

CHAPTER 13

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Part 1

Regulating and Licensing Transient Retail Business

§101. Definitions. As used in this Part 1, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

LEGAL HOLIDAY - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas.

PERSON - any natural person, partnership, association, corporation, or other legal entity.

TRANSIENT RETAIL BUSINESS -

A. engaging in peddling, soliciting, or taking orders, either by sample or otherwise, for any goods, wares, or merchandise upon any street, alley, sidewalk, or public ground, or from house to house, within the Borough of Millheim;

B. selling, soliciting, or taking orders for any goods, wares, or merchandise, from a fixed location within the Borough, on a temporary basis, which shall include, but not be limited to, such activities conducted at the time of special occasions or celebrations, for seasonal purposes, or for or in advance of specific yearly holidays.

The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and the neuter.

(Ord. 151, 11/12/1984)

§102. License Required; Conditions of Issuance; Fee. No person shall engage in any transient retail business within the Borough of Millheim without first having obtained from the Borough Secretary a license, for which a fee, which shall be for the use of the Borough, shall be charged:

- five dollars (\$5.00) for one day
- ten dollars (\$10.00) for one week
- fifteen dollars (\$15.00) for one month
- twenty-five dollars (\$25.00) for one year

(Ord. 151, 11/12/1984)

§103. Exceptions. No license fee shall be charged:

1. to farmers selling their own produce;
2. 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;

3. to any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk and milk products;
4. to children under the age of eighteen (18) years who take orders for and deliver newspapers, greeting cards, candy, bakery products, and the like, or who represent the Boy Scouts or Girl Scouts or similar organizations;
5. to any honorable discharged member of any of the armed services who complies with the Act of 1867, April 8, P.L. 50, 60 P.S. §61(1982), hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, and who procures from the Prothonotary a certificate in pursuance of the Act of 1867;
6. to the seeking or taking of orders by insurance agents or brokers licensed under the insurance laws of the Commonwealth of Pennsylvania;
7. to any person who has complied with the provisions of the Solicitation of Charitable Funds Act, August 9, 1963, P.L. 628, 10 P.S. §§160-1 et seq. (1982), as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania; or
8. for taking orders for merchandise, by sample, from dealers or merchants for individuals or companies who pay a license or business privilege tax at their chief place of business.

But all persons exempted hereby from the payment of the license fee shall be required to register with the Borough Secretary and obtain a license without fee; provided, any person dealing in one or more of the above mentioned exempted categories, and dealing with other goods, wares, or merchandise not so exempted, shall be subject to the payment of the license fee fixed by this section for his activities in connection with the sale of goods, wares, and merchandise not in such exempted categories. Provided further, the Borough Secretary may similarly exempt from payment of the license fee, but not from registering with him, persons working without compensation and selling goods, wares, or merchandise for the sole benefit of any nonprofit corporation. Provided further: every license issued under the provisions of this ordinance 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 in his 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 the applicants therein.

(Ord. 151, 11/12/1984)

§104. License Application. Every person desiring a license under this ordinance shall first make application to the Borough Secretary for such license. He shall, when making such application, exhibit a valid license from any state or county officer, if such license is also required. The applicant shall state:

1. his criminal record, if any;
2. name and address of the person by whom he is employed;
3. type of goods, wares, and merchandise he wishes to deal with in such transient retail business;
4. length of time for which license is to be issued; and
5. type and license number of the vehicle to be used, if any.

(Ord. 151, 11/12/1984)

§105. Issuance of License; Custody, Display, or Exhibit. Upon receipt of such application and the prescribed fee, the Borough Secretary, if he shall find such application in order, shall issue the license required under this ordinance. Such license shall contain the information required to be given on the application therefor. Every license holder shall carry such license upon his person if engaged in transient retail business from house to house or upon any of the streets, alleys, sidewalks, or public grounds, or shall display such license at the location where he shall engage in such business if doing so at a fixed location. He shall exhibit such license, upon request, to all police officers, municipal officials, and citizens or residents of the Borough of Millheim. (Ord. 151, 11/12/1984)

§106. Prohibited Acts. No person in any transient retail business shall:

1. sell any product or type of product not mentioned in his license;
2. hawk or cry his wares upon any of the streets, alleys, sidewalks, or public grounds in the Borough;
3. when operating from a vehicle, stop or park such vehicle upon any of the streets or alleys in the Borough for longer than necessary in order to sell therefrom to persons residing or working in the immediate vicinity;
4. park any vehicle upon any of the streets or alleys in the Borough for the purpose of sorting, rearranging, or cleaning any of his goods, wares, or merchandise or of disposing of any carton, wrapping material or of any stock or wares or foodstuffs which have become unsaleable through handling, age or otherwise;
5. engage in any business activity, except by prior appointment, at any time on a Sunday or legal holiday or at any time before 8:30 A.M. or after 8:00 P.M. on any day of the week other than a Sunday or legal holiday.

