ORDINANCE 2014-01

DOWNINGTOWN BOROUGH

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE AMENDING THE CODE OF THE BOROUGH OF DOWNINGTOWN, AS AMENDED, BY REPLACING CHAPTER 211,"PEDDLING AND SOLICITING" IN ITS ENTIRETY BY SETTING FORTH ARTICLE I, "GENERAL PROVISIONS;" ARTICLE II, "SPECIAL CONDITIONS FOR ICE CREAM OR FROZEN DESSERT STREET VENDORS;" ARTICLE III, "SUSPENSION, REVOCATION AND APPEALS;" AND ARTICLE IV, "ENFORCEMENT AND PENALTIES."

AND NOW, this 5th day of February, 2014, it is hereby Enacted and Ordained by the Borough Council of the Borough of Downingtown, Chester County, Pennsylvania, that:

Section 1. Chapter 211, "Peddling and Solicitation," is hereby amended by deleting the Chapter in its entirety, and replacing it as follows:

Article I. General Provisions

§ 211-1. Purpose

This chapter is intended to regulate peddling and soliciting activities in the Borough of Downingtown to ensure the public welfare and to protect against criminal activity, including fraud and burglary; minimize the unwelcome disturbance of citizens and the disruption of privacy; and to otherwise preserve the public health, safety and welfare by regulating, controlling and licensing peddlers and solicitors, including but not limited to door-to-door peddlers and solicitors and ice cream or frozen dessert street vendors. This chapter also provides a means for residents to prohibit door-to-door sales and solicitations at their homes by properly posting a sign indicating that solicitors are prohibited. This is important for parents who may have children at home and who do not want them exploited, annoyed or alarmed by strangers.

§ 211-2. Definitions.

As used in this chapter, the words and phrases herein defined shall have the following meanings unless the context otherwise requires:

CASUAL CRAFTERS OR ARTISTS

Persons making, by their own hand and labor, novelties, trinkets, or jewelry such as may be crafted from wood, stone or metal and other media, or drawings, paintings, and sketches.

CHIEF or CHIEF OF POLICE

The Chief of Police of the Borough of Downingtown, or his/her designee.

BOROUGH

The Borough of Downingtown.

CODES OFFICE or BOROUGH CODE ENFORCEMENT

The Code Enforcement Office of the Borough of Downingtown, or his/her designee.

GOODS

Any goods, wares, foodstuffs, merchandise or services offered for sale, whether or not displayed. This does not include frozen dairy and nondairy desserts offered for sale by ice cream or frozen dessert street vendors.

ICE CREAM OR FROZEN DESSERT STREET VENDOR

A person who travels by any type of vehicle bearing a sticker containing a Pennsylvania Frozen Dessert License number, whether motorized or not, upon the improved portion of any street, selling or offering for sale any single-serving frozen dairy or nondairy dessert. Frozen dessert shall have the same meaning set forth in Pennsylvania's Frozen Dessert Law, 31 P.S. §417-1 *et seq.*

PEDDLER

Any person who goes upon the premises of any private residence in the Borough, not having been invited by the occupant thereof, or any person who goes upon the Borough streets, sidewalks or other public place, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale.

PEDDLING

Includes all activities ordinarily performed by a peddler as indicated under the definition of "peddler" herein.

POINT OF SALE

The actual location of a peddling or soliciting activity, primarily characterized by physical separation from any other peddling or soliciting activity.

PUBLIC PLACE(S)

Any highway, street, park, sidewalk, cemetery, playground, parking area, school ground, public beach, skating rink, or any privately owned property that is open to the public or any other place to which the public or a substantial group of persons has access, including, but not limited to, transportation facilities, schools, places of amusement, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence and any other public lands or property owned, operated or controlled by the Borough of Downingtown whether located within or without said Borough of Downingtown, or any other municipality or public agency.

SOLICITING

Includes all activities ordinarily performed by a solicitor as indicated under the definition of "solicitor" herein.

SOLICITOR

Any person who goes upon the premises of any private residence in the Borough, not having been invited by the occupant thereof, or any person who goes upon any Borough street, sidewalk or other public place, for the purpose of offering, taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for future delivery, or for services to be performed in the future, or for the solicitation of support or donations where said support or donation is unsolicited by the person or entity being solicited.

§ 211-5. Permit requirements and exemptions.

A. It shall be unlawful for any person 18 years of age or older to engage in peddling or soliciting activities within the Borough without first obtaining a permit issued by the Code Enforcement Office.

B. It shall be unlawful for any person to suffer or permit a person less than 18 years of age to engage in peddling or soliciting activities within the Borough without first obtaining a permit issued by the Borough Code Enforcement Department.

C. This chapter shall not apply to the sales of property to dealers or wholesalers in the ordinary course of such business, or to drug retail salespersons calling on physicians, pharmacists, veterinarians or hospitals, nor shall this chapter apply to peddling and soliciting conducted by an existing business or enterprise when such activities are consistent with and in the ordinary course of the primary activities of the business or enterprise and only when such activities are conducted immediately adjacent to the primary business location.

