BOROUGH OF BRENTWOOD

BOROUGH OF BRENTWOOD
ORDINANCE NO. 1208

AN ORDINANCE OF THE BOROUGH OF BRENTWOOD AMENDING THE BRENTWOOD BOROUGH CODE, AS AMENDED, TO AMEND IN ITS ENTIRITY CHAPTER 194 – ENTITLED TRANSIENT RETAIL BUSINESSES, PANHANDLING, CANVASSING & SOLICITATION.

WHEREAS, the Borough of Brentwood is a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, including but not limited to the Borough Code; and

WHEREAS, the Legislature of the Commonwealth of Pennsylvania vests the Borough of Brentwood with the power and authority to make and adopt all such ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth, as is expedient or necessary for the proper management, care and control of, *inter alia*, the Borough's finances, the maintenance of peace, good government, health, safety and welfare of the Borough, its trade, commerce and manufacturers; and

WHEREAS, Brentwood Borough Council has determined that it is necessary to enact this Ordinance to improve the quality of life and economic vitality of the Borough and to protect the safety and welfare of the general public against certain types of conduct of persons engaged in panhandling or solicitation by imposing reasonable time, place, and manner restrictions on such conduct while respecting the Constitutional right of free speech for all citizens; and

WHEREAS, the restrictions contained herein are neither broad nor overly vague and are content neutral and narrowly tailored to achieve a significant government interest while leaving ample alternative channels of communication available to individuals who practice non-confrontational methods of solicitation; and

NOW THEREFORE, on this 22nd day of January, 2013, it is hereby Enacted and Ordained by the Council for the Borough of Brentwood, that:

PART I – The Brentwood Borough Code shall be amended to amend in its entirety Chapter 194 to Part II, General Legislation, which shall read as follows:

Sec. 1: TITLE: This Ordinance shall be known as the Borough of Brentwood Transient Retail Business, Panhandling, Canvassing & Solicitation Ordinance.

Sec. 2: PURPOSE: It is the purpose of this Ordinance and the policy of the Borough of Brentwood, in order to protect and promote the public health, safety and welfare of its citizens, to establish the rights and obligations of those who wish to engage in legal temporary business or canvassing.

Sec 1: DEFINITIONS

A. As used in this chapter, the following terms shall have the meanings indicated:

BOROUGH

Means the Borough of Brentwood, Allegheny County, Pennsylvania.

CHARITABLE ORGANIZATION

An organization which has been granted an exemption by the United States Internal Revenue Service under § 501(c) or § 509(a) of the United States Internal Revenue Code and/or any person or organization who has complied with the provisions of the Pennsylvania Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.1, et seq., as amended.

LEGAL HOLIDAY

Any holiday characterized by the suspension of business of the state or federal government, including, but not limited to, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

CANVASSING

Includes any person who goes from private house to house questioning persons for the purposes of obtaining information, data or opinions from such persons contacted for any issue of public interest, including political, religious, charitable or educational purposes, whether or not a donation from the resident(s) is sought from the canvasser.

PANHANDLING

a. Shall include, but not be limited to, using the spoken, written or printed word, bodily gestures, signs, music, singing or other street performance with the purpose of obtaining an immediate donation of money or other thing of value. Panhandling shall also include exchanges in which the person being approached receives an item or thing of value of little or no monetary value in exchange for a donation, under circumstances where a reasonable person would understand that the transaction is in substance a donation.

b. Panhandling in an Aggressive Manner means:

(1) Following behind, ahead or alongside a person for more than fifty (50) feet either before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, or damage to or loss of property or otherwise be intimidated into giving money or other thing of value.

(2) Continuing to solicit from a person after that person has given a negative response to such soliciting or walked away from the solicitor;

(3) Intentionally touching or causing physical contact with the solicited person without such person's consent;

(4) Intentionally blocking or interfering with the safe or free passage of a person or vehicle being solicited by any means, including unreasonably causing a person or vehicle operator to take evasive action to avoid physical contact;

(5) Using profane or abusive language, or speaking in an unreasonably loud volume, either during the solicitation or following a refusal to make a donation, or making any statement or gestures toward a solicited person which would cause a reasonable person to be fearful or feel compelled; or

(6) Soliciting from a person while that person is waiting in line for entry to a building or for another purpose.