(Ord. 151, 11/12/1984)

§107. Supervision; Records and Reports. The Borough Secretary shall supervise the activities of all persons holding licenses under this Part. He shall keep a record of all licenses issued hereunder, and shall make a report thereof each month to the Borough Council. (Ord. 151, 11/12/1984)

§108. Suspension and Revocation of License; Appeal. The Borough Secretary is hereby authorized to suspend or revoke any license issued under this ordinance when he deems such suspension or revocation to be beneficial to the public health, safety, or morals, for violation of any provision of this ordinance, or for giving false information upon any application for a license hereunder. Appeals from any suspension or revocation may be made to the Borough Council at any time within ten (10) days after such suspension or revocation. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked. (Ord. 151, 11/12/1984)

§109. Penalty. Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00) plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Each day that a violation of this Part continues shall constitute a separate offense. (Ord. 151, 11/12/1984; as amended by Ord. 189, 6/1/1999)

Part 2

Sexually Oriented Businesses

§201. Purpose. The purpose of this Part is to promote the health, cleanliness, comfort and safety of the citizens of the Borough of Millheim, by regulating the location of sexually oriented businesses within the Borough of Millheim in order to minimize and control the adverse affects of such businesses on the health, safety and welfare of the citizens of the Borough of Millheim. (Ord. 205, 5/14/2002, §1)

§202. Definitions.

ADULT ARCADE - any place to which the public is permitted or invited wherein coin-operated, slug-operated or for any form of consideration or electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE - a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

A. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

B. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing "specified sexual activities" or "specified anatomical areas" and still be characterized as adult bookstore, adult novelty or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being characterized as an adult bookstore, adult novelty store or adult video store so long as one of its business purposes is the offering for sale or rental for any consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT CABARET - a nightclub, bar and/or restaurant or similar commercial establishment which regularly features:

A. Persons who appear in a state of nudity or semi-nudity; and

B. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

C. Films, motion pictures, video cassettes, slides, laser discs or similar photographic reproductions which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas."

ADULT MOTION PICTURE THEATER - a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, laser discs or similar photographic reproductions are regularly shown which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas."

ADULT THEATER - a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified sexual activities" or by "specified anatomical areas."

NUDITY or a STATE OF NUDITY - the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernable turgid state.

PERSON - any individual, proprietorship, partnership, corporation, association, joint venture or other legal entity.

SEMI-NUDE or SEMI-NUDE CONDITION - the state of dress in which clothing partially or opaquely covers specified anatomical areas.

SEXUAL ENCOUNTER CENTER - a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex.

B. Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nudity.

SEXUALLY ORIENTED BUSINESS - an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater or sexual encounter center.

SPECIFIED ANATOMICAL AREAS - human genitals, pubic region, anus, buttocks, female breast(s) below a point immediately above the top of the areola or human male genitals in a discernable turgid state, even if completely covered.

SPECIFIED SEXUAL ACTIVITIES - any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast(s).

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy.

C. Excretory functions as part of or in connection with any of the activities set forth in subsections (A) and (B) above.

(Ord. 205, 5/14/2002, §2)

§203. Location of Sexually Oriented Businesses.

1. A person commits a violation of this Part if the person operates or causes to be operated a sexually oriented business within one thousand (1,000) feet of:

A. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related activities.

B. A public or private educational facility including, but not limited to, child day-care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, special education schools, junior colleges and universities; school includes the school grounds.

C. A licensed premises licensed pursuant to the alcoholic beverage control regulations of the Pennsylvania Liquor Control Board of the Commonwealth of Pennsylvania.

D. Any other sexually oriented business.

E. A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness area or other similar public land within the Borough of Millheim which is under the control, operation or management of the Borough or the Borough's Park and Recreation Authority/Committee.

F. A cemetery.

G. A building or other structure owned or operated by the Borough of Millheim for municipal purposes.

2. For purposes of subsection (1) of this Section, measurement shall be in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (1).

