

**OFFICIAL
TOWN OF McCANDLESS
ORDINANCE No. 1450**

AN ORDINANCE OF THE TOWN OF McCANDLESS, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, AMENDING ARTICLE 305 ("PEDDLERS; TRANSIENT VENDORS") OF THE CODIFIED ORDINANCES OF THE TOWN OF McCANDLESS SO AS TO AMEND CERTAIN DEFINITIONS; ESTABLISH PROCEDURES TO LICENSE TRANSIENT VENDORS INCLUDING BACKGROUND CHECKS; ESTABLISH FEES; PROVIDE EXCEPTIONS TO THE LICENSING AND FEE REQUIREMENTS; ESTABLISH THE DURATION OF ISSUED LICENSES; ESTABLISH THE DUTY TO DISPLAY LICENSES TO CITIZENS AND THE POLICE; ESTABLISH THE TOWN'S DUTY TO MAINTAIN RECORDS OF LICENSED TRANSIENT VENDORS; ESTABLISH MANNER OF CONDUCTING BUSINESS, INCLUDING A CURFEW ON ALL VENDORS; ESTABLISH PROCEDURES FOR POLICE CHIEF TO REVOKE LICENSES; ESTABLISH APPEAL PROCEDURES; ESTABLISH PENALTIES FOR VIOLATIONS; AND DELETE ARTICLE 306 ("SOLICITATION OF FUNDS")

WHEREAS, Section 305 of the Codified Ordinances of the Town of McCandless ("McCandless Code") regulates Peddlers and Transient Vendors; and

WHEREAS, Section 306 of the McCandless Code regulates persons and entities that solicit funds for religious, political, charitable or nonprofit causes; and

WHEREAS, the Town has concluded that Article 305 and Article 306 should be modified and consolidated into Article 305; and

WHEREAS, the Town Council of the Town of McCandless finds that the prevention of fraud, the prevention of crime, and the protection of residents' privacy are important interests that the Town may seek to safeguard through some form of regulation of solicitation activities; and

WHEREAS, Town Council has concluded, after consultation with its police department and Town Attorney and after conducting its own investigation, that, for the health, safety and welfare of its residents, Article 305 should be updated to provide, among other things, for the licensing of Transient vendors and those who wish to solicit funds by entering onto the private property of Town citizens. In support of this determination, the Town hereby makes the following findings:

1. the licensing requirement helps to serve the Town's interest in preventing fraud by preventing individuals from soliciting on behalf of non-existent charities and from falsely posing as authorized representatives of legitimate charities; and

2. the licensing requirement helps to serve the Town's interest in preventing fraud because the information that must be provided on the application form enables police to confirm the existence of the entity on whose behalf the solicitation purportedly is being conducted as well as the authority of the Transient vendors to act on behalf of that entity; and
3. the licensing requirement helps to serve the Town's interest in preventing fraud because the information on the application also helps police to determine whether individual Transient vendors have a history of involvement in fraudulent schemes and requiring Transient vendors to identify themselves is likely to deter solicitation by individuals who engage in fraudulent practices; and
4. the licensing requirement enables residents to identify Transient vendors who have not provided the required information and to obtain more information from the police about Transient vendors who have licenses; and
5. the licensing requirement helps to serve the Town's interest in preventing crime because burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of surveying the premises in order that they may return later to commit a crime; and
6. the licensing requirement helps to serve the Town's interest in preventing crime because it is unlikely that a burglar would be willing to identify himself by completing an application form or to call attention to himself by soliciting without a permit and this requirement thereby deprives prospective burglars of at least one of the pretexts commonly used in facilitating their crimes; and
7. the licensing requirement helps to serve the Town's interest in preventing crime because the background checks performed as part of the permit process enable police to identify Transient vendors with criminal records that may indicate a propensity to commit violent crimes as well as to monitor their activities, alert residents and/or deny them a license; and
8. the licensing requirement is narrowly drawn because the burden of obtaining a permit is not an onerous one and the requirements are closely related to furthering the Town's interest in preventing fraud and other crimes; and
9. the licensing requirement is narrowly drawn because the Town could not effectively prevent its residents from being defrauded without requiring Transient vendors to obtain licenses; and
10. the licensing requirement is narrowly drawn because a license is required only when canvassing involves the solicitation of money, which is the type of canvassing that poses the greatest risk of fraud; and