D. This chapter shall not apply to persons soliciting signatures upon political petitions when conducted pursuant to Pennsylvania Election Law, except that such solicitors must comply with any signs at a residence that indicate that such political solicitations are prohibited.

E. This chapter shall not apply to persons engaged in religious proselytizing, anonymous political speech or the distribution of handbills, except that such persons must comply with any signs at a residence that indicate that solicitations are prohibited.

F. This chapter shall not apply to persons soliciting information when such information is pursuant to a legislative mandate such as the census, dog enumerations, and the like.

G. This chapter shall not be construed as to require a permit for a charitable or nonprofit organization when soliciting for fund-raising activities (i.e., car washes, cookie sales) in public places.

H. This chapter shall not be construed as to require a permit for farmers or gardeners selling their own produce.

I. This chapter shall not apply to persons selling goods, wares and merchandise if the proceeds of the sale are to be applied to any charitable or philanthropic purpose.

J. This chapter shall not apply to manufacturers or producers in the sale of bread and bakery products, meat and meat products, or milk and milk products, provided that milk and milk products shall not include or apply to ice cream or other frozen desserts.

K. This chapter shall not apply to any insurance company or its agents, or insurance broker, authorized to transact business under the laws of the Commonwealth.

L. This chapter shall not be construed as to require a permit for casual crafters or artists who, themselves or through family members, vend, sell or dispose of products made by them provided that such products are not produced by mass production (use of machinery or through the work of multiple persons).

M. Any persons, organizations or corporations that have received approval from Borough Council to conduct a special event within the Borough shall be responsible for the vendors participating within the boundaries of that event. Registered vendors will receive permission to operate their stands for that special event only. No other vendors will be permitted within the boundary area of such event during the time period designated for the special event. Existing businesses in the Borough will be permitted to sell merchandise in the area adjacent to the business, provided that such business complies with and conducts such sale in accordance with the vendors' responsibilities and guidelines applicable to such special event.

N. A special application may be made by a school, group or organization, regularly engaged in fund-raising activities throughout the year for charitable, nonprofit, sports or educational purposes for an annual permit. Such permit will be without fee. Each such applicant for a school, group or organization, upon approval of an annual permit.

§ 211-6. Permit application.

A. Every person subject to the provisions of this chapter shall file, in person, with the Code Enforcement Office an application, in writing, on a form furnished by that office, at least three business days in advance of the beginning of soliciting or peddling activities in the Borough, which shall provide the following information:

(1) Proof of age, address and identification of the applicant, to be provided through the applicant's driver's license, or other legally recognized form of identification, along with proof of a clean criminal background.

(2) A brief description of the business or activity to be conducted as well as the requested location where it will be conducted.

(3) A listing of all vehicles to be used in the peddling or soliciting activities.

(4) A food vendor's license issued by Chester County, if applicable.

(5) If employed, the name, address and telephone number of the employer, or if acting as an agent, the name, address and telephone number of the principal who is being represented, with credentials in written form establishing the relationship and the authority of the employee or agent to act for the employer or principal as the case may be.

(6) A statement as to whether or not the applicant has been convicted of a felony, misdemeanor or local law violation (other than traffic violations), the nature of the offense or violation, the penalty or punishment imposed, the date when and place where such offense occurred, and other pertinent details.

(7) Proof of possession of any license or permit which the applicant is required to have under federal, state, county or local law in order to conduct the proposed business.

(8) An acknowledgment that the applicant is aware of and understands regulations set forth in this Chapter and when peddling or soliciting is prohibited.

§ 211-7. Application review and permit issuance; permits nontransferable.

A. Upon receipt of an application, the Code Enforcement Office, or the Code Enforcement Office's authorized representative, shall review the application and forward same to the Chief of Police. The application will be reviewed so as to ensure the protection of the public health, safety and general welfare of the public. If the application is found to be satisfactory by the Chief of Police, the Code Enforcement Office shall issue the permit to the applicant.

B. A permit issued pursuant to this chapter is not transferable to any other person or entity. Further, any permit that is specifically issued to a particular vehicle, pushcart or other unit, is not transferable to any other vehicle, pushcart or other unit.

C. The Chief of Police or Downingtown Codes Department is hereby authorized, in the interests of the public welfare, to limit the issuance of the number of permits for peddling or soliciting in any particular public place(s) and to designate the specific locations for vendor activity in any public place(s).

D. The Chief of Police or Downingtown Codes Department is hereby authorized, in the interests of the public welfare, to designate the specific locations for peddling and soliciting by any particular vendor.

§ 211-8. Denial of permit.

