

# **CHAPTER 26**

## **PEDDLING AND SOLICITING**

BOROUGH OF WYALUSING  
ORDINANCE NO. 26

AN ORDINANCE CHAPTER NO. 26, PEDDLING AND SOLICITING, OF THE  
CODE OF THE BOROUGH OF WYALUSING, COUNTY OF BRADFORD,  
COMMONWEALTH OF PENNSYLVANIA.

The purpose of this Ordinance is to regulate Peddling and Soliciting as authorized under the Borough Code found at 53 P.S. § 46202, Specific powers.

(31) Markets, market houses and peddling. To regulate markets and peddling, whether for individual use or for resale; and to purchase and own ground for and to erect, establish and maintain market houses and market places, for which latter purposes, parts of any streets or sidewalks may be temporarily used; to contract with any person or persons, or association of persons, companies, or corporations, for the erection, maintenance and regulation of market houses and market places, on such terms and conditions, and in such manner, as the council may prescribe; to provide and enforce suitable regulations respecting said market houses and market places and to provide for the payment of the cost or expense thereof, either in whole or in part, out of the funds of the borough; and to levy and collect a suitable license fee from every person who may be authorized by council to occupy any portion of said market houses or market places, or any portion of the streets or sidewalks for temporary market purposes.

53 P.S. § 47901, Licensing transient retail business.

Every borough shall have power, by ordinance, to regulate and license each and every person, firm or corporation engaged in any transient retail business, within such borough, for the sale of goods, wares, or merchandise, whether such business shall be conducted from a fixed location within the borough or by any person or persons engaged in peddling, soliciting, or taking of orders from house to house, and to prohibit the commencement or doing of any such business or unless the license required by such ordinance has been procured from the proper authorities by the person, firm, or

corporation desiring to commence such transient retail business, and to enforce such ordinances by penalties or by other appropriate means. The amount of any such license fee shall bear a reasonable relationship to the cost of administering such ordinance and regulating, investigating inspecting and supervising such transient retail business.

No license fee shall be charged under this section: (2) to farmers selling their own produce, (ii) 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, or (iii) to any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk or milk products, but the ordinance may require any person, partnership, firm or corporation in any or all of these excepted categories to register with the borough, and be subject to all other provisions of the ordinance except those pertaining to the payment of license fees: Provided, the term "milk or milk products" shall not include or apply to ice cream or other frozen desserts: And provided further, That any transient retail business dealing in one or more of the excepted categories and selling other goods, wares and merchandise not excepted shall be subject to the license fee fixed by the ordinance for its activities in connection with the sale of goods, wares and merchandise not in any of the excepted categories.

The Borough of Wyalusing hereby ordains and enacts as follows:

#### § 1. DEFINITIONS.

Words as used herein are defined as follows:

CHARITABLE NONPROFIT AND PHILANTHROPIC – Included political, patriotic, religious, service, welfare, benevolent, educational, civic or fraternal corporations, organizations, associations, societies and the like, not organized for private gain. Examples of nonprofit organizations include veterans groups and organizations which assist the poor, the aged, the sick, the physically or mentally challenged, or which aid victims of fire, flood or similar catastrophes. This enumeration is intended to be typical and shall not be construed as exclusive. All applicants shall provide satisfactory proof of nonprofit status upon request, including but not limited to evidence of tax exemption.

COMMERICAL SOLICITOR – Any individual or person meeting the definition under this ordinance as a solicitor, peddler or transient, or itinerant merchant or vendor engaged in the sale of a product who does not meet the definition of an invited solicitor.

GOVERNMENTAL AGENCIES – Include local municipal agencies, school districts, county agencies, Commonwealth of Pennsylvania, and Federal agencies. This will include but no limit the agencies obtaining survey data or information for government purposes, including census takers and assessment officials.

NON-COMMERCIAL SOLICITOR – Any individual or person who is a member of a bona fide religious, educational, charitable, non-profit community service organizations or government agencies as defined in this ordinance and candidates or campaign workers for political office or for legitimate campaign issues who travel door to door in the Borough who are not engaged in the sale of a product.

OWNER – Any person vested with ownership, legal, or equitable, sole or partial, of any property located in the Borough.