PERSON

Any natural person, partnership, association, corporation or other legal entity.

PUBLIC PLACE

Any place to which the public or a substantial group of persons has access, including but not limited to any street, highway, sidewalk, parking facility, plaza, transportation facility, school, place of amusement, park or playground, and any doorway, entrance, hallway, lobby, or other portion of any business establishment, apartment house or hotel not constituting a room or apartment designed for actual residences.

SOLICITING

Includes, but is not limited to a person going:

(1) From private house to house, conveying or transporting goods, wares or merchandise, or offering or exposing the same for sale or making sales or delivering articles, goods, wares or merchandise to purchasers.

(2) From private house to house, soliciting or attempting to take orders from individuals for sale of goods, wares or merchandise, including magazines, books, periodicals or other personal property of any nature whatsoever, for future delivery or for services to be performed at that time or in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such order or whether or not he is collecting advance payments on such orders.

TRANSIENT RETAIL BUSINESS

(1) The term "transient retail business" includes the following:

(a) Engaging in begging, panhandling, 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 Brentwood.

(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 shall 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 or legal holidays.

(c) The business conducted by any transient merchant, which term shall include any person who, temporarily and for a short time, hires, rents or obtains a definite place of business, whether a storeroom or a market stand or a private residence, for the sale of goods, wares, merchandise or to offer or expose the same for sale or for future delivery and sale. The terms "temporarily" and "short time" shall be construed as three months or less.

(2) The term "transient retail business" shall not include:

(a) The solicitation of funds for nonprofit charitable, religious or political organizations or any other activity with a predominantly charitable, religious or political purpose

(b) The solicitation of funds by school children through and including 12th grade for any school-approved activity or organization.

(c) Sales made to dealers by commercial sales agents in the usual course of business, calling upon or dealing with manufacturers, wholesalers, distributors or retailers at their places of business.

(d) Yard and/or garage sales as conducted by a Brentwood Borough resident from his place of residence.

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

194-2 <u>License required; issuance; fee.</u>

[Amended 9-16-1983 by Ord. No. 916; 10-28-2008 by Ord. No. 1171]

A. No person shall engage as a solicitor in any transient retail business within the Borough of Brentwood without first registering with the Borough and having obtained from the Borough a license, for which a fee shall be charged. The amount of the fee shall be fixed from time to time by resolution of Council (Editor's Note: See Ch. A215, Fees).

B. No license fee shall be charged for the following transient retail businesses:

(1) To farmers selling their own produce.

(2) For the sale of goods, wares and merchandise donated by the owners thereof, or the proceeds of which sale 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 the seeking or taking of orders by insurance agents or brokers licensed under the insurance laws of the Commonwealth of Pennsylvania.

C. All persons exempted hereby from the payment of the license fee shall be required to register with the Borough Manager and obtain a license from the Borough without fee; provided, further, that 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;

D. Every license issued under the provisions of this chapter shall be issued on an individual basis to 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.

E. No person under the age of eighteen (18) shall be permitted to engage as a solicitor or in any transient retail business except as provided below:

(1) A license shall be obtained by a sponsoring person, company or organization for employment or engagement of any person under the age of eighteen (18) in soliciting or a transient retail business. Said sponsor must be at least twenty-one (21) years of age.

(2) A separate license must be acquired for each sponsored person under the age of eighteen (18).

(3) The sponsor shall be responsible for supervising and controlling the conduct of the sponsored person or persons.

