

ORDINANCE NO. _____

AN ORDINANCE OF THE TOBYHANNA TOWNSHIP BOARD OF SUPERVISORS AMENDING THE CODE OF THE TOWNSHIP OF TOBYHANNA, PART II, CHAPTER 101, PEDDLING AND SOLICITING, EXEMPTING CERTAIN TRANSIENT BUSINESSES FROM REGULATION, PROVIDING FOR DEFINITIONS, AMENDING THE FREQUENCY OF OPERATION; CREATING TIME, PLACE, AND MANNER RESTRICTIONS FOR TRANSIENT RETAIL BUSINESSES; AND REGULATING MOBILE FOOD SERVICE VEHICLES.

WHEREAS, the Township of Tobyhanna (“Township”) is empowered to ensure the public health, safety and welfare pursuant to the Second Class Township Code, 53 P.S. §65101 et seq.; and,

WHEREAS, on April 14, 2003, the Board of Supervisors adopted Ordinance No. 439 establishing rules and regulations for Transient Retail Business; and

WHEREAS, on July 11, 2005, the Board of Supervisors adopted Ordinance No. 455 creating licensure requirements for Transient Retail Business; and

WHEREAS, after some consideration and discussion the Board of Supervisors now wishes to further revise certain rules and regulations to better accomplish legislative goals and accommodate certain businesses.

NOW, THEREFORE, the Tobyhanna Township Board of Supervisors hereby *ENACTS* and *ORDAINS* the following Ordinance amending the Code of the Township of Tobyhanna by amending Part II General Legislation, Chapter 101, Peddling and Soliciting, as set forth herein.

ARTICLE I.

- A. Part II General Legislation, Chapter 101 Peddling and Soliciting, Subsection §101-2 Definitions is revised to include the following definitions:

FOOD TRUCK. A vehicle from which edible food products are cooked, prepared or assembled with the intent to sell such items to the general public, provided further that food trucks may also sell other edible food products and beverages that have been prepared or assembled elsewhere.

ICE CREAM TRUCK. A vehicle from which the operator sells only pre-packaged frozen dairy or water-based food products and pre-packaged beverages. For purposes of this

chapter, a non-motorized cart from which such products are sold shall be considered an ice cream truck.

MOBILE FOOD SERVICE VEHICLES. A self-contained food service operation, located in a readily movable motorized, wheeled, or towed vehicles, used to store, prepare, display, or serve food intended for individual portion service. This definition includes both Food Trucks and Ice Cream Trucks

TRANSIENT RETAIL BUSINESS. A business that engages in the sale and/or exhibition of goods, wares, or merchandise, **not including Mobile Food Service Vehicles** at any place in the Township on a temporary basis which does not intend to become and does not become a permanent retail business in the Township. A transient retail business which contracts with a permanent retail business or any of its subcontractors to conduct a transient retail business upon the real property of the permanent retail business shall be considered and is a transient retail business subject to the provisions of this article. The fact that a transient retail business conducts such business within the Township on a regular periodic basis, for example, on a once-a-month or once-a-year basis, does not affect such business's status and it shall be considered for these purposes at all times a transient retail business.

TEMPORARY. Lasting for a period of time of less than six consecutive months and/or existing and/or continuing to exist for a limited time of six consecutive months and/or existing and/or continuing to exist for a limited time of six consecutive months or less.

PEDDLER. Any person who shall engage in peddling or soliciting

PEDDLING or SOLICITING. Engaging in the peddling, canvassing, soliciting, hawking, vending, taking of orders, selling or offering for sale of any commercial services, goods, wares, merchandise, printed matter or food products by visitation to private homes or residences without the direct invitation of the inhabitants thereof, or on the public streets or highways of the Township.

PERMANENT. Continuing or enduring in the same state, status place or the like without fundamental or marked change on a daily basis for a period of time in excess of six consecutive months.

- B. Part II General Legislation, Chapter 101 Peddling and Soliciting, §101-3(A), License Required, is hereby amended to insert the word “public” before the clause “exhibition and/or sale of goods, wares, or merchandise. Section 101-3(A) shall read:

“Every person, resident or nonresident, whether principal or agent, entering into, beginning or desiring to begin a transient retail business in Tobyhanna Township for the sale of any goods, wares or merchandise whatsoever, and who hires, leases, occupies or uses any room, apartment, store, shop, building, railway car or other place or structure for the public

exhibition and/or sale of such goods, wares or merchandise, shall make application to Tobyhanna Township for a transient retail merchant's license, shall pay the appropriate license fee to Tobyhanna Township and shall obtain a transient retail merchant's license from Tobyhanna Township for each and every room, apartment, store, shop, building, railway car or other place or structure used for the exhibition and/or sale of such goods, wares or merchandise, before such person enters into, begins or desires to begin a transient retail business in the Township for the sale of any goods, wares or merchandise whatsoever.”