Upon review of the application, the Code Enforcement Office may refuse to issue a permit to the applicant for either of the following reasons:

A. If the application is incomplete;

B. If the information provides a reasonable basis for determining that the public health, safety, and welfare will be threatened by issuance of a permit to the applicant;

C. If there are misrepresentations in the application, or if any fraud or deceit is identified within the application, or if fraud or deception has been identified in the practices of the applicant, organization or agent thereof;

D. Failure to comply with any law concerning soliciting, peddling or consumer sales, of the General Business Law of the Commonwealth of Pennsylvania; or

E. Sale or offering for sale of illegal merchandise.

F. Employment of a felon or wanted person.

§ 211-9. Term of permit.
Any permit issued pursuant to this article shall be for a term of no less than 30 days and no greater than 1 year, to be determined by the Code Enforcement Office.

§ 211-10.Copy of permits required for each solicitor.
At the same time the permit is issued, the Code Enforcement Office shall issue to each permittee a copy of the permit which shall be carried by the permittee and produced upon demand of any buyer, prospective buyer, or any police officer, code enforcement officer or other public servant of the Borough of Downingtown at all times while the permittee is soliciting or peddling in the Borough.

§ 211-11. General Provisions
A. Any owner or lawful occupant of any residence within the Borough who wishes to prohibit door-to-door commercial solicitation at his or her residence may register the address of such residence with the Borough by completing a form prepared by the Code Enforcement Office, which form may be submitted to the Borough either in person, by mail, or on the Borough's website.

B. As of the date of the registration of a residential address, all door-to-door commercial solicitation at such address shall be prohibited until such time, if at all, that the address has been deleted from the no-solicitation list.

C. Neither the Borough nor any of its officers, employees, agents or authorized volunteers shall be liable to any person for any injuries, damages or liabilities of any kind arising from or relating to any errors or omissions that may occur in compiling or maintaining the no-solicitation list.

§ 211-12. Hours of peddling or soliciting.
A. No person shall engage in either peddling or soliciting between the hours of 5:00 p.m. and 10:00 a.m.

B. Persons conducting peddling or soliciting in public places, as defined in this chapter, may be authorized to conduct such activities within time periods as determined by the Chief of Police. Such time periods are to be determined after giving due consideration to the nature

of the peddling or soliciting activity, the location of such activity, and the effect of such activities on the peace, order and general welfare of the Borough.

§ 211-13. Primary entrance.
It shall be unlawful for any person while either peddling or soliciting to knock, ring the doorbell, or otherwise attempt to gain the attention of the occupant(s) of the residence other than at the primary entrance to the residence.

§ 211-14. Entry upon signed premises unlawful.
It shall be unlawful for any person while either peddling or soliciting to knock, ring the doorbell, or otherwise attempt to gain the attention of the occupant(s) of a residence in the Borough where the owner, occupant, or person legally in charge of the premises has posted at the primary entrance to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Peddlers," "No Solicitors," or words of similar import.

§ 211-15. Aggressive peddling or soliciting prohibited.
A. It shall be unlawful for any person to engage in peddling or soliciting in an aggressive manner. As used in this section, "aggressive manner" means either approaching a person present at the residence or continuing the peddling or soliciting activity after the person has made a negative response, whether before or after being invited into the residence, in a manner that:

(1) 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

(2) Is intended to or is likely to intimidate the person into responding affirmatively to the peddling or soliciting activity; or

(3) To refuse to display a permit to the person being solicited; or

(4) To refuse to leave premises upon being told to do so by the owner, tenant, occupant or person in control of the property; or

(5) In violation of a sign properly posted on said property that prohibits solicitations.

B. Aggressive peddling or soliciting is punishable as a summaryand upon conviction thereof shall be subject to a fine of at least $250 and not to exceed $1,000, or imprisonment of not more than 90 days, or both such fine and imprisonment.

§ 211-16. Sales on public streets and ways.
It shall be unlawful for any person to engage in peddling or soliciting activities from any vehicle, push cart, stand or temporary stand, device, trailer or other conveyance while upon the improved portion of any street, avenue or alley within the Borough. This section shall not apply to the following:

A. The delivery of previously ordered merchandise.

B. The sale of ice cream or frozen dessert from vehicles regulated under Article II of this chapter.

C. The sale of food and/or beverages from vehicles when permitted under this chapter and other applicable laws and regulations.

Article II. Special Conditions for Ice Cream or Frozen Dessert Street Vendors

§ 211-17. Permitting.
It is unlawful for any person to act as an ice cream or frozen dessert street vendor as defined by § **211-2**, without first having obtained a permit as provided by this article.

§ 211-18. Application.
Before the Borough shall issue any permit required by this article, the proposed licensee must complete an application supplied by the Code Enforcement Office.

§ 211-19. Operator's license required.
No person shall operate any vehicle under this article unless the person is the holder of a valid driver's license.

§ 211-20. Unauthorized passengers.
No person, other than the authorized operator of a vehicle and other persons expressly authorized by the owner or lessee of a vehicle, shall be in or upon said vehicle.

§ 211-21. Hours of sale.
A. Unless authorized under the provisions in Subsection B of this section, it is unlawful to operate a vehicle in the business of an ice cream or frozen dessert street vendor between 8:30p.m. and continuing until 10:00a.m. the following day.

B. Ice cream or frozen dessert street vendors, as defined in this chapter, may