

LEGAL NOTICE

NOTICE OF INTENTION OF EAST BERLIN BOROUGH,
ADAMS COUNTY, PENNSYLVANIA BY THE BOROUGH COUNCIL, TO ENACT AN
ORDINANCE REGULATING TRANSIENT BUSINESS LICENSES FOR SAME, AND
SETTING FINES AND PENALTIES AND ENFORCEMENT.

NOTICE is hereby given that the East Berlin Borough, Adams County, Pennsylvania, by the Borough Council, intends to adopt the following Ordinance by adopting, enacting and ordaining an ordinance allowing for the regulation of transient businesses; and setting fines, penalties and enforcement procedures. The East Berlin Borough Council will hold a Public Hearing to consider the enactment of said Ordinance as aforesaid, and to receive and review written or verbal public input relative thereto, at said Borough's regularly-scheduled public meeting on Wednesday, April 12, 2023, commencing at 7:00 o'clock p.m., prevailing time, in the East Berlin Borough Office Building, located at 128 Water Street. The East Berlin Borough Council intends to take official action and to vote to enact the East Berlin Transient Business Ordinance, as aforesaid, by enacting, adopting and ordaining the Ordinance at said April 12, 2023 public meeting, unless, as a result of the Public Hearing, substantial changes are required relative to the contents of said Ordinance.

The full text of the proposed East Berlin Transient Business Ordinance, is as follows:

AN ORDINANCE OF THE BOROUGH OF EAST BERLIN, REGULATING
TRANSIENT RETAIL BUSINESS WITHIN THE BOROUGH OF EAST BERLIN.

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

THE TITLE OF THIS CHAPTER shall be known and may be cited as "THE EAST BERLIN BOROUGH TRANSIENT BUSINESS ORDINANCE":

§ _____ Definitions.

BOROUGH

The Borough of East Berlin, Adams County, Pennsylvania BOROUGH COUNCIL

The Borough Council of the Borough of East Berlin, Adams County, Pennsylvania.

PERSON

Any natural person, partnership, association, corporation, company or any other form of legal entity.

SIGN

A temporary structure, device or object, not permanently attached to a structure or to the ground, that incorporates lettering, logos or colors which either convey a message to the public or intend to advertise, direct, invite, announce or draw attention to goods, wares or merchandise. See also the East Berlin Borough Sign Ordinance of _____.

TRANSIENT RETAIL BUSINESS

A. Engaging in the sale of goods, wares or merchandise on a temporary basis with such business being conducted from a fixed location within the Borough of East Berlin. Such activities shall include but shall not be limited to the sale of goods, wares or merchandise at the time of special events conducted in the Borough of East Berlin for special occasions, parades or seasonal celebrations.

B. Engaging in peddling, soliciting or taking of orders, either by sample or otherwise, for the sale of goods, wares or merchandise upon any street, alley, sidewalk or public property of the Borough of East Berlin or on a house-to-house or business-to-business basis within the Borough of East Berlin. Such activities shall include by shall not be limited to the sale of goods, wares or merchandise on a seasonal basis conducted in the Borough of East Berlin from temporary stands or sales structures.

C. Transient Retail Business may only be conducted in the Borough core and commercial zone districts of East Berlin.

§ _____ License Required.

No person shall engage in any transient retail business within the Borough without first having obtained a license to conduct such transient retail business from the Borough. Any person who is engaged in any transient retail business within the Borough for which the payment of a license fee is excepted pursuant to _____, Subsection _____, of this Part shall be required to obtain a license from the Borough in order to conduct such transient retail business pursuant to this provision.

§ _____ License Fee; Exceptions.

No license fee shall be charged under this Part:

A. 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.

B. To a charitable organization, as defined herein, including any person who has registered with the Pennsylvania Department of State, as required by the Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.1 et seq., as amended.