11. the licensing requirement is narrowly drawn because Town officials have no discretion to deny a permit based on the content of the proposed message or the type or manner of goods or services being sold; and
12. the licensing requirement is narrowly drawn because any delay in issuing the license is necessary in order to enable police to verify the information provided by the applicant and to perform background checks on the individual Transient vendors; and
13. the licensing requirement is narrowly drawn because, unlike purely communicative speech that sometimes may be spontaneous, fundraising and commercial sales require considerable advance planning and organization that takes place before solicitation begins and Transient vendors could minimize or completely eliminate any delay by filing an application when those plans are formulated rather than waiting until the day of the proposed solicitation; and
14. the licensing requirement is narrowly drawn because the fee charged by the Town is directly related to the expenses the Town incurs in processing permit applications and verifying the information provided in them; and

WHEREAS, the Town has concluded, after consultation with its police department and Town Attorney and after conducting its own investigation, that it may not impose a registration requirement or criminal background check on persons delivering a purely political, social, charitable or religious message or distributing related materials, but not soliciting funds. In support of this determination, the Town hereby makes the following findings:

1. the United States Supreme Court has repeatedly held that political, social, charitable and religious message door-to-door canvassing which does not involve the solicitation of money or the sale of goods, is among the most protected activities under the First Amendment, the Town has determined that such individuals need not be licensed; and

WHEREAS, the Town has concluded, after consultation with its police department and Town Attorney and after conducting its own investigation, that, for the health, safety and welfare of its residents, Article 305 must be updated to provide, among other things, a curfew on all Transient vendors and those soliciting funds who wish to enter onto the private property of Town citizens. In support of this determination, the Town hereby makes the following findings:

1. every individual has a right to privacy, the essence of which is the right to be left alone; and
2. the right to privacy in one's home includes not only the right to be free from unreasonable searches and seizures but also the right to be free from unwanted and unwelcome intrusions; and
3. intrusions on an individual's right to privacy include uninvited knocks on the door and the need to confront and turn away unwelcome visitors at unreasonable times of day; and

4. the curfew requirement helps to serve the Town's interest in protecting its residents' privacy; and
5. after sunset, many residents do not wish to be disturbed; and
6. burglars frequently pose as canvassers and that crime rates increase during the nighttime hours; and
7. travelling door-to-door in the dark poses an increased risk to the health and safety of the Transient vendors; and
8. the curfew requirement does not burden speech to any greater extent than is necessary to further the Town's interests in preventing crime and protecting residents' privacy; and
9. requiring residents to post "No Solicitation" signs in order to prevent uninvited solicitations after dark would force them to ban even those solicitors that they might welcome during daylight hours or, alternatively, to create billboard-like signs that vary from house to house specifying the circumstances under which solicitors are or are not welcome; and
10. the curfew requirement does not ban door-to-door solicitation nor restrict, in any way, the message that may be conveyed, but merely limits the times during which such solicitations may be made; and
11. the curfew's prohibition applies only to those hours during which solicitation is most intrusive on residents' privacy, during which there is an increased risk of crime and during which there is an increase risk of injury to the Transient vendors.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Town Council of the Town of McCandless, Allegheny County, Pennsylvania, that:

SECTION 1: Article 306 of the McCandless Code is deleted in its entirety.

SECTION 2: Article 305 of the McCandless Code is deleted in its entirety and replaced with the following:

305.01 SHORT TITLE.

This Article shall be known as the Transient Vendors Ordinance.

305.02 PURPOSE.

It is the purpose of this Article to regulate Transient vendors who enter the Town of McCandless to sell or attempt to sell, to take orders or attempt to take orders, or to solicit contributions, pledges, or subscriptions or attempt to solicit contributions, pledges or subscriptions, such regulations being in the interest and for the protection of the residents of the Town of McCandless and further requiring license fees to offset the cost of regulation and administration of this Article.

305.03 LICENSE REQUIRED.

No Transient vendor may conduct a business within the geographic limits of the Town without first obtaining a license in accordance with the requirements of this Article.

