

ORDINANCE NO.263

AN ORDINANCE, OR THE BOROUGH OF CLYMER, COUNTY OF INDIANA AND COMMONWEALTH OF PENNSYLVANIA, PROVIDING FOR THE REGULATION AND LICENSING OF TRANSIENT RETAIL BUSINESS WITHIN THE BOROUGH OF CLYMER; REQUIRING PERSONS DESIRING TO ENGAGE IN TRANSIENT RETAIL BUSINESS TO OBTAIN LICENSES; AND PRESCRIBING PENALTY FOR VIOLATION.

BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Clymer, Indiana County, Pennsylvania, and it is hereby ordained and enacted as follows:

SECTION 1 - DEFINITIONS AND INTERPRETATION

1. The term "transient retail business," as used in this ordinance, shall mean and include the following:

a. engaging and peddling, canvassing, soliciting or taking orders, either by sample or otherwise, for any goods, wares or merchandise, upon any of the streets or alleys, sidewalks or public grounds, or from house to house, within the Borough of Clymer; and

b. selling, soliciting or taking orders for any goods, wares or merchandise, from a fixed location within the Borough, on a temporary basis, which shall include, but shall 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.

The term "transient retail business," shall not include fund raising activities for non-profit organizations.

2. The word "person," as used in this ordinance, shall mean any natural person, association, partnership, firm or corporation.

3. In this ordinance, the masculine shall include the feminine and the neuter, the singular shall include the plural and the plural shall include the singular.

SECTION 2 - LICENSE REQUIRED TO ENGAGE IN TRANSIENT RETAIL BUSINESS

1. No person shall engage in any transient retail business within the Borough of Clymer without first having obtained from the Borough Secretary. The fee for the license shall be \$100.00.

2. No license fee shall be charged for the following:

a. farmers selling their own produce;

b. the sale of goods, wares and merchandise, donated by the owner thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose;

c. the sale of bread and bakery products, meat and meat products, or milk and milk products by the manufacturer or producer; and

d. persons working without compensation and selling goods, wares or merchandise for the sole benefit of any nonprofit corporation

3. All persons exempt hereby from payment of the license fee shall be required to register with the Borough Secretary and to obtain a license without paying the fee.

4. Any person dealing in one or more of the hereinabove-mentioned exempted categories, and selling other goods, wares and merchandise not so exempted, shall be subject to the payment of the license fee fixed by this section for his activity in connection with the sale of goods, wares and merchandise not in such exempted categories.

5. Every license issued under the provisions of this ordinance shall be issued on an individual basis to persons 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.

### SECTION 3 - APPLICATION FOR LICENSE

1. Every person desiring a license under this ordinance shall appear in person at the office of the Borough Secretary at the Municipal Building and shall:

a. Complete and file an application in writing signed and verified by the applicant, under penalty of perjury, which application shall set forth:

1. The name, address, occupation and a general description of distinguishing physical appearance of the applicant.

2. A detailed description of the kind and character of business to be licensed, including a detailed statement of the merchandise to be sold or for which orders are to be solicited.

3. The name and address of the person, firm, or corporation for whom the applicant is selling or soliciting, and/or who is or will supply the merchandise sold.

4. At least three (3) personal references as to the applicant's character, honesty, and integrity.

5. At least three (3) business references as to the quality of the merchandise and the reliability of the manufacturer, jobber or seller.

b. Submit two (2) forms of identification, one being an unretouched photograph of the applicant not larger than 2 x 2 inches, which photograph shall be attached to the application.

c. Permit his fingerprints to be taken by the Police Department as a matter of further identification.

d. Submit each additional identification, reference or information as the Borough Secretary or the Police Department may reasonably require.

e. Pay to the order of the Borough the fee, required by this ordinance.

### SECTION 4 - INVESTIGATION; ENDORSEMENT

1. Upon receipt of every application and upon compliance with the provisions of Section 3 hereof, the Borough Secretary shall immediately transmit the application to the Police Department, which Department shall without delay take such action as may be necessary to verify the identity and character of the applicant, and to verify the statements and references contained in the application. Upon completion of its investigation, if the Police Department is satisfied that the applicant is of good character, and that his business is legitimate, and that the license may be issued without fraud or imposition upon the public, the Mayor or Chief of Police shall endorse upon the application the approval of that department, or shall endorse thereon the disapproval of the Police Department, setting forth the reasons therefor, and shall immediately return the application to the Borough Secretary.

### SECTION 5 - ISSUANCE OR REFUSAL OF LICENSE

1. The Borough Secretary shall, upon receipt of any application for license under this ordinance from the Police Department, immediately notify the applicant of the action of that department, and if the application is approved, the Borough Secretary shall forthwith issue a license in accordance with the application.

### SECTION 6 - APPEALS

1. Any person aggrieved by the action of the Police Department or the Borough Secretary in granting or refusing to grant a license under this ordinance shall have the right of appeal to the Borough Council. Such appeals shall be made in writing, setting forth the matters objected to and shall be filed with the Borough Secretary within ten (10) days after the action appealed from. Such appeals shall be heard by the Council at its next regular meeting or within ten (10) days following such regular meeting, and the decision of Council shall be communicated to the appellant without delay.

#### SECTION 7 - INFORMATION OF LICENSE

1. Every license issued under authority of this ordinance shall contain:
  - a. The serial number of the license, the date upon which it is issued, and the date upon which it shall expire.
  - b. The name, address and occupation and general description of distinguishing physical appearance of the licensee.
  - c. A photograph of the licensee.
  - d. A statement of the business for which the license is issued.
  - e. The signature of the Borough Secretary and the Borough seal.

#### SECTION 8 - RIGHTS OF LICENSE HOLDER

1. Every licensee complying with the provisions of this ordinance shall be entitled to carry on the business or activities specified in such license; provided, however, that the issuing of such license shall not be construed to permit the selling of any article or the doing of any act prohibited by law or by any other ordinance of the borough now in force, or which may hereafter be passed. Each license issued hereunder shall be personal, individual and not transferable, and shall not be construed to permit the employment of unlicensed agents. The license shall expire thirty (30) days after it is issued.

#### SECTION 9 - CUSTODY AND DISPLAY OR EXHIBIT OF LICENSE

1. Every licensee shall carry his license with him at all times while engaged in doing the acts permitted therein, and shall first exhibit the said license to each prospective customer before attempting to engage in any licensed business. Said licensee shall also exhibit his license when requested by any person having any reasonable cause for requesting the same. No licensee shall permit any other person to use his license and such use shall operate to revoke the permit in addition to subjecting the licensee to the penalties of this ordinance. Every licensee shall report to the Borough Secretary any change of his residence or place of business or any other change affecting the said licensed business within forty-eight (48) hours after such change.

#### SECTION 10 - PROHIBITED ACTS

1. No person engaged in any transient retail business shall:
  - a. sell any product or type of product not mentioned in his license;
  - b. hawk or cry his wares upon any streets, alleys, sidewalks or public grounds in the Borough;
  - c. when selling 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 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 cartons, wrapping material or of any stock or wares or foodstuffs which have become unsaleable through handling, age or otherwise; and
  - e. engage in any such business, on a house-to-house basis, at any time before 10 a.m. or after 3 p.m., Monday through Friday; or on any of the following holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

#### SECTION 11 - SUSPENSION OR REVOCATION OF LICENSE; APPEALS

1. The Mayor is hereby authorized to suspend or revoke any license issued under this ordinance when he deems such suspension to be beneficial to the public health, safety or morals, or for violation of any of the provisions 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 within ten (10) days after such suspension or revocation. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked.

SECTION 12 - PENALTY FOR VIOLATION

1. Any person who shall violate any of the provisions of this ordinance shall, for every such violation, upon conviction thereof, be sentenced to pay a fine of not more than one hundred fifty dollars (\$150.00), and for subsequent violations a fine of not more than three hundred dollars (\$300.00) would be imposed, plus costs of prosecution, and, in default of payment of such fines and costs, to imprisonment for not more than thirty (30) days.

2. Each day's violation of any of the provisions of this ordinance shall constitute a separate violation.

SECTION 13 - SEVERABILITY

1. The provisions of this ordinance shall be severable, and if any section, part of a section or provision thereof shall be held to be unconstitutional, illegal or otherwise invalid, such decision shall not affect the validity of any of the remaining sections, parts of sections or provisions of this ordinance. It is hereby declared as a legislative intent that this ordinance would have been adopted had such unconstitutional, illegal or otherwise invalid provision not been a part thereof.

ORDAINED AND ENACTED by the Borough Council of Clymer Borough this

2nd day of November, 1992.

ATTEST:

BOROUGH OF CLYMER

*Cornelius L. Custer*  
Secretary

By *Ronald J. Deason*  
President of Council

APPROVED this 2nd day of November, 1992.

*Joseph E. Krolick*  
Mayor