

Upon motion by Richard P. Figaski, seconded by Joseph S. Kujawa, the following Ordinance was enacted, 2 voting in favor of enactment, 0 voting against enactment.

**ORDINANCE NO. 2013-10**

**An Ordinance of the Township of Millcreek to amend and restate provisions governing the licensing and regulation of transient merchants; providing penalties for violation and including severability and repealor clauses.**

**WHEREAS**, Section 1532 of the Second Class Township Code, 53 P.S. § 66532, authorizes boards of supervisors to license and regulate transient merchants and other businesses operating within the township; and

**WHEREAS**, Ordinance No. 94-11, enacted on May 9, 1994, established regulations and provided for the licensure of transient merchants; and

**WHEREAS**, for various and diverse reasons including but not limited to reenactment of the Second Class Township Code enactment of Pennsylvania law affecting operations by certain transient merchants and changes in procedures pertaining to access to criminal records, the Board of Supervisors finds that updating and restatement of regulations pertaining to transient merchants is necessary and appropriate to protect the public safety and general welfare.

**IT IS HEREBY ENACTED AND ORDAINED** by the Board of Supervisors of Millcreek Township, Erie County, Pennsylvania as follows:

- 1.01 Common Name. This Ordinance shall be known as the Transient Merchant Ordinance.
- 1.02 Word Usage; Definitions.
- 1.02.1 Word Usage. Words used in the present tense shall include the future. The singular shall include the plural, and the plural the singular. Reference to one gender shall be deemed to include the other. The words "shall" or "must" is intended to be and shall be deemed mandatory.
- 1.02.2 Undefined Terms. Where not defined in this Ordinance or in applicable Pennsylvania statutes or Township ordinances, terms shall be given their common or ordinary meaning.
- 1.02.3 Definitions. The following words and phrases when used in this Ordinance shall have the meanings given to them in this Article unless the context clearly indicates otherwise:

*Applicant* - shall mean all persons owning, operating, conducting or involved in the operation of a transient business.

*Person* - shall include individuals, firms, corporations, limited liability companies, clubs, associations, societies, partnerships and any other forms of entities, whether the same may be the principal, employee or agent.

*Transient Wholesale or Retail Business* - shall include each and every business conducted or proposed to be conducted within the Township of Millcreek temporarily or for a continuous period of less than twelve (12) consecutive months for the sale therein of any goods, wares or merchandise whatsoever, at either wholesale or retail, in any room, apartment, store, shop, building, railroad car, motor or other vehicle, stand, airplane, boat, open lot, tent, structure, establishment or other location, other than by those persons specifically exempted under Section 1.03, below.

1.03 Exemptions. The term “transient wholesale or retail business” does not comprise, include or apply to the following persons:

- 1.03.1 Any persons who have had their principal place of business in the Township of Millcreek for a period of at least one (1) year immediately preceding the commencement of such business.
- 1.03.2 Any person who has filed a bond with corporate surety approved by the Township Solicitor in the sum of Two Thousand Five Hundred Dollars (\$2,500.00),, with the Township as sole obligee therein, conditioned to pay the Township the monthly license fees as provided in this Ordinance for the conduct of a transient wholesale or retail business in the event that the principal of such bond should not continue and remain in such business for a continuous period of twelve (12) consecutive months unless otherwise prevented by involuntary insolvency proceedings.
- 1.03.3 Farmers selling their own produce.
- 1.03.4 The sale of goods, wares and merchandise, donated by the owners thereof, the proceeds of which are to be applied primarily to any charitable or philanthropic purpose.
- 1.03.5 Insurance companies or their agents or insurance brokers authorized to transact business under the Insurance Laws of the Commonwealth of Pennsylvania.
- 1.03.6 Any persons taking orders for merchandise, by sample from dealers or merchants. Nothing in this subsection shall exempt any person selling to persons other than dealers or merchants.
- 1.03.7 Persons conducting judicial or other sales under legal proceedings.
- 1.03.8 Any manufacturer or producer in the sale of milk and milk products.
- 1.03.9 Commercial travelers or sales agents selling only to dealers in the ordinary course of business.
- 1.03.10 Merchants previously established in the Township who are, by reason of fire or other circumstances, compelled to lease temporarily until they can establish a permanent location.
- 1.03.11 Persons who do not sell from stock but exhibit samples only for the purpose of securing orders for future delivery with payment due upon delivery only.

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1.04 Persons Not Exempted. No person who would otherwise be conducting, participating or engaging in a transient wholesale or retail business shall be exempted from the provisions of this Ordinance by reason of being temporarily associated with any local dealer, trader, merchant or auctioneer or by reason of conducting such business in connection with or as a part of the business of any such local person.