305.04 DEFINITIONS.

For the purpose of interpreting this Article, words used herein shall have the following definitions:

- (a) "Transient vendor" includes any person, corporation, partnership, association or other entity and any agent thereof who is conducting business in the Town off of their own property or at the request of the owner, and shall include, without limitation, any peddler, canvasser, huckster, transient merchant and itinerant vendor.
- (b) "Conducting business" means the conducting of retail sales of goods, wares or merchandise, including work commonly done by peddlers or hucksters on commercial property behind the zoning buffer area including solicitations or taking of orders, whether verbal or written, and with the owner's prior written consent. (For a definition of zoning buffer area, see Section 1311.04(a)(13) of the Codified Ordinances.) Where no buffer area exists on commercial property, conducting of business shall take place at least ten feet off the paved road cartway. Transient vendors are prohibited from conducting business on any portion of any right-of-way or zoning buffer area within the Town of McCandless. Conducting business may include work performed by door-to-door salespersons so long as such business is conducted in compliance with the other sections of this Article. Conducting business may also include, without limitation, work performed by a person at a flea market or a farmers market so long as the conduct of such business is conducted in compliance with the other sections of this Article.

- (c) "Solicitor" means any person, corporation, partnership, association or other entity and any agent thereof soliciting funds to further its non profit purpose.

305.05 EXEMPTIONS.

The following activities shall be exempt from the provisions of this Article except for the provisions of § 305.12 relating to the manner of conducting business:

- (a) Sales conducted pursuant to statute;
- (b) Sales conducted pursuant to order by any court;
- (c) The sale of personal property at wholesale to dealers;
- (d) The sale or disposal of products of a farm or garden by a farmer or truck gardener where such products are cultivated on his premises;
- (e) The sale of personal property at a garage sale held at a person's residence;
- (f) The sale of newspapers from a fixed location;
- (g) Any person, corporation, partnership, association or other entity or any agent thereof delivering a purely political, social, charitable or religious message or distributing related materials, but not soliciting funds.
- (h) The solicitation of funds by any solicitor; provided that the entity has given advance written notice of their intent to the Chief of Police prior to conducting such solicitation and that such solicitors carry a photo identification card while conducting solicitations.

305.06 APPLICATION FOR LICENSE; FEE.

Applicants for a license under this Article must file with the Chief of Police a sworn application in writing on a form to be furnished by the Town which shall include the following information:

- (a) The name and physical description of the applicant;
- (b) The complete permanent home and full local address of the applicant and, in the case of transient merchants and itinerant vendors, the local address from which proposed sales will be made;
- (c) A brief description of the nature of the business and the goods to be sold;

- (d) If employed, the name and address of the employer, the name and address of the employee's immediate supervisor, together with credentials establishing the exact employment relationship;
- (e) The length of time for which the right to do business is desired;
- (f) If a vehicle is to be used, a description of the same, together with the license plate number or other means of identification;
- (g) The source of supply of the goods or property proposed to be sold or orders taken for the sale thereof and the proposed method of delivery;
- (h) Two photographs of the applicant which shall be approximately one inch by one inch, showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (i) A valid state or federal photographic identification, such as a valid state driver's license or passport; and

305.07 BACKGROUND CHECK.

The Chief of Police shall conduct a background investigation of the applicant. The applicant shall execute any and all documentation authorizing the release of personal information for the background investigation. Such documentation shall be provided by the Chief of Police. The Chief of Police shall, upon payment of the prescribed fee, issue the license to the applicant; provided that such fee shall be waived for persons or entities listed under Section 305.08. The Chief of Police shall deny the applicant the license if the applicant has:

- (a) Committed any act consisting of fraud or misrepresentation;
- (b) Committed any act which, if committed by a licensee, would be grounds for revocation of a license;
- (c) Within the previous ten (10) years, been convicted of a felony directly relating to his or her fitness to engage in the occupation of Transient vendor, and including, but not limited to, those felonies involving moral turpitude, fraud or misrepresentation;
- (d) Been charged with a felony of the type defined in subdivision (c) of this subsection, and disposition of that charge is pending;

- (e) Been refused a license under the provisions of this Article; provided, however, that any applicant denied a license under the provisions of this Article may reapply if and when the reasons for denial no longer exist; and
- (f) Made any false or misleading statements in the application.