PEDDLER -- Any person, whether a resident of the Borough of Wyalusing or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden or farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car or other vehicle or conveyance, and further provided that one who solicits orders and, as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this chapter shall be deemed a "peddler" subject to the provisions of this chapter.

PERSON -- Includes the singular and the plural and shall also mean and include any person, firm or corporation, association, club, copartnership or society or any other organization.

SERVICE ORGANIZATION – Includes benevolent, civic or fraternal organizations, association, societies and the like, not organized for private gain. Examples of nonprofit organizations include organizations, which provide a free community service, assist the poor, the aged, the sick, the physically or mentally challenged, or which aid victims of fire, flood or similar catastrophes. This enumeration is intended to be typical and shall not be construed as exclusive. All applicants shall provide satisfactory proof of nonprofit status upon request, including but not limited to evidence of tax exemption: Examples of service organizations as defined for the purposes of this chapter are as follows: Rotary, Kiwanis, Elks, Lions Club, etc.

SOLICITOR -- Any individual, whether of the Borough of Wyalusing or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance from place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or for another person, firm or corporation, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, hotel room, lodging house, apartment, shop or any other place within the borough for the sole purpose of exhibiting samples and taking orders for future delivery.

TRANSIENT MERCHANT -- Any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the borough or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within said borough and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar or public room in hotels, lodging houses, apartments or shops or any street, alley or other place within the borough for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm or corporation who, while occupying such temporary location, does not sell from stock but exhibits samples only for the purpose of securing orders for future delivery only. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer.

## § 2. LICENSE REQUIRED.

No person shall engage as a peddler, commercial solicitor or transient merchant within the Borough of Wyalusing without first having obtained a license as hereafter provided.

## § 3. EXEMPTIONS.

A. No license fee shall be charged under this section: (2) to farmers selling their own produce, (ii) 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, or (iii) to any manufacturer or producer in the sale of bread

and bakery products, meat and meat products, or milk or milk products, but the ordinance may require any person, partnership, firm or corporation in any or all of these excepted categories to register with the borough, and be subject to all other provisions of the ordinance except those pertaining to the payment of license fees: Provided, the term "milk or milk products" shall not include or apply to ice cream or other frozen desserts: And provided further, That any transient retail business dealing in one or more of the excepted categories and selling other goods, wares and merchandise not excepted shall be subject to the license fee fixed by the ordinance for its activities in connection with the sale of goods, wares and merchandise not in any of the excepted categories.

B. The license fee provisions of this chapter shall not apply to sales made to manufacturers, merchants and dealers for resale only.

C. Any commercial solicitor who was invited by the property owner to meet at the property owner(s) residence to discuss the sale of their product.

#### § 4. RELIGIOUS, CHARITABLE, EDUCATIONAL OR SERVICE ORGANIZATIONS.

Authorized representatives of bona fide religious, charitable, educational or service organizations government agencies and political candidates or campaign workers may go door to door in the Borough without any requirement to register provided they are not selling any products. Any of these organizations selling a product shall be exempt from the payment of any fee required by any section of this chapter. All such organizations shall be required to submit, in writing, to the Borough Secretary the name and purpose of the cause for which such activity is sought, the name and address of the immediate director of such activity and the period during which such activity is to be carried on in the Borough of Wyalusing. If the Borough Secretary, after investigation, shall find that the organization is a bona fide charitable, religious, educational or service organization, she shall issue, free of charge, a license to carry on such activity for which the license was issued. However, there will be no requirement to register or pay a fee for any individual identified in this Section who is not selling a product.

#### § 5. APPLICATIONS FOR LICENSE.

An application, in writing, shall be filed with the Borough Secretary for a license under this chapter. Such application shall set forth the applicant's name, permanent and local address, business address, if any, and physical description. The application shall also set for the applicant's employer, if any, and the employer's address,

the nature of the applicant's business, the last place of such business and the type of activity to be conducted under the license.

#### § 6. INVESTIGATION, ISSUANCE OF LICENSE.

A. Upon receipt of such application, including a driver's license or photo identification, the original shall be referred to the Borough Secretary, who shall cause such investigation of the applicant's business responsibility to be made, as he deems necessary for the protection of the public good.