1.05 License Required. No person shall engage in any transient wholesale or retail business, whether as owner, agent, consignee, employee, independent contractor or in any other capacity, and whether or not a resident of Millcreek Township, without first obtaining from the Township's Treasurer a license for each person to be involved in the enterprise. No license shall be issued until such time as the applicant submits to the Township (i) a copy of the sales and use tax license issued by the Pennsylvania Department of Revenue for the proposed enterprise (or a certification issued by the Department that the enterprise is exempt therefrom) and (ii) if State and/or Federal licenses and/or permits are required for the lawful conduct of the proposed business enterprise, a copy of each such license and/or permit required under applicable laws.

1.05.1 It shall be the duty of the applicant to identify any and all State and/or Federal licenses and/or permits which are required to lawfully conduct the proposed business enterprise and to provide copies of all such licenses and/or permits.

1.05.2 All persons licensed by the Township shall have in their possession at all times the license and/or identification card issued by the Township as provided herein.

#### 1.06 License Application.

1.06.1 Application for such license shall be made and sworn to by the applicant on such form(s) as may be approved by the Board of Supervisors and to be supplied by the Township's Treasurer. At a minimum, such application shall set forth the following:

- (i) The applicant's full name, address, Social Security or employer identification number, date of birth and status or position with the proposed enterprise and the names and addresses of all persons proposed to be put in charge or to participate in conduct of the business.
- (ii) Full information as to the applicant's business character and prior business experience.
- (iii) The nature and character of the proposed business and the length of time the business is intended to be conducted.
- (iv) Full information of the nature, character and quality of the goods, wares and merchandise to be sold or offered for sale, the invoice, value and quality of such goods, wares and merchandise and the place where such goods, wares and merchandise were produced.
- (v) Representations and advertising relating to such business proposed or intended to be made.
- (vi) The place(s) or premises where such business is to be conducted, together with a summary of the applicant's agreement(s) with the owner of such place(s) and premises relating to the applicant's occupancy thereof.

- (vii) If employed, the name and address of the employer, together with the credentials establishing the precise employment relationship.
- (viii) If a vehicle is to be used in the conduct of the business, a description of the same and the vehicle identification and registration number for each such vehicle.
- (ix) Two (2) photographs of each individual applicant taken within 60 days prior to the date of application, which photographs shall be 2" by 2" in size, showing the head and shoulders of the applicant in a clear and distinguishing manner the name of the person to be set forth on the reverse side of each photograph.
- (x) A statement as to whether the applicant has ever been convicted or pled guilty or no contest to a misdemeanor or a felony criminal offense and, if so, the specific criminal offense(s), court, date of conviction or plea and disposition.

1.06.2 In addition, each applicant shall be subjected to a background check at the time of application and shall pay to the Township a fee equal to that charged by the Township for all criminal record checks under the Township's fee schedule as is then in effect. Each applicant shall be obligated to complete such documents in connection with the investigation as the Township may require, which documents shall include but not be limited to an authorization allowing the Township to obtain criminal history information regarding the applicant and the applicant's release of the Township and its Police Department with regard to acquisition of such information.

1.07 Investigation of Applicant; Denial of Application. Upon receipt of the required application, the Township Supervisors or their designee shall cause such investigation of the applicant's business responsibility and moral character to be made as the Supervisors deem necessary for the protection of the public good and welfare. If, as a result of such investigation, the applicant's character and business responsibility are found to be unsatisfactory the application shall be denied. Any false statement made upon an application shall be just cause for denial of an application or for revocation of any license which has been issued in reliance upon a false statement. The Township shall make its determination upon each application within five (5) business days after it receives all requested criminal history information regarding the applicant.

1.08 Surety Bond. Before a license shall be issued, the applicant shall secure and deliver to the Township Treasurer a bond with corporate surety approved by the Township Solicitor in the sum of \$5,000.00. Such surety bond shall be issued by a bonding company authorized to conduct business in the Commonwealth, and shall provide for and secure to the public assurance that the applicant shall comply fully with all of the provisions of Township ordinances and of Pennsylvania statutes regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against such applicant for any violations of such ordinances and/or statutes.

1.09 License Term; Fee.

1.09.1 A license issued shall be effective for a term of one (1) month from the date of its issuance, unless sooner revoked, and shall be renewed monthly during the continuation of such business. A license shall expire by its terms at the end of its one month term, unless extended for an additional one-month period for so long as the business enterprise continues.

1.09.2 The license fee is fixed at the maximum amount authorized by 53 P.S. Section 66532(b) as the same in the future may be amended for each month or fractional part of a month during which a person shall conduct or engage in a transient wholesale or retail business within the Township. Such license fee shall be paid by all persons conducting or engaged in the enterprise prior to issuance of a license. License fees are due and payable prior to renewal of a license.

1.10 Issuance of License.

1.10.1 Upon payment of the investigation fee, receipt by the Township of all application forms, bond and other required documents and completion of investigation, the Township Supervisors or their designee, upon receipt of payment of the license fee, shall issue a license to an applicant who is found to be of satisfactory responsible and good moral character.