194-3 <u>Application for license.</u>

[Amended 9-16-1983 by Ord. No. 916; 10-28-2008 by Ord. No. 1171]
A. Every person desiring a license under this chapter shall first make application to the Borough for such license. If such person shall also be required to obtain a license from any state or county officer, he shall, when making such application, exhibit a valid license from such state or county officer. The applicant shall state thereof and present:

(1) A photo identification document in the form of a state-issued driver's license, state-issued non-driver identification card, U.S. passport or passport card, U.S. military identification, U.S. permanent residency card, or photo identification from an accredited institution of higher learning. Photo identification must be valid for the dates during which the licensee will be engaged in solicitation or transient retail business.

(2) The name and physical description of the applicant.

(3) The complete permanent home and local address of the applicant and, in the case of transient merchants, the local address from which proposed sales will be made.

(4) A brief description of the nature of the business and the goods to be sold or the organization on behalf of which funds will be solicited.

(5) If employed, the name and address of the employer.

(6) If a motor vehicle is to be used, a description of the vehicle together with the motor vehicle registration number and the driver's license number.

(7) The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, and the proposed method of delivery.

(8) The names of other communities in which the applicant has worked as a solicitor in the past twelve (12) months; and if he was employed by a different transient retail business in those communities, the name of those companies shall also be stated

(9) Two recent photographs of the applicant, said photographs being at least two inches by three inches in dimension and clearly showing the applicant's head and shoulders.

(10) Documentation of whether or not the applicant has been convicted of any felony, misdemeanor or crime involving moral turpitude and a brief description of each such conviction.

(11) Proof of sales tax permit issued by the State of Pennsylvania or proof that the goods sold are not subject to such sales tax; and

(12) The length of time, with beginning date and ending date, during which said business or solicitation is to be conducted in the Borough, said length of time not to exceed six consecutive days.

B. No application for a transient retail business license, including those that exempt from the license fee under the conditions previously covered in this chapter, will be accepted less than three (3) business days prior to the beginning date stated in the application.

194-4 <u>Investigation of application; license issuance; display.</u>

A. Upon receipt of such application and the prescribed license fee, it shall be referred to the Chief of Police who shall cause an investigation to be made as to all matters contained in the application to ensure the protection of the public health, safety and general welfare. The amount of the fee for said background investigation shall be fixed from time to time by resolution of Council.

B. The Chief of Police shall endorse on such application his approval or disapproval for the issuance of the license and shall notify the Mayor of the same within three (3) days, not including weekends or holidays, of receipt of such application.

C. The Mayor, if he shall find such application in order, shall issue the license required under this chapter.

D. As a condition prerequisite to issuance of said permit, and as continuing condition for use and maintenance of such permit, the Mayor may impose such conditions as he deems necessary to protect and preserve the health, safety, morals, general welfare, cleanliness, beauty and convenience of the borough, the borough residents and visitors to the borough. Said conditions may include but are not limited to an obligation assumed, in writing, by the permittee and other interested persons or entities to reimburse the borough for public safety cost incurred as a result of the use of the permit and to protect, defend, indemnify and hold the borough officials, employees and representatives harmless from all claims, causes of action and loss arising from issuance and/or use of said permit.
[Amended 6-19-1990 by Ord. No. 995]

E. 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, borough officials and citizens or residents of the borough.

194-5 Prohibited acts; restrictions.

[Amended 9-16-1983 by Ord. No. 916]

A. No person 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 of Brentwood.

(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 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 unsalable through handling, age or otherwise.

(5) Engage in a transient retail business in an aggressive manner. As used in this section, "aggressive manner" means continuing the soliciting activity after the person has made a negative response, whether before or after being invited into a residence, by blocking the path of the person solicited, or by following or walking alongside with the person solicited, in a manner that is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in a person's possession or in or about the residence, or is intended to or is, likely to intimidate the person into responding affirmatively to the peddling or soliciting activity.

(6) Misrepresent the purpose of the solicitation. False or misleading representations include, but are not limited to, the following: stating that the solicitor is from out of town and stranded when such is not true; stating or suggesting falsely that the solicitor is either a present or former member of the armed service indicated; wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated; stating that the solicitor is homeless, when he or she is not.

(7) Use at any time a license issued to any other person.

(8) Permit any other person to use a license that was not issued to said other person.