Presence of a municipal, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(Ord. 205, 5/14/2002, §3)

§204. Inspection.

1. A person who operates a sexually oriented business shall permit representatives of the Borough, including the Code Enforcement Officer or other official, to inspect the premises of any sexually oriented business for the purposes of insuring compliance with this Part at any time it is occupied or open for business.

2. A person who operates a sexually oriented business, or any agent or employee thereof, commits a violation of this Part if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

(Ord. 205, 5/14/2002, §4)

§205. Hours of Operation. No sexually oriented business may remain open at any time after 1:00 a.m. on Sundays and between the hours of 1:00 a.m. and 6:00 a.m. on weekdays and Saturdays. (Ord. 205, 5/14/2002, §5)

§206. Enforcement Remedies.

1. Any person who or which has violated any provision of this Part shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than six hundred dollars (\$600.00) plus all court costs, including reasonable attorney's fees incurred by the Borough as a result thereof. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rule of civil procedure. Each day that a violation continues shall constitute a separate violation.

2. The Borough may also institute proceedings in equity in the Court of Common Pleas of Centre County, Pennsylvania, against any person who violates or clearly is about to violate this Part for the purpose of enjoining such violation. The Court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The request for injunctive relief contained herein shall be in addition to all other remedies contained herein.

(Ord. 205, 5/14/2002, §6)

Part 3

Pawn Shops

§301. Purpose. The purpose of this Part is to promote the health, cleanliness, comfort and safety of the citizens of the Borough of Millheim, by regulating the location of pawn shops within the Borough of Millheim in order to minimize and control the adverse affects of such businesses on the health, safety and welfare of the citizens of the Borough of Millheim. (Ord. 215, 4/13/2004, §1)

§302. Definitions.

APPLICANT - any individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized applying for a license under this Part and/or any person appearing as owner, partner, officer, director, trustee or other official of a partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized, on such application for license under this Part.

BOROUGH - the Borough of Millheim, Centre County, Pennsylvania.

PAWN SHOP - the place of business of a pawnbroker.

PAWNBROKER - any person, who (A) engages in the business of lending money on the deposit or pledge of personal property, other than choses in action, securities, or written evidences of indebtedness; of (B) purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price; or (C) lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security.

PAWNBROKING - the business of a pawnbroker as defined in this Part.

PERSON - an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized.

PLEDGE - an article or articles deposited with a pawnbroker as security for a loan in the course of the pawnbroker's business as defined in the preceding paragraphs.

PLEDGER - the person who obtains a loan from a pawnbroker and delivers a pledge in the possession of the pawnbroker unless such person discloses that he or she is or was acting for another in which case a "pledger" means the disclosed principal.

(Ord. 215, 4/13/2004, §2)

§303. Location of Pawn Shops.

1. A person commits a violation of this Part if the person operates or causes to be operated a pawn shop within one thousand (1,000) feet of:

A. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related activities.

B. A public or private educational facility including, but not limited to, child daycare facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, special education schools, junior colleges, and universities; school includes the school grounds.

C. A licensed premises licensed pursuant to the alcoholic beverage control regulations of the Pennsylvania Liquor Control Board of the Commonwealth of Pennsylvania.

D. A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness area, or other similar public land within the Borough of Millheim which is under the control, operation or management of the Borough or the Borough's Park and Recreation Authority/Committee.

E. A cemetery.

F. A building or other structure owned or operated by the Borough of Millheim for municipal purposes.

2. For purposes of subsection .1 of this Section, measurement shall be in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a pawn shop is conducted, to the nearest property line of the premises of a use listed in subsection .1. Presence of a municipal, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(Ord. 215, 4/13/2004, §3)

§304. License. Any person, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any group of individuals however organized, on and after the effective date of this Part prior to engaging in the business of a pawnbroker or operating a pawn shop in the Borough, shall first obtain a license from the Borough. (Ord. 215, 4/13/2004, §4)

§305. Application for License. The application for such license shall be in writing, under oath and in the form prescribed by the Borough and shall contain the name and address of residence of the applicant, and if the applicant is a partnership, association, joint-stock company or common law trust of every member thereof, and if the applicant is a business corporation or nonprofit corporation of each officer and director thereof; also the specific address where the pawn shop business is to be conducted and such further information as the Borough may require. The application shall be signed by the individual owner if the applicant is an individual, by all the partners if the applicant is a partnership, by two officers if the applicant is an association, joint-stock company or common law trust, and by the president and secretary if the applicant is a business corporation or a nonprofit corporation. (Ord. 215, 4/13/2004, §5)

§306. License Fee. Every application for license under this Part shall be accompanied by a license fee of one hundred dollars (\$100.00). (Ord. 215, 4/13/2004, §6)

§307. Hours of Operation. No pawn shop business may remain open at any time between the hours of 9:00 p.m. and 7:00 am. on weekdays and Saturdays and no pawn shop shall be open at anytime on Sundays. (Ord. 215, 4/13/2004, §7)

§308. Enforcement Remedies.