1.10.2 The Township shall maintain a registration book setting forth the date of issuance and denial of all licenses and the names and addresses of the applicants therefor. The Township shall maintain a file on applications for licenses which shall include the application(s), photographs, criminal history investigation and other documents obtained. Such files shall be maintained for at least two (2) years after cessation of the transient wholesale or retail enterprise or date of denial of the application(s), whichever is applicable.

1.10.3 Each license issued shall be numbered and state the kind of goods to be sold thereunder, the name of the licensee(s), the dates of issuance and expiration and have attached thereto one of the photographs supplied by the applicant.

1.10.4 Upon expiration of the monthly license term, the Township Supervisors or their designee shall have authority to renew a license issued, upon payment of the monthly license fee and receipt of the application for extension or to deny reissuance if, upon investigation, it is determined that the applicant has failed to comply fully with all applicable ordinances and laws.

1.11 Revocation of License. Any license issued pursuant to this Ordinance may be revoked by the Township Treasurer at any time he or she is satisfied that the applicant/licensee furnished false and/or incomplete information to secure a license; in the event a licensed person is convicted of any summary, misdemeanor or felony criminal offense; and/or if the applicant engages in activities subject to regulation by this Ordinance other than as represented on the application and license. Notice of revocation shall be sent to the licensee at the address set forth on the application for license, via U.S. first class mail, and, upon the giving of such notice of revocation, the licensee shall be required to surrender to the Township Treasurer the license previously issued by the Township.

1.12 Administration and Enforcement.

1.12.1 The Township's Treasurer and/or Secretary, or their designee(s), shall be responsible for administration of this Ordinance, for recommending adoption and/or revision of forms and fees for administration, for receipt of applications for permits, referral of applicants to the Police Department and/or other offices for proper investigation, for issuance or denial of and other actions upon or pertaining to applications and permits, including but not limited to suspension and/or revocation.

- 1.12.2 The Board of Supervisors shall have authority to adopt, amend and rescind forms, fees and procedures pertinent or relating to administration and enforcement of this Ordinance and to designate persons to administer and/or enforce this Ordinance.
- 1.12.3 This Ordinance shall be enforced as a civil matter in accordance with Section 1601(c.1)(1) of the Second Class Township Code and Ordinance 2007-6, as the same may in the future be amended.
- 1.12.4 The Police Department, the Treasurer and/or the Code Administrator, in any combination as the Board of Supervisors may elect, shall have authority to enforce this Ordinance. The Police Department shall have authority to preclude persons from engaging in activities regulated by this Ordinance without first securing and having in effect the license(s) required under Section 1.05, above, and/or from engaging in activities not authorized by an issued permit. The Police Department may cite a person or entity for violation of this Ordinance, but any action to enforce this Ordinance and/or seeking assessment of penalties for its violation otherwise shall be commenced by the filing of a civil complaint in the office of the Magisterial District Judge having jurisdiction. Such actions shall be commenced by the Treasurer, the Code Administrator and/or such other personnel as may be designated by the Board of Supervisors. The Police Department shall assist and participate in such proceedings where necessary and appropriate.

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### 1.13 Violation and Penalties.

- 1.13.1 Any person who engages in a transient wholesale and/or retail business within Millcreek Township without first obtaining a license authorizing such activity, who continues to engage in such business activity after expiration of an issued permit without first obtaining a license renewal or extension, who fails or refuses to provide full and truthful information on an application for license or any other required document, who engages in activities of a type, at a location and/or in a manner other than as represented on an application and an issued license and/or who otherwise fails to comply with the requirements of this Ordinance shall violate this Ordinance and be subject to enforcement remedies, fines and penalties as prescribed in this Article and in Millcreek Township Ordinances 2007-6 and 96-9, as the same may in the future be amended.
- 1.13.2 Each day a violation occurs or continues shall be deemed a separate violation, and shall subject the person or entity committing the violation to fines and other enforcement remedies for each day such violation continues.
- 1.13.3 Penalties for Violation.
- (i) A person found in an enforcement proceeding to have violated Sections 5, 6 and/or 8 of this Ordinance shall pay a civil fine of \$600.00 per day for each violation, plus all costs and attorneys' fees incurred by the Township in said proceeding. All fines collected for violation of this Ordinance shall be paid over to the Township.
  - (ii) A person found in an enforcement proceeding to have violated any other provision of this Ordinance shall pay a civil fine not less than \$300.00 and not more than \$500.00 per day for each violation, plus all costs and attorneys' fees incurred by the Township in said proceeding. All fines collected for violation of this Ordinance shall be paid over to the Township.

(iii) No enforcement proceeding under this Ordinance shall bar the Township from collecting the license and investigation fees herein provided for in a civil action.

1.14 Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

1.15 Repealor. All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed. This Ordinance is expressly intended to constitute an amendment and restatement of applicable regulations, such that Ordinance No. 94-11 shall be repealed upon the effective date of this Ordinance.

**BE IT ENACTED** this 3rd day of December, 2013.

  
Richard P. Figaski, Secretary