C. To students or members of philanthropic organizations conducting sales or taking orders for fundraising purposes on behalf of their schools or such organizations. Any proceeds from such sales must be for the benefit of the schools or organizations, or programs and activities sponsored thereby, and not for the individual monetary gain and benefit of the students or members conducting such sales or taking orders unrelated to such programs or activities.

D. To speech-related transient retail activity involving soliciting for sale message-bearing

merchandise where the product bears the message that espouses the purpose and activities of the vendor. All message-bearing merchandise must contain a conspicuous political, religious, philosophical or ideological message having intellectual content that is consistent with the purpose of the vendor's organization.

Any person engaged in 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 for its activities in connection with the sale of goods, wares and merchandise which are not in any of the excepted categories; provided further, that every license issued under the provisions of this Part shall be issued on an individual basis to any person or persons engaging in such business; every individual shall obtain a separate license, issued to him or her in his or her name, and the license fee hereby imposed shall be applicable to every such individual license, except that a representative of a charitable organization may obtain licenses for all individuals engaged on its behalf in activities regulated by this Part.

§ _____ License Application

Every person desiring a license under this Part shall first make application to the Borough for such license. The applicant shall, when making such application, exhibit a valid license from any state or county official, if such license is also required. On the license application form, the applicant shall state and present to the Borough the following information:

- A. Name, address, contact information and date of birth (if an individual applicant).
- B. Name and address of the employer, if any.
- C. The type of goods, wares and merchandise which the applicant proposes to sell pursuant to the transient retail business license requested by the applicant and a brief description of the applicant's transient retail business.
- D. The length of time, with a specific start date and termination date, of the transient retail business to be conducted within the Borough for which the license is proposed to be issued.
- E. The type and license number of any motor vehicle to be used in any manner in connection with the transient retail business of the applicant.
- F. The location or locations from which transient retail sales are proposed to be conducted by the applicant. If a location from which transient retail sales will be conducted by any applicant is on private property, including sidewalks abutting private property, such location shall require written permission from the property owner or the authorized person in control of the property.
- G. If the applicant is a charitable organization, copies of the documentation issued by the United States Internal Revenue Service, the Pennsylvania Department of State and/or the Pennsylvania Department of Revenue upon which the applicant bases its exception for the payment of a license fee pursuant to § 13-403, Subsection 2, of this Part.

§ _____ Local Restrictions.

1. As part of the license approval process and in consideration of the public health, safety and welfare, the Borough shall approve any fixed location or locations from which transient retail business shall be conducted on streets, alleys, sidewalks or public property of the Borough. Such locations approved by the Borough shall be set forth on the license issued by the Borough under this Part.

2. To further ensure the public health, safety and welfare through the regulation of transient retail business, the Borough may reasonably restrict the location of transient retail business activity where the concentrated gathering of such vendors at certain locations within the Borough may create hazardous conditions, including but not limited to excessive pedestrian traffic and impediments to movement on Borough streets, alleys or sidewalks.

§ _____ Issuance of License; Custody, Display and Exhibit.

Within five (5) business days of the receipt of a completed application and any prescribed fee, the Borough, if it shall find such application to be in order, shall issue the license required under this Part. Such license shall contain the information required to be given on the application therefor, to include any fixed locations from which the authorized transient retail business shall be conducted. Every license holder shall carry such license upon his or her person if engaged in transient retail business from house to house or upon any of the streets, alleys, sidewalks or public property of the Borough or shall display such license at the location if engaged in transient retail business at a fixed location.

§ _____ Prohibited Acts.

