

ORDINANCE NO. 459

AN ORDINANCE REGULATING THE BUSINESS OF TRANSIENT MERCHANTS WITHIN THE BOROUGH OF SOUTHMONT, CAMBRIA COUNTY, PENNSYLVANIA, REQUIRING TRANSIENT MERCHANTS TO OBTAIN LICENSES, ESTABLISHING LICENSE FEES, PROVIDING FOR THE ENFORCEMENT OF THE PROVISIONS OR THE ORDINANCE AND PENALTIES FOR VIOLATIONS THEREOF.

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

SECTION 1. (a) The word "soliciting" as used in this Ordinance shall mean the seeking or taking of contracts or orders for any goods, wares, services, or merchandise for future delivery, or for subscriptions or contributions, upon any of the streets or sidewalks, or from house to house, or by visitation to private residences, or by entering in or upon private property, within the Borough of Southmont, and shall further mean the seeking or taking of contract or orders for home or other building repairs, improvements and alterations, and also orders or contracts for any mechanical, electrical, plumbing or heating device or equipment for house, or other building improvements or repairs, upon or from the places aforesaid within the said Borough.

(b) The word "peddling" as used in this Ordinance shall mean the selling or offering for sale of any goods, wares, services, or merchandise for immediate delivery which the person selling or offering for sale carries with him in traveling, or has in his possession or control, upon any of the streets or sidewalks, or from house to house, or by visitation to private residences, or by entering in or upon private property, within the said Borough.

PROVIDED: The words "soliciting" and "peddling" shall not apply:

(1) To farmers seeking or taking orders for the sale of their own products.

(2) To the sale of goods, wares and merchandise donated by the owners

thereof, the proceeds of which are to be applied to any charitable or philanthropic purpose.

(3) To non charitable groups such as boy scouts, girl scouts, etc.

(4) To persons, corporations, partnerships and associations, their agents or

employees, who have complied with the provisions of the Act of Assembly of the Commonwealth of Pennsylvania of 1990, Dec. 19, P.L. 1200, No. 202, as amended, governing solicitations for charitable, benevolent, patriotic or other purposes.

(c) Any person who is engaged in the business of "soliciting" and/or "peddling" shall be termed a "transient merchant."

(d) The word "person" as used in this Ordinance, shall mean any natural person, association, partnership, firm, organization, corporation or any other entity however styled.

(e) In this Ordinance the singular shall include the plural and the masculine shall include the feminine and the neuter.

SECTION 2. No person shall engage in soliciting or peddling or in the business of Transient Merchant in the Borough of Southmont without first having secured a license as herein provided.

SECTION 3. Every person desiring to engage in the business of Transient Merchant in the Borough of Southmont shall first make application to the Borough Manager, or a designated person, for a license, and a background check by the West Hills Police. The application shall be upon a form prescribed by the Council of the Borough of Southmont and shall contain at least the following information:

(a) Full name of the applicant and local address, if any.

(b) Permanent address.

(c) Name of employer or a statement that such applicant is self-employed.

(d) The nature of the goods, wares, services or merchandise offered for sale.

(e) A statement as to whether or not the applicant has ever been convicted of any

crime, and if the answer is in the affirmative, the nature of the offense or offenses and the punishment or punishments imposed there.

(f) The type of vehicle to be used and license plate number, if any.

(g) Upon request, the applicant shall also submit to fingerprinting and furnish a photograph.

(h) The start and end date for the license requested.

PROVIDED:

(1) Where a person makes application for himself and one or more helpers, all applicable personal information specified above shall be given for each helper and verified or affirmed by oath or affirmation by the applicant and an individual license shall be required for each helper. No license under this Ordinance shall be transferable from one person to another.

SECTION 4. (a) No license to engage in the business of Transient Merchant shall be issued under the Ordinance until the required license fee shall be paid to the Borough of Southmont. Such fees shall be in accordance with the Schedule of Fees then in effect in the Borough and established by resolution of the Board of Supervisors. A separate application shall be filed and a separate license fee shall be paid by each person who shall actually conduct the soliciting or peddling and shall apply where an employer desires to secure licenses for his employees, agents or servants.

(b) It shall be the duty of every person who leases property in the Borough of Southmont to a Transient Retail Merchant, by oral or written lease:

(1) To notify the Transient Retail Merchant of the existence of this Ordinance.

(2) To report to the Borough Council, in writing, the name, permanent address

and dates that the Transient Merchant shall be renting or leasing property in the Borough at least 24 hours prior to the Transient Retail Merchant actually taking possession of the leased property.