1. Any person who or which has violated any provision of this Part shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than six hundred dollars (\$600.00) plus all court costs, including reasonable attorney's fees incurred by the Borough as a result thereof. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rule of civil procedure. Each day that a violation continues shall constitute a separate violation.

2. The Borough may also institute proceedings in equity in the Court of Common Pleas of Centre County, Pennsylvania, against any person who violates or clearly is about to violate this Part for the purpose of enjoining such violation. The court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The request for injunctive relief contained herein shall be in addition to all other remedies contained herein.

(Ord. 215, 4/13/2004, §9)

Part 4
Yard Sales

§401. Definitions. The following terms shall have the meanings indicated:

BOROUGH - Millheim Borough, Centre County, Pennsylvania.

HOUSEHOLD - the individual who applies for a permit and anyone who resides in that individual's residence.

PERMIT - the form that must be obtained, completed, and submitted along with the respective fee to the Code Enforcement Officer prior to conducting a yard sale.

YARD SALE - any public sale of goods (excluding the sale of a single item) on residential property including, but not limited to, the residential property's garage, home, lawn, or yard.

(Ord. 225, 7/11/2006, §1)

§402. Yard Sale Permit; Removal of Yard Sale Signs.

1. It shall be unlawful for any individual, group, corporation or other legal entity to conduct within the Borough a yard sale or permit a yard sale to be held within the Borough on residential property under the control of the individual, group, corporation or other legal entity without first obtaining a yard sale permit from the Borough; provided, however, that no permit shall be required for a town-wide yard sale.

2. Any individual, group, corporation or other legal entity conducting a yard sale within the Borough limits or any individual, group, corporation or other legal entity, posting advertisements within the Borough limits for a yard sale to be held inside or outside the Borough limits must remove, from within the Borough rights-of-way, all signs, flyers, posters, and bulletins no later than the day after the yard sale. Should the yard sale for any reason not be held all signs, flyers, posters, and bulletins advertising the yard sale must be removed no later than the scheduled last day for the yard sale.

3. All merchandise and equipment used in conducting the yard sale shall be cleaned up no later than the day after the yard sale.

(Ord. 225, 7/11/2006, §2)

§403. Frequency and Duration Limitations.

1. Two (2) - three (3) day or three (3) - two (2) day yard sales for a total of six (6) days are permissible per household in any twelve (12) month period.

2. The maximum duration of any yard sale shall be three (3) consecutive calendar days.

3. The approved yard sale must be held within twenty (20) days of the issuance of the permit for that yard sale.

4. Town-wide yard sales are not included in frequency and duration limitations.

(Ord. 225, 7/11/2006, §3)

§404. Fee for Permit.

1. No fee shall be charged for a permit issued to a household for the first two yard sales conducted within any twelve (12) month period (which does not include the town-wide yard sale). The fee for each permit issued to a household for any subsequent yard sale conducted within any twelve (12) month period shall be ten (\$10.00) dollars each. [Ord. 230]

2. All permit fees shall be paid to the Penns Valley Code Enforcement Agency prior to issuance of the permit.

3. The permit must be posted and clearly visible during the event.

4. Nonprofit service organizations and charitable organizations may obtain two (2) - three (3) day or three (3) - two (2) day yard sale permits in any twelve (12) month period without fee.

(Ord. 225, 7/11/2006, §4; as amended by Ord. 230, 6/12/2007)

§405. Violation. Any individual, group, corporation or other legal entity who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than fifty (\$50.00) dollars and costs of prosecution for the first offense, a fine of not more than one hundred (\$100.00) dollars plus costs of prosecution for the second offense; and a fine of not more than three hundred (\$300.00) dollars plus costs of prosecution for the third and any subsequent offense and any offense thereafter. (Ord. 225, 7/11/2006, §5)

§406. Enforcement. The Code Enforcement Officer is hereby authorized to act on behalf of the Borough. (Ord. 225, 7/11/2006, §6)