafe or harmful to the public.
- C. If it is determined the licensee has given false information on the application.
- D. If it is determined the approval of the Health Officer or designated agency is revoked.

SECTION 107. APPEALS.

- A. **Opportunity for Appeal.** Any person whose application for a license is disapproved may appeal such action to the Borough Council.
- B. **Filing.** Such appeal shall be in writing and signed by the person and filed in the office of the Borough Manager, Borough Secretary or Designated Borough Representative within ten (10) days of the date of such action appealed from.
- C. **Hearing.** The Borough Council shall conduct a hearing at a public meeting within 40 days of the filing of such appeal and shall notify such person by written letter mailed to the permanent address of the person shown on the application, such mailing to occur 15 days or more prior to such hearings. In lieu of mailing such notice, it may be delivered to such person.
- D. **Procedure.** The President of the Borough Council shall preside over the hearing and shall administer oath to all witnesses.
- E. **Action.** The Council shall affirm the action appealed from or reverse such action or may modify the Borough Manager, Borough Secretary or Designated Borough Representative's action. Any reversal or modification be by majority vote of the Borough Council members present, providing a quorum is present.
- F. **Restricted Participation.** The Borough Manager, Borough Secretary or Designated Borough Representative shall not participate in the making of such decision, but shall be permitted to testify or present evidence.

SECTION 108. PENALTIES.

Any person who shall violate any of the provisions of this Ordinance shall on conviction thereof be sentenced to pay a fine of not less than \$25.00, no more than \$300.00 plus costs and on failure to pay such fine and costs, to imprisonment for not more than ten (10) days. Each day's continuance of a violation of any provision of this Ordinance shall constitute a separate offense.

SECTION 109. REPEALS.

This Ordinance repeals Ordinance No. 2005-05, Ordinance No. 2010-04 and any other prior ordinances concerning peddlers in their entirety.

SECTION 110. SEVERABILITY.

Should any section, subsection, clause, provision or other portion of this ordinance be declared invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance; the Borough Council having adopted this ordinance as if such invalid portions had not been included therein.

SECTION 111. EFFECTIVE DATE.

This Ordinance shall become effective five (5) days following its adoption.

ORDAINED AND ENACTED this 3rd day of February, 2015, by the Borough Council of the Borough of Clarks Summit, Lackawanna County, Pennsylvania.

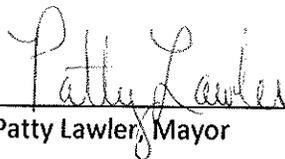
BOROUGH OF CLARKS SUMMIT

By: 
Germaine Carey, Council President

ATTEST:


Virginia Kehoe, Manager/Secretary

APPROVED this 3rd day of February, 2015

By: 
Patty Lawler, Mayor