(9) Solicit at any private residence exhibiting a sign reading "no solicitors," or words having the same connotation.

(10) Canvass at any private residence exhibiting a sign reading "no canvassers," or words having the same connotation.

B. No person may operate a transient retail business, panhandle or solicit in any of the following locations, unless located within a permanent storefront or residence:

(1) On any public space, within twenty (20) feet of any intersection or pedestrian crosswalk.

(2) Within 20 feet of the entrance to or exit from any public toilet facility, which includes any temporary use site (port-a-toilet);

(3) Within twenty (20) feet of any bus stop or taxi stand.

(4) Within (20) feet of an automatic teller machine (ATM), provided that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;

(5) Within twenty (20) feet of any fire hydrant.

(6) Within any metered parking spaces owned by the Borough.

(7) On the median of any divided roadway.

(8) Within two hundred (200) feet of another vending location assigned to another vendor on a public sidewalk.

(9) In any public transportation vehicle, or in any bus, or within 20 feet of any bus stop or taxi;

(10) From any operator of a motor vehicle that is in traffic on a public street; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the owner for passengers of such vehicle;

(11) Within twenty (20) feet of an entrance to or exit from any financial institution, check cashing business without the consent of the owner of the property or another person legally in possession of such facilities.

(12) Within twenty (20) feet of the outside perimeter of any restaurant or other establishment serving food or alcoholic beverage for immediate consumption, outdoor café, licensed sidewalk food vendor, or store licensed for package sales of alcoholic beverages by the Pennsylvania Liquor Control Board, unless expressly authorized by the owner, manager, or supervisor of the establishment.

[Amended 2-4-1997 by Ord. No. 1091]

194-6 Supervision of activities; records and reports.

The Mayor and the Brentwood police shall supervise the activities of all persons holding licenses under this chapter. The Borough Secretary shall keep a record of all licenses issued hereunder and shall make a report thereof each month to the Borough Council.

194-7 Business hours.

[Amended 9-16-1983 by Ord. No. 916]

A. Transient retail business, canvassing and solicitation may be conducted at business properties in the borough during all regular business hours and may be conducted in the borough public streets and other public places from 9:00 a.m., prevailing time, to 8:00 p.m., provided that such business persons and/or solicitors, with canvassers excepted, obtain a license as required by this chapter and that such activities are conducted subject to all other provisions of this chapter.

194-8 Suspension and revocation of licenses; appeals.

[Amended 9-16-1983 by Ord. No. 916]

A. The Mayor is hereby authorized to deny, suspend or revoke any license issued under this chapter when he deems such denial, suspension or revocation to be necessary to assist in the prevention of crime and/or necessary to protect the security of the homes of borough residents from annoyance. In addition, the Mayor may deny, suspend or revoke any license issued under this chapter for violation of any provision of this chapter and/or for the giving of any false information upon any application for a license hereunder.

B. Notice of the denial, revocation or suspension of a license shall be given, in writing, setting forth specifically the grounds of complaint and the opportunity for a hearing. Such notice shall be given by the Mayor or Borough Secretary personally to the applicant or may be transmitted by certified mail, postage prepaid, to the applicant or licensee at his address given in said application.

C. Appeals from any denial, suspension or revocation may be made to the Borough Council, in writing, at any time within 10 days after such denial, suspension or revocation. Such notice of appeal shall state, in detail, the reasons why the applicant or permittee believes said denial, revocation or suspension is improper. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked.

D. Hearing on an appeal under this chapter shall be conducted by Borough Council according to the provisions of the Pennsylvania Local Agency Law, the Act of April 28, 1978, P.L. 202, No. 53, as amended, Editor's Note: See 2 Pa. C.S. §§ 551 et seq. and 751 et seq., and the provisions of the Pennsylvania Open Meetings and Hearings Act, the Act of July 19, 1974, P.L. 486, No. 175, as amended. Editor's Note: The Open Meetings and Hearing Act was repealed July 3, 1986, by P.L. 388, No. 84, § 17. See now 65 P.S. § 271 et seq. Such hearing shall be commended within 45 days after receiving notice of such appeal. The appellant shall be notified of Council's decision with 45 days, after the conclusion of said hearing, or any, continuance thereof. Said notice of decision of Council shall be given to the appellant, in writing, specifying reasons for said decision and shall be mailed to the appellant by certified mail, postage prepaid, at appellant's address set forth in the application for license. The decision of Council shall be the decision of a majority of a quorum of the members of Council voting on said appeal and said decision shall be final.