No person in any transient retail business shall:

- A. Sell any product or type of product not described in the license application submitted to the Borough or referred to on the license issued by the Borough.
- B. Engage in any transient retail business activity at a location, a time or in a manner not specifically permitted pursuant to the license issued by the Borough.
- C. When operating from a vehicle, stop or park such vehicle upon any street or alley of the Borough in violation of the Pennsylvania Vehicle Code or in violation of any Borough ordinance.
- D. Engage in any transient retail business activity longer than 180 calendar days, at any time before 7:00 a.m. or after 8:00 p.m. unless associated with and consistent with permitted times of a special event which is held pursuant to a special event permit issued by the Borough or by prior written approval of the Borough where such transient retail business activity is not associated with an event requiring a special event permit.
- E. Maintain any transient retail business related equipment, accessories or vehicles on streets, alleys, sidewalks or public property of the Borough between the hours of 9:00 p.m. and 9:00 a.m. unless associated with and consistent with permitted times of a special event which is held pursuant to a special event permit issued by the Borough or by prior written approval of the Borough where such transient retail business is not associated with an event requiring a special event permit.

- F. Conduct any transient retail business beyond 180 calendar days or after suspension, revocation or expiration of the license issued by the Borough.
- G. Block or unreasonably impede vehicular or pedestrian traffic.
- H. Extend any cord, hose, tube, rope or other transient retail business related equipment or accessories across any street, alley or sidewalk to block or unreasonably impede vehicular or pedestrian traffic.
- I. Block or in any manner restrict the use of sidewalks and pedestrian traffic thereon, including blockage of sidewalk curb cuts maintained for access onto Borough streets, alleys or sidewalks.
- J. Fail to pay any Borough-mandated fees or to procure any required permits for use of metered parking spaces or for use of a fixed location within the Borough.

§ _____ Signs.

Any signs used in the course of conducting a transient retail business shall conform to the following:

- A. There shall be not more than one sign for each transient retail business. Double-backed signs, including signs that incorporate two sign faces that are back-to-back and are not more than two feet from each other, shall constitute one sign.
- B. The sign shall not be placed on any street, alley, sidewalk or public property of the Borough so as to impede pedestrian or vehicular traffic. Any sign placed on private property, including sidewalks abutting private property, shall require written permission from the property owner or the authorized person in control of the property.
- C. The sign shall not be internally lit.
- D. Signs shall not impede traffic or clear sight distances required at intersections.

§ _____ Denial, Suspension and Revocation of License; Appeal.

The Borough is hereby authorized to deny, suspend or revoke any license issued under this Part when such denial, suspension or revocation is deemed for the protection of the public health, safety or welfare, or for the violation of any provisions of this Part, or for providing or giving any false information upon any application for a license hereunder. Appeals from any suspension, revocation or denial of a license may be made to the Borough Council President within 10 business days after such suspension, revocation or denial. The Borough Council President shall review the appeal and render a decision on the appeal within 10 business days of receipt of the appeal. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked.

§ _____ Violations and penalties.

Any person who shall violate any provision of this chapter shall, for each and every such

violation, upon conviction thereof; be sentenced to pay a fine of \$600.00 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. Each day's violation of any provision of this chapter shall constitute a separate violation.

§ _____ Investigation of applicants; granting of authorization.

A. Upon receipt of such application, the Chief of Police or his or her delegate shall cause such investigation of the applicant's business or organization and moral character to be made as he or she deems necessary for the protection of the public welfare.

B. If, as a result of such investigation, the applicant's business or organization or moral character is found to be unsatisfactory, the Chief of Police or his or her delegate shall endorse on such application his or her disapproval and the reasons for the same and return said application to the applicant.

C. If, as a result of such investigation, the business or organization and moral character of the applicant are found to be satisfactory, the Chief of Police or his or her delegate shall endorse on the application his or her approval and record the name of the applicant, date, duration of authorization and other data of public interest which he or she deems relevant in a book entitled "Peddling Authorizations Granted", which shall be available for public inspection at reasonable times.

D. No authorization shall be granted until such investigation is complete, but in no event shall authorization be granted sooner than three full business days from the date of receipt of the application by the East Berlin Police Department.

EAST BERLIN BOROUGH COUNCIL
MATTHEW R. BATTERSBY, SOLICITOR