

ORDINANCE NUMBER 2018-17

CALLERY BOROUGH, BUTLER COUNTY, PENNSYLVANIA

AN ORDINANCE REGULATING PEDDLING AND SOLICITING WITHIN CALLERY BOROUGH, REQUIRING PEDDLERS AND SOLICITORS TO OBTAIN PERMITS, ESTABLISHING PERMIT FEES, PROVIDING FOR APPEALS, EXEMPTIONS, RESTRICTIONS AND ENFORCEMENT PROCEDURES, AND ESTABLISHING PENALTIES FOR VIOLATIONS.

BE IT ENACTED AND ORDAINED that Chapter 62, Public Safety, of the Code of Borough of Callery is hereby amended by the addition of the following:

**CHAPTER 62
PUBLIC SAFETY**

**ARTICLE I
PEDDLING AND DOOR-TO-DOOR SOLICITATION REGULATIONS**

SECTION 62-101. SHORT TITLE. This Ordinance shall be known as the “Callery Borough Peddling and Door-to-Door Solicitation Ordinance.”

SECTION 62-102. DEFINITIONS. The following words, when used in this Ordinance shall have the following meanings, unless the context clearly indicates otherwise.

BOROUGH – Callery Borough, Butler County, Pennsylvania.

LEGAL HOLIDAYS – New Year’s Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve Day, and Christmas Day.

OFFER FOR SALE – See “SELL,” below.

PEDDLE – To SELL or OFFER FOR SALE any goods, merchandise, commodities or services for *immediate delivery* which the person selling or offering the items carries with him/her in traveling, or has in his/her possession or control, in, upon or along any public street or alley or public place within the Borough or by going from house to house within the Borough for such purpose.

PERSON – Any natural person, association, corporation, firm, partnership, organization, or other legal entity.

SELL – Any interaction that primarily proposes a commercial transaction.

SOLICIT – To seek funds or contributions or to seek or take contracts or orders for any goods, merchandise, commodities or services for *future delivery*, in, upon or along any public street

or alley or public place within the Borough or by going from house to house within the Borough for such purpose.

SECTION 62-103. PERMITS REQUIRED.

A. It shall be unlawful for any person to engage in peddling and/or soliciting within the Borough without having first obtained a permit to do so from the Borough.

B. The permits granted under this Ordinance shall be valid for up to ninety (90) days after the date of issuance. Upon the expiration of any permit, if the permit holder desires to continue or renew peddling or soliciting, he/she shall be required to file a new application for a permit and pay a new permit fee. Upon expiration of the permit or when the permit holder no longer requires the permit, whichever is earlier, the permit holder shall immediately surrender it to the Borough.

C. The permit when issued shall state, at a minimum, the products or services to be sold or offered for sale, and/or name, address and telephone number of any and all organizations for which funds or contributions are to be solicited.

D. Every peddler or solicitor shall at all times, when engaged in peddling or soliciting in the Borough shall carry the permit upon his/her person and shall exhibit it upon request to all police officers, Borough officials and residents.

E. No peddler or solicitor shall engage in selling any products or service or solicit funds or contributions for any organization not expressly listed on the permit.

F. The Borough shall maintain a record of all permits issued under this Ordinance.

SECTION 62-104. EXEMPTIONS.

A. No permit is required under this Ordinance for the following:

- (1) Religious proselytizing, political speech, and the distribution of handbills.
- (2) Farmers selling their own produce.
- (3) Sale of goods, merchandise and/or commodities donated by the owners thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose.
- (4) Any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk and milk products.
- (5) Children, under the age of eighteen (18) years, taking orders for and delivery of newspapers, greeting cards, candy, bakery products and the like, or who represent the Boy Scouts or Girl Scouts or similar organizations.
- (6) A company, including an agent, or an insurance broker authorized to transact business under the Insurance Company Law of 1921.

(7) Persons registered with the Department of State for the Commonwealth under the provisions of the Solicitation of Funds for Charitable Purposes Act, 10 P.S. §162.1, *et seq.*, or who are expressly exempted from this regulation under the Act.

B. Any person claiming any exemption outlined above shall provide the Borough with documentation demonstrating that the person qualifies for the exemption.

SECTION 62-105. PERMIT APPLICATIONS.

A. It shall be the duty of any person desiring to engage in peddling and/or soliciting to make application to the Borough, on forms provided by the Borough, fully pay such fees as are required by the Borough, and obtain a permit issued by the Borough prior to engaging in such activity.