194-9 Violations and penalties.

[Amended 9-16-1983 by Ord. No. 916; 2-4-1997 by Ord. No. 1091]

Any person who shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of not more than $600 and costs of prosecution or, in default of payment of such fine and costs, to undergo imprisonment for no more than 30 days. Each separate act of sale or solicitation committed in violation of the provisions of this chapter shall constitute a separate violation thereof.

194-10 Restricted residence listing.

[Added 10-28-2008 by Ord. No. 1171]

A. Any resident, upon written request to the Borough Manager, may ask to be placed on a restricted listing which will be given to all applicants being issued a transient retail business license. Persons to whom licenses are issued shall not call upon any residents named on the restricted listing.

B. All persons wishing to engage in any transient retail business within the Borough of Brentwood are required to first obtain a list of residents who have notified the Borough of their desire to be placed on the restricted residence listing. The list may be obtained in person or by telephoning the Borough Manager with a request for the list to be delivered by facsimile or e-mail.

PART II – The Mayor, Police Department, Borough Manager, and Borough Solicitor, and all others employed or appointed by the Borough of Brentwood, are authorized to take any and all action necessary to ensure implementation of this Ordinance and to effectuate the purpose hereof.

PART III – Any and all Ordinances and/or Resolutions, or parts thereof, conflicting herewith are repealed insofar as the matters herein are affected.

PART IV – The provisions of this Ordinance are severable, and if any clause, sentence, section or subsection hereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder, but shall be confined in its operation and application to the clause, sentence, section or subsection rendered. It is hereby declared that the intent of the Borough of Brentwood Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional clause, sentence, section or subsection had not been included therein.

PART V – This Ordinance is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended or revoked by action of the Council of the Borough of Brentwood.

ORDAINED AND ENACTED THIS 22nd DAY OF JANUARY, 2013 BY THE BOROUGH COUNCIL OF THE BOROUGH OF BRENTWOOD.

ATTEST:

George Zboyovsky, P.E.
Borough Manager

BOROUGH OF BRENTWOOD

David Wenzel
President of Council

EXAMINED AND APPROVED BY ME THIS 22nd DAY OF January, 2013.

Kenneth Lockhart
Mayor

APPROVED AS TO FORM

Thomas H. Ayoob, III
Borough Solicitor

CERTIFICATE

I, the undersigned, hereby certify that the foregoing and attached is a true copy of an Ordinance which was duly enacted at a meeting of the Borough Council of the Borough of Brentwood on January 22, 2013, and that at such meeting a quorum was present and acting throughout, after due notice to the members of the Borough Council of the Borough of Brentwood and to the public and such meeting was at all times open to the public; that the Ordinance was duly recorded in the Borough of Brentwood's Minutes Book and that a summary thereof was published as required by law in a newspaper of general circulation in the Borough. I further certify that the Borough met the advance requirements of Act No. 1998-93 by advertising the date of the meeting and posting a notice of the meeting at the public meeting place of the Borough Council; that the total number of members of the Borough Council is seven; and the vote upon the Ordinance was called and duly recorded upon the minutes and that the members voted in the following manner:

	Yes	No	Abstain	Absent
David Wenzel, President	X			
Charles Johnson, Vice President	X			
Ann Schade, President Pro Tem.	X			
Pasquale Carnevale	X			
Rich Schubert	X			
Marty Vickless	X			
Clyde Zimmerman	X			

WITNESS my hand and the seal of the Borough on this 22nd day of January, 2013.

(Seal)

By: _____
George Zboyovsky, PE
Borough Manager