B. If, as a result of such investigation, the applicant's business responsibility is found to be unsatisfactory, the Borough Secretary shall endorse on such application his disapproval and her reason for the same and return said application to the applicant that his application is disapproved and that no permit and license shall be issued.

C. If, as a result of such investigation, the business responsible for the applicant is found to be satisfactory, the Borough Secretary shall endorse on the application her approval and shall, upon payment of the prescribed license fee, deliver to the applicant his license. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of said driver's licensee shall be required, the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such activity. The Borough Secretary shall keep a permanent record of all licenses issued.

#### § 7. DISPLAY OF LICENSE.

Each solicitor or peddler shall at all times while doing business in this borough keep in his possession the license provided for in this chapter and shall, upon the request of prospective customers, exhibit the license as evidence that he has complied with all requirements of this chapter. Each transient merchant shall publicly display his license in his place of business.

#### § 8. TRANSFER PROHIBITED.

No license issued under the provisions of this chapter shall be used at any time by any person other than the one to whom it was issued.

#### § 9. NOISE.

No person licensed as a peddler under this chapter shall hawk or cry his wares upon any of the streets or sidewalks of the borough, nor shall he use any loudspeaker or

horn or any other device for announcing his presence by which the general public is annoyed.

§ 10. USE OF STREETS.

Unless otherwise permitted by ordinance, no transient merchant shall be permitted to sell from any fixed location in the public streets nor shall any peddler, solicitor or transient merchant be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this chapter, the judgment of the Borough Secretary exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

§ 11. ENFORCEMENT.

It shall be the duty of any the Ordinance Enforcement Officer of the Borough of Wyalusing to require any person seen peddling, soliciting or doing business as a transient merchant and who is not known by such officer to be duly licensed to produce his license and to enforce the provisions of this chapter against any person found to be violating the same.

§ 12. RECORDS.

The Borough Secretary shall maintain a record for each license issued and record all violations therein.

§ 13. REVOCAION OF LICENSE.

A. Permits and licenses issued under the provisions of this chapter may be revoked by the Borough Secretary of the Borough of Wyalusing after notice and hearing for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on his business.
- (3) Any violation of this chapter.
- (4) Conviction of any crime or misdemeanor involving moral turpitude.
- (5) Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.



B. Notice of the hearing by the Borough Secretary for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last-known address or otherwise placed in his possession at least five days prior to the date set for hearing.

#### §14. APPEALS.

Any person aggrieved by the action of the Borough Secretary in the denial of a license as provided in § 6 of this chapter or in the decision with reference to the revocation of a license as provided in § 13 of this chapter shall have the right to appeal to the Council of the Borough of Wyalusing. Such appeal shall be taken by filing with the Council, within five days after notice of the action complained of has been mailed to such person's last-known address or otherwise placed in his possession, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and place for a hearing on such appeal within five days after the date of filing, and such hearing shall be held not later than 15 days after the date of filing. Notice of such hearing shall be given to the appellant in the same manner as provided in § 13 of this chapter for notice of hearing on revocation.

#### § 15. EXPIRATION OF LICENSE.

All annual licenses issued under the provisions of this chapter shall cover the period from January 1 to December 31.

#### § 16. HOURS DURING WHICH PEDDLING IS PERMITTED.

No person licensed as a peddler under this chapter shall engage in peddling at any time on Sunday or upon any other day of the week before 9:00 am. or one (1) hour after sunset but not later than 7:00 p.m.

#### § 17. LICENSE FEES.

No license shall be issued under this chapter until the proper fee, as follows, shall be paid to the Borough Secretary for the use of the borough unless changed by the Borough by Resolution:

- A. Ten dollars per week per group.
- C. Forty dollars per year per group.

#### § 18. VIOLATIONS AND PENALTIES.

Any person, firm or corporation who or which shall violate or fail to comply with any of the provisions of this chapter shall, upon conviction, be sentenced to pay a fine of not more than \$600 and costs of prosecution and, in default of payment of such fine and costs, be imprisoned for a term not exceeding 30 days.

THIS ORDINANCE shall take effect immediately upon adoption.