B. The application shall contain, at a minimum, the following information:

- (1) Name, permanent address, telephone number and cell phone number of the person engaging in the activity;
- (2) Name and address of the person, association, corporation, firm, partnership, organization, or other legal entity by whom the applicant is employed, together with the applicant's immediate supervisor's or other business contact person's name and telephone and fax number or a statement that the applicant is self-employed;
- (3) If the applicant is a business enterprise of any kind; the official name of the business, any alternate names under which the enterprise conducts business, its state of incorporation/business registration, tax identification numbers and its registered address for accepting service of process;
- (4) The type and description of goods, merchandise commodities or services that will be sold or offered for sale and the manner in which they will be sold or offered for sale;
- (5) The name, address and telephone number of any and all organizations and a point-of-contact(s) within the organization(s) for which funds or contributions are to be solicited;
- (6) A statement as to whether or not the applicant has ever been convicted of any crime, and if the answer in the affirmative, the nature of the offenses and the punishment imposed;
- (7) Length of time for which a permit is required;
- (8) Copy of the valid registration of any vehicle(s) to be used, if any; and

- (9) Copy of applicant's valid driver's license if a vehicle is to be used or any valid federal or state government issued picture identification card if a vehicle is not being used.

C. It shall be the duty of the Borough to investigate the application, with regard to the accuracy of the information on the application.

D. The Borough shall issue a permit within five (5) days of the filing of a complete application, unless the Borough informs the applicant, in writing, that the application is denied.

SECTION 62-106. DENIAL, REVOCATION, SUSPENSION AND TRANSFER OF PERMITS.

A. Denial of Permits. The Borough may deny a permit upon determining that: 1) the applicant is seeking to engage in unsafe, illegal, fraudulent or criminal activity; 2) the application is incomplete or contains false information; or 3) the applicant has been convicted of disorderly conduct or a crime involving moral turpitude. The Borough shall provide written notice of denial to the applicant. The notice shall include the reasons for denial and provide notice of the applicant's right to request a formal appeal hearing before Borough council. No part of the permit fees shall be refunded to any person whose permit has been denied.

B. Suspension or Revocation of Permits. Any permit issued under this Ordinance may be suspended or revoked at any time by the Borough upon the determining that: 1) the application contained false information; 2) the permit holder was convicted of a crime involving moral turpitude or was convicted of disorderly conduct after the issuance of the permit; or 3) the permit holder has failed or refuses to comply with any of the provisions of this Ordinance. The Borough shall provide written notice of suspension or revocation to the permit holder. The notice shall include the reasons for suspension/revocation, notice of the permit holder's right to request an appeal hearing before council and prohibit any further activity until a new permit is issued or the suspension/revocation is finally reversed on appeal. No part of the permit fees shall be refunded to any person whose permit has been suspended or revoked. Any person whose permit is suspended or revoked shall immediately surrender it to the Borough.

C. Transfer of Permits. Permits shall not be transferred to another party.

SECTION 62-107. APPEALS.

A. Any person aggrieved by any decision, determination or action of the Borough concerning the administration of the provisions of this Ordinance may appeal to Borough council. Appeals must be filed, in writing, on forms provided by the Borough, within thirty (30) calendar days after the decision, determination or action of the Borough.

B. The applicant shall fully pay the hearing application fee, set by council by resolution and as amended from time to time, to the Borough at the time the written request for a hearing is submitted to the Borough.

C. Hearing requests shall state concisely all reasons for the appeal.

D. Council shall hold a public hearing within thirty (30) calendar days after receipt of a timely and complete written request for a hearing. Notice of the time and place at which the appeal will be considered shall be given to all parties.

E. Hearings under this section shall be conducted pursuant to the Local Agency Law, 2 Pa.C.S. §§ 551 *et seq.*

F. At the hearing, the applicant and the Borough shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

G. Any party aggrieved by any decision of council may appeal to the Court of Common Pleas of Butler County, as provided by the law.

H. Council may defend its actions during the course of subsequent appeals.

SECTION 62-108. RESTRICTIONS.

A. In order to reserve the right of Borough residents to enjoy the peace and tranquility of their homes without unreasonable interruption and annoyance, it shall be unlawful for any person to peddle or solicit in, upon or along any public street or alley or public places of the Borough or by going from house to house for such purposes between the hours of 5:00 P.M. and 10:00 A.M., prevailing time, and all day on Sundays and LEGAL HOLIDAYS.

B. It shall be unlawful for any person to engage in peddling and/or soliciting on any private property within the Borough if such property is posted with "NO SOLICITATION" signs prominently displayed on or near the main entrance to the premises or on or near the main door to any residence located thereon. Any such violation will be considered a trespass subject to the criminal laws of the Commonwealth of Pennsylvania.