C. Part II General Legislation, Chapter 101, Peddling and Soliciting, §101-3 is amended to create a new subsection “B” which shall read as follows:

“B. Any person or organization desiring to engage in peddling within Tobyhanna Township must first make application to the Township. The Township may require such information as it deems appropriate, including but not limited to photograph, prior criminal record, name of employer and type of solicitation being made to the public.

1. Every person intending to peddle or solicit within Tobyhanna Township shall be required to file an application and obtain a license. No license issued under this Part 1 shall be transferable from one person to another, and there shall be a three- to five-day waiting period between application and issuance of the license.
2. All fees for peddling licenses shall be set by separate resolution of the Tobyhanna Township Board of Supervisors.
3. All peddling licenses issued by Tobyhanna Township shall be exhibited in clear view by the person soliciting at all times, and they shall not be altered or used by any other person except the applicant and licensee.”

The existing subsection “B” is renamed to subsection “C” and remains in full force and effect.

D. Part II General Legislation, Chapter 101, Peddling and Soliciting is amended to create a new §101-7 that reads as follows:

“§101-7- Conduct of Peddlers.

- A. The Peddler shall not enter or attempt to enter any dwelling house or place of business without invitation or permission of the occupant and shall immediately leave the premises upon request.

B. The Peddler shall only engage in peddling or soliciting within the Township on Monday through Saturday from 9 A.M. to 8:30 P.M.. No peddling shall be allowed on Sundays or on any State or Federal legal holidays.

C. The Peddler shall not call out or shout to sell his or her services or goods, nor shall the Peddler use any loudspeaker or horn or other device for announcing his or her presence by which the public is annoyed.

D. The Peddler shall not occupy any fixed location upon or along any of the streets, alleys or sidewalks of the Township for the purpose of peddling or soliciting, with or without any stand, counter or cart.

E. The Peddler shall not peddle in any Township park without first acquiring a permit from the Township's Zoning Officer."

The existing sections 101-7 through 101-9 are re-numbered to 101-8 through 101-10, accordingly and remain in full force and effect

E. Part II General Legislation, Chapter 101, Peddling and Soliciting, §101-5 is hereby amended to remove the sentence "The fee per license is \$300 per year."

F. Part II General Legislation, Chapter 101, Peddling and Soliciting, §101-6(A) is hereby amended to read as follows:

With the exception Mobile Food Service Vehicles, transient retail businesses and shall not be conducted on a public street, shoulder or easement. In the case of a peddler who conducts door-to-door solicitations, the traveling over the public street, road, highway or thoroughfare, or its shoulders or easements, to its prospects shall not be considered prohibited herein as long as such solicitations, exhibitions and/or sales are conducted solely and wholly upon the private property of the solicitee and solely and wholly off the public street, road, highway or thoroughfare, or its shoulders or easements.

G. Part II General Legislation, Chapter 101, Peddling and Soliciting, is amended to create a new §101-11 which shall read as follows:

Mobile Food Service Vehicles Operation Requirements

A. **Licensing.** Mobile Food Service Vehicles must be licensed and equipped in accordance with the rules and regulations of all local, state, and federal agencies having jurisdiction over such vehicles. The preparation and sale of food from Mobile Food Service Vehicles must

comply with all applicable local, state, and federal laws and regulations.

B. Right-of-Way/Public Property- Food trucks. Food Trucks may not operate within the public right-of-way or on any Municipal property except as may be specifically allowed by the Municipality. Food trucks may not operate on property owned by a public entity other than the Municipality unless specifically allowed by such public entity. No unattended food truck shall be left at any time in the right-of-way or parked on any other public property overnight.

C. Right-of-Way/Public Property- Ice Cream Trucks. An ice cream truck may operate from the right-of-way at any one location for no more than 15 minutes before relocating to another location not less than one-quarter mile from the previous location. Operation of ice cream trucks within Municipal parks shall be subject to rules and regulations established in Chapter 99 of the Tobyhanna Township Code relating to Park Rules. Ice cream trucks may not operate on any other property owned by the Municipality or another public entity except as may be specifically allowed by the Municipality or other public entity. No unattended ice cream truck shall be left at any time in the right-of-way or parked on any other public property overnight.

ARTICLE II. AUTOMATIC REPEALER.

All ordinances or parts of ordinances that are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

ARTICLE III. SEVERABILITY.

If any sentence, clause, section or part 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, sections or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors of Tobyhanna Township, that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

ARTICLE IV. EFFECTIVE DATE.

This Ordinance shall be effective five days after enactment.

SO ENACTED AND ORDAINED this 17th day of September, A.D., 2019.

TOBYHANNA TOWNSHIP
BOARD OF SUPERVISORS

ATTEST:

Julia Heilakka,
Township Secretary

Anne M. Lamberton

John J. Holahan III

John E. Kerrick

Heidi A. Pickard

Brendon J.E. Carroll