305.08 LICENSE FEES; EXPIRATION OF LICENSE.

- (a) The nonrefundable fee for each license application pursuant to this Article shall be \$100 to cover the cost to process the application, plus \$25 for each vendor associated with the applicant, plus the prescribed fee for any background check conducted by the Chief of Police. Any renewal shall be at half price if renewed within 15 days of the expiration of the license. Any and all fee amounts may be adjusted by Resolution of Town Council, including the cost for the background check.
- (b) Licenses shall be valid for forty-five (45) days from the date of issuance. The expiration date shall be set forth on all licenses.
- (c) None of the license fees provided for by this Article shall be applied to occasion any undue burden upon interstate commerce. In any case where a license fee is believed by a licensee or applicant for a license to place an undue burden upon such commerce, he may apply to the governing body of the Town for an adjustment of the fee so that it shall not be discriminatory or unreasonable or unfair as to such commerce.
- (d) No fee shall be required for any political, social, charitable or religious organization or agent thereof desiring to solicit or have solicited in its name money, donations of money, property or financial assistance of any kind or desiring to sell or distribute any item of literature, tokens or merchandise for political, social, charitable or religious purposes.

305.09 EXHIBITION OF LICENSE TO CITIZENS.

It shall be the duty of any Transient vendor to produce his license upon request of any resident at the Town with whom he does or proposes to do business.

305.10 EXHIBITION OF LICENSE TO POLICE.

It shall be the duty of any Transient vendor to produce his license upon request of any police officer of the Department.

305.11 RECORDS.

The Town shall maintain a record for each license issued and a record of the reports of violations.

305.12 MANNER OF CONDUCTING BUSINESS.

- (a) No Transient vendor or solicitor shall enter or attempt to enter a residence without an express invitation from the occupant, or enter onto property posted with a sign stating "No Soliciting" or similar language, or enter onto any property displaying a non-solicitation sign.
- (b) A Transient vendor or solicitor may conduct business in the Town from 9:00 a.m. prevailing time until the time of sunset in the Town, as published by the United States Naval Observatory.

305.13 REVOCATION OF LICENSE.

Licenses issued under the provisions of this Article shall be revoked by the Chief of Police or his designee for any of the following causes:

- (a) Fraud, misrepresentation, or false statement contained in the application for license;
- (b) Fraud, misrepresentation or false statement made in the course of carrying on his business as a Transient vendor;
- (c) Any violation of this Article;
- (d) Conviction of any crime involving moral turpitude; or
- (e) Conducting his 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 general public.

305.14 APPEALS.

Any person aggrieved by the denial or revocation of a license provided hereunder shall have the right to appeal to Town Council by filing a Notice of Appeal within fourteen (14) days of the action complained of. Town Council shall set a time for such hearings and shall provide written notice to the appellant at least seven (7) days prior to the hearing.

305.15 VIOLATIONS AND PENALTIES.

Any person, firm or corporation or other entity that shall violate any of the provisions of this Article shall, upon conviction thereof, be guilty of a summary offense and punished by a fine for each and every separate offense a sum of not less than \$100 nor more than \$1,000 to be sued for and recovered as other fines and penalties are now by law recoverable, including the Town's attorneys' fees, and, in default of payment of the fine and costs of prosecution, shall be subject to incarceration for a period not to exceed thirty (30) days. Each day any person, firm or corporation engages in the business of a Transient vendor in violation of this Article shall constitute a separate offense.

In addition to the penalties set forth above, the Town is also authorized to seek equitable relief, including injunctive relief, to enforce compliance with this Article.

SECTION 3: If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect; and to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 4: All Resolutions, Ordinances, or parts thereof, of the Town of McCandless which are contradictory to or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of any such contradiction or inconsistency.

ORDAINED AND ENACTED into law this 27th day of April 2015, to become effective ten (10) days after proper advertisement hereof.

ATTEST:

TOWN OF MCCANDLESS COUNCIL:



Secretary (Assistant)



Council President

AUTHORIZATION FOR RELEASE OR PERSONAL INFORMATION AGREEMENT

I am an applicant for a Transient vendor license with the Town of McCandless. The Town needs to thoroughly investigate my employment background and personal history to evaluate my qualifications to hold the position for which I applied. I have authorized the Town to gather all available information regarding my background and personal history that may include a review of professional and personal references, driving record, criminal record, and other information that may be of confidential or privileged nature.

I, the undersigned, authorize you to furnish to the Town of McCandless any and all information you have concerning me, my criminal history; including any arrest records and information contained in investigatory files, my military service records, my education background and such information and records as you have in your possession relating to me.

I hereby agree to release you and those who supply you with the above information, your company, or organization and the Town of McCandless, and its employees from any liability for any damage which may result from furnishing the requested information.

Applicant Signature: _____

Print Name: _____

Date: _____

