

**BOROUGH OF WIND GAP
COUNTY OF NORTHAMPTON
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. 395-A

AN ORDINANCE OF THE BOROUGH OF WIND GAP, COUNTY OF NORTHAMPTON, COMMONWEALTH OF PENNSYLVANIA, AMENDING ORDINANCE 395, REGULATING AND LICENSING EACH TRANSIENT RETAIL BUSINESS AND TEMPORARY RETAIL DEALER AND EACH PERSON ENGAGED IN CANVASING AND/OR SOLICITING WITHIN THE BOROUGH.

Be it enacted and ordained by the Council of the Borough of Wind Gap, County of Northampton, and Commonwealth of Pennsylvania; and it is hereby ordained and enacted as follows:

I. DEFINITIONS

(1) Transient Retail Business. Transient Retail Business is defined as an entity temporarily engaged in selling, soliciting or taking orders for any goods or services or seeking contribution from a *fixed location* within the Borough on a temporary basis. This does not include yard sales (defined below) or garage sales which are limited to two (2) such sales or less per year on any parcel of private property. The lease or use of a location by a business shall be presumed temporary if said period of time is less than six consecutive (6) months.

(2) Temporary Retail Dealer. Temporary Retail Dealer is defined as any person engaged in a Transient Retail Business.

(3) Yard Sales or Garage Sales. Sales for residential purposes related to the household in the Borough wherein the sale is being conducted and not for commercial purposes. For example, when property owners lease or rent their yard or garage to others to hold sales in an effort to avoid the fees imposed by this Ordinance, this will not qualify as a Yard Sale or Garage Sale entitled to two free sales each calendar years.

These sales are those which are restricted in length to forty-eight (48) hours (2 consecutive calendar days). If a sale extends longer than two (2) consecutive calendar days, it will not qualify as a yard sale or garage sale entitled to two (2) free sales each calendar year.

If more than two (2) such sales are held each year, this shall then be considered a Transient Retail Business, subject to the licensing procedure and fees, and shall no longer, upon the third sale and subsequent sales, be considered a Yard or Garage sale under this Ordinance.

(4) Person. Person shall mean any individual person, corporation, partnership or other form of organization.

(5) Canvassing or Soliciting. Canvassing and/or Soliciting is defined as pedaling , offering or taking orders for goods or merchandise for sale by moving from *place to place* within the Borough.

(6) Charitable or Philanthropic Purpose. Charitable or Philanthropic Purpose is defined as any purpose which is exempt from taxation by the United States Treasury Department and declared exempt by the Internal Revenue Service.

II. LICENSE REQUIRED

(1) License Required. Prior to commencing any activity which would be classified as either a Transient Retail Business or as Canvassing and/or Soliciting within the Borough, every Person intending to engage in such an activity, shall obtain a license for said activity as provided herein.

(2) License Procedure. An application for a license pursuant to this Ordinance shall be made in a writing, signed by the applicant, and submitted to the Borough Secretary. The application shall contain the following:

- (a) The full name and address, if any, of the person making the application.
- (b) The permanent address and telephone number of the person making the application.
- (c) A listing of the names and addresses of each person who will be assisting in the conduct of any activity regulated by this Ordinance.
- (d) A statement regarding each person listed on the application which discloses whether or not that person has ever been convicted of any felony or misdemeanor.
- (e) The specific type of goods and/or merchandise the proposed licensee intends to offer, carry or a statement of any other purpose for the license. This summary shall include the location(s) of the proposed activity, the procedures and methods to be used in contacting perspective purchasers and/or contributors, and the days and hours the activity will be conducted.
- (f) If a vehicle(s) is/are to be used by any person listed in the application for the activities regulated under this Ordinance, the make,

model, year, and license plate number of each vehicle to be used in the activity must be provided.

(g) The application shall include a clear photograph of each person listed on the application which photograph shall not be smaller than 2" x 3". A clear photocopy of a picture identification is sufficient.

(h) A sample of the order form or sales receipts which will be used must be submitted with the application.

(3) Action on the License Application.

(a) A three-day waiting period, not including weekends or holidays shall be required between the submission of the application and the action on the application by the Mayor.

(b) During the 3-day waiting period, the Chief of Police shall investigate the information on the application, including, whether any person has been convicted of any crime, whether the person is actually located at the temporary or permanent address(es) provided in the application. The Chief of Police shall advise the Mayor of the results of this investigation, in writing.

(c) Within five days of the submission of the application, the Mayor shall grant or deny the application. The Mayor has the right to disapprove of any application for any of the following reasons:

(i) If any person named in the application has been convicted of felony or misdemeanor.

(ii) If the Chief of Police has not been able to confirm the authenticity of the addresses provided on the application and on the sales receipt.

(iii) If the application is incomplete

(iv) If the applicant has previously violated the terms of this ordinance during the proceeding the 2- year period prior to this application.

(v) If any information on the application is materially false or incorrect.

4. License Fees

(a) The Fees for a temporary license under this Ordinance shall be: \$25.00 per day; \$100.00 per week; \$300.00 per month.

(b) No license fee shall be charged under this Ordinance to the following:

(i) For the sale of goods and merchandise which have been donated by others and/or when the proceeds of such sales are to be applied to any Charitable or Philanthropic Purpose;

(ii) Manufacturers or Producers engaging in the sale of bread, bakery products, meat, meat products, milk or milk products.

5. License Term. The term of each license issued under this Ordinance shall be for a period of time of not more than six (6) weeks.

6. Display of License. Upon approval of the license application, the Borough Secretary shall issue the applicant a license under this Ordinance which shall contain: the length of time for which the license has been issued; the name of the licensed person; the permanent address of the licensed person; and a statement of the activity which has been permitted. This license shall be posted for display if the activity is occurring at a fixed location. If the activity is occurring from place to place within the Borough, the license holder must carry the license upon his person.

III. LIMITATIONS

A license issued pursuant to this Ordinance shall be subject to the following limitations:

(1) Transient business, solicitation and/or canvassing shall occur only at the following times:

(a) Sundays: Between the hours of 1:00 PM and 5:00 PM;

(i) Mondays through Fridays: Between the hours of 9:00 AM and 6:00 PM;

(ii) Saturdays: Between the hours of 9:00 AM and 1:00 PM.

(2) These hours may only be varied in the following circumstances:

(a) If a special appointment is made with a citizen of the Borough of Wind Gap for place to place canvassing and/or soliciting.

(b) By special order of the Mayor, upon good cause shown for the variance, such as annual festivals or unique events in the Borough.

(3). No person licensed under this Ordinance shall sell any product or engage in any type of activity not disclosed in the license application.

(4). No person licensed under this Ordinance shall advertise his activity by making or causing to be made any loud noise to attract attention. Such noises include, but are not limited to, shouting, use of loud speakers, use of musical instruments or other sound devices, or the like.

(5) No person licensed under this Ordinance shall dispose of any rubbish upon any of the public property of the Borough and shall not dispose of any rubbish on any private property within the Borough without permission of the owner.

(6) A sales receipt must be completed and given to any purchaser or contributor each time a sale is made or a contribution is given to a person under this Ordinance. The receipt shall have printed on it the name of the licensed person, the permanent address of the licensed person, and the

telephone number at which purchasers or contributors can reach the person licensed under this Ordinance.

IV. SUSPENSION OR REVOCATION OF LICENSES

The Mayor is hereby authorized to revoke or to suspend licenses, without the return of fees under the following circumstances:

- (1) If any person named in the license is convicted of a felony or misdemeanor.
- (2) If it is determined that the licensed person has given false information on the license application.
- (3) If it is determined that unsafe or harmful goods are being sold to the public.
- (4) If any provisions of this Ordinance are violated.

V. PENALTY FOR VIOLATION

Any person who violates any provision of this Ordinance shall have committed a summary offense. Upon conviction, the Person shall be subject to a fine not exceeding \$300.00 per offense, plus costs of prosecution. Each day's violation of any provision of this Ordinance shall constitute a separate offense.

VI. SEVERABILITY

The provisions of this Ordinance shall be severable. If any action, section or portion thereof shall be held to be unconstitutional, illegal or otherwise invalid, such decision shall not affect the validity of any of the remaining portions of this Ordinance.

VII. APPEALS

Any person whose application is denied by the Mayor or whose license is revoked or suspended by the Mayor, may appeal such action to the Borough Council. Such appeal shall be in writing and signed by the licensed person or license applicant and filed with the Secretary of the Borough within 10 days of receiving notice of the appealed action. Borough Council shall

conduct a public hearing at the next scheduled monthly meeting of Council.
This provision in this Ordinance shall serve as written notice to the Person that
the hearing will take place at the next scheduled monthly meeting of Council.
No further notice to the appellant is required. The Mayor shall not participate
in the making of any decision on the appeal but shall be permitted to testify or
present evidence.

This Ordinance amends Ordinance 395, all previous resolutions or
ordinances of Borough Council inconsistent herewith are hereby superseded,
including, but not limited to Ordinance number 291.

ORDAINED AND ENACTED into an Ordinance this 7th day of
April, 1997.

ATTEST:

Doris Bruch
Doris Bruch, Secretary

BOROUGH OF WIND GAP

Thomas Wills, Sr.
Thomas Wills, Sr., President

APPROVED this 7th day of April, 1997.

ATTEST:

Doris Bruch
Doris Bruch, Secretary

BOROUGH OF WIND GAP

Kenneth L. George
Kenneth L. George, Mayor

LAW OFFICES
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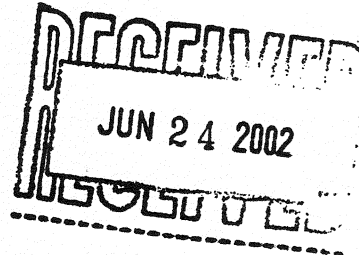
ALYSSA A. LOPIANO-REILLY*
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*ALSO ADMITTED IN NEW JERSEY

June 21, 2002

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Wind Gap Borough Council
Wind Gap Municipal Building
29 Mechanic Street
Wind Gap, Pennsylvania 18091



RE: Ordinance No. 395-A

Council:

The Supreme Court of the United States, in the case of Watch Tower Bible and Tract Society of New York, Inc. vs. Village of Stratton, Ohio (2002WL1305851), decided on June 17, 2002 that a municipal ordinance which required individuals to obtain a permit, prior to engaging in door-to-door solicitation, violated the First Amendment.

This decision will affect the Borough of Wind Gap's Transient Business Ordinance, No. 395-A. The Supreme Court, in dicta, indicated that an ordinance that is narrowly tailored to prohibit unregulated commercial transactions for the purpose of preventing fraud against its citizens, may be valid. However, an ordinance that prohibits religious, political or charitable solicitation, without first obtaining a permit is unconstitutional.

Accordingly, Ordinance 395-A must not be enforced against non-profit, political or religious organizations. As it applies to all commercial activities, the Ordinance remains valid.

Very truly yours,

ZITO, MARTINO AND KARASEK

Leonard N. Zito, Esquire
Solicitor of the Borough of Wind Gap

LNZ/mh

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