SECTION 5. The Fee Schedule adopted by the Council of the Borough of Southmont may provide for different fees for different periods of times. No license shall be issued for a period of time in excess of one (1) month. Should the Transient Merchant desire to continue his activities for a period longer than one month, a new application must be filed and the appropriate fee paid. All fees shall be non-refundable.

SECTION 6. Such license when issued shall state, inter alia, the products to be sold or services to be rendered by the licensee. Every Transient Merchant shall at all times, when engaged in soliciting or peddling in the Borough of Southmont, carry such license upon his person and shall exhibit it upon request to all police officers, Borough officials and citizens.

The Transient Merchant shall conform to the following standards of conduct:

(a) No Transient Merchant shall engage in selling any product or

service not specified on his license.

(b) No Transient Merchant shall enter or attempt to enter any

dwelling house without invitation or permission of the occupant and shall immediately leave any premises upon request.

(c) No peddling or soliciting of business shall occur on Sundays or official holidays.

(d) No peddling or soliciting of business shall occur prior to 9:30

a.m., prevailing time, and shall cease at sunset or 5:00 p.m., prevailing time, whichever shall occur earlier.

(e) No person licensed as a Transient Merchant under this

Ordinance shall occupy any fixed location upon any of the sidewalks, streets, highways or alleys of the

Borough or upon private property not properly zoned for such activity for the purpose of soliciting or peddling with or without any stand or counter.

(f) No person in any transient retail business shall, when

operating 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 or working in the immediate vicinity.

SECTION 7. The Borough Manager, or a designated person of the Borough of Southmont shall keep a record of all licenses issued under the Ordinance. The , Borough Manager, or a designated person, of the Borough of Southmont shall supervise the activity of all holders of such licenses.

SECTION 8. (a) Any license which has been issued under the terms of this Ordinance may be suspended by the Borough Manager, or a designated person, upon the filing of complaints by two (2) or more residents of the Borough regarding the misconduct or adverse behavior of any licensed Transient Merchant. The license shall be revoked or reinstated within seven (7) days following an investigation into the merits of the complaints by the Borough Manager, or a designated person.

(b) Any license which has been issued under the terms of this Ordinance may be revoked by the Borough Manager, or a designated person, upon failure of the licensee to comply with the standards of conduct established herein or upon ascertainment that the licensee has made a false statement in his application for a license hereunder, or that the licensee was convicted of a crime after the issuance of such license or was convicted of disorderly conduct under any law of the Commonwealth of Pennsylvania or any Ordinance of the Borough of Southmont. Notice of revocation shall be given by written notice personally served or sent by certified mail to the address designated for this purpose in the application for license.

SECTION 9. Any person whose license has been revoked may file a written appeal of the revocation on or prior to the thirtieth (30th) day following the date on which the notice of revocation is mailed or delivered to the licensee. A hearing on the revocation shall be held at any regular or special meeting of the Borough Council scheduled not more than sixty (60) days following the date when the licensee's notice of appeal is actually received by the Borough. The licensee may be represented by legal counsel at the hearing. The Borough will not be required to swear witnesses or to transcribe testimony or statements and formal rules of evidence or administrative procedure will not apply. The Borough Council shall rule on the licensee's appeal on or prior to the fifth (5th) day

following the hearing. If the Borough Council fails to rule, the appeal shall be deemed as denied.

SECTION 10. No person licensed as a Transient Merchant under this Ordinance shall hawk or cry his wares or services upon any of the streets or sidewalks of the Borough no shall he use any loud speaker, bell, whistle or other device for announcing his presence by which the public is annoyed.

SECTION 11. Any person, including lessors of real property as identified in Section 4 herein above, who shall violate any of the provisions of this Ordinance, or who permits the violations of this ordinance by any of his helpers, shall, upon being convicted thereof in a summary proceeding commenced by the Borough of Southmont, pay a fine of not more than \$300.00, plus all costs of prosecution for each and every offense. In default of payment of such fine and costs, said violator shall undergo imprisonment in the Cambria County Prison for a period not exceeding thirty (30) days.

SECTION 12. The provisions of this Ordinance shall be severable and if any of the provisions or sections shall be declared unconstitutional or illegal by the Court of competent jurisdiction, the decision of such Court shall not affect the validity of the remaining sections or provisions of this Ordinance, it being declared by the Borough Council that it would have been their legislative intent that this Ordinance would have been adopted have such illegal or unconstitutional provisions not been included therein.

SECTION 13. Ordinance No. 91 of the Borough of Southmont is specifically repealed, as well as any prior resolutions or prior ordinances or parts thereof which are inconsistent herewith.