C. No person engaged in peddling and/or soliciting shall: 1) park any vehicle upon any of the public streets or alleys or public grounds in the Borough in order to sort, rearrange or clean any of his/her goods, merchandise or commodities; 2) place or dispose of or deposit any refuse upon any of the public streets or alleys or public grounds in the Borough; or 3) maintain or keep a street or curbstone market by parking any vehicle upon any public street or alley or public grounds for longer than necessary in order to sell or distribute therefrom to persons residing or working in the immediate vicinity.

D. No person engaged in peddling and/or soliciting shall occupy any fixed location upon any of the public streets, alleys, sidewalks or other public grounds in the Borough, with or without any stand or counter. Compliance with all applicable zoning and building code regulations is required.

E. No person engaged in peddling and/or soliciting shall hawk or cry his/her wares or services upon any of the public streets, alleys, sidewalks or other public grounds in the Borough nor shall he/she use any loud speaker, bell, whistle or other device for announcing his/her presence.

F. No person engaged in peddling and/or soliciting shall enter or attempt to enter any dwelling without the invitation or permission of the occupant and shall immediately leave any premises upon request of the occupant.

G. No person engaged in peddling and/or soliciting shall sell any product or solicit funds or contributions for organizations not expressly listed on their permit.

H. No person engaged in peddling and/or soliciting shall permit any other person to have possession or use or display their permit and shall immediately report its loss to the Borough.

SECTION 62-109. PERMIT FEES.

A. Council shall establish, by resolution, a schedule of fees and collect such fees to cover the costs to the Borough of administering and enforcing this Ordinance. The fee schedule may establish different charges for various activities consistent with the administrative and personnel costs necessary to support the permit application review, permit renewal, enforcement and appeal programs. The schedule of fees may be revised from time to time by resolution of council. The schedule of fees shall be available for public inspection at the Borough office.

B. No permit shall be issued unless or until such costs, charges, fees or expenses for the permit have been paid in full by the applicant; nor shall any action be taken on appeal proceedings before council unless or until all charges and fees related to the appeal have been paid in full by the applicant.

SECTION 62-110. ENFORCEMENT, VIOLATIONS AND PENALTIES.

A. Enforcement as a Summary Offense. This Ordinance governs and regulates public safety and, as such, enforcement of this Ordinance shall be by action brought before a magisterial district judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.

B. The Borough solicitor may assume charge of the prosecution without the consent of the District Attorney as permitted under the Pennsylvania Rules of Criminal Procedure No. 83(c) (relating to trial in summary cases).

C. Any person who shall violate any provision of this Ordinance shall be guilty of a summary offense. Upon conviction, such person shall be sentenced to pay a fine of not less than Three Hundred Dollars (\$300) and not more than One Thousand Dollars (\$1,000), per violation. A separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of this Ordinance which is found to have been violated.

D. In addition to or in lieu of summary charges, the Borough, through its solicitor, may institute injunctive, mandamus, or other appropriate action or proceeding at law or in equity for enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other appropriate forms of remedy or relief.

E. Nothing contained in this Section shall be construed or interpreted to grant any person or entity other than the Borough the right to commence an action for enforcement pursuant to this Ordinance.

SECTION 62-111. LIABILITY OF BOROUGH. This Ordinance shall not create liability on the part of the Borough or any officer or employee thereof for any damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

SECTION 62-112. SEVERABILITY. The provisions of this Ordinance are severable. If any sentence, clause, or section of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections of this Ordinance. It is hereby declared to be the intent of council that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, or section not been included herein.

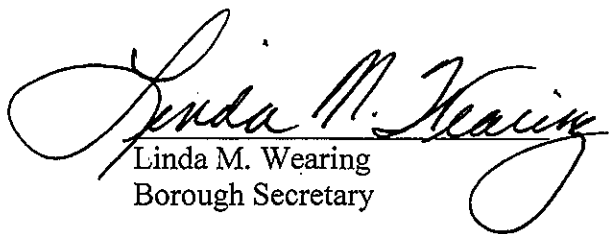
SECTION 62-113. REPEALER. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed insofar as they may be inconsistent herewith.

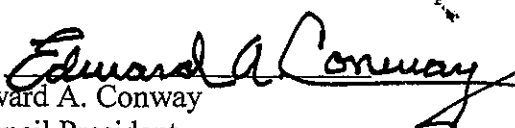
SECTION 62-114. EFFECTIVE DATE. This Ordinance shall become effective five (5) days after enactment.

ENACTED AND ORDAINED, this the 2nd day of July 2018, by Callery Borough council in public session duly assembled.

CALLERY BOROUGH

ATTEST:


Linda M. Wearing
Borough Secretary

By: 
Edward A. Conway
Council President

(SEAL)

APPROVED

By: 
Ed Ashley
Mayor

Date: July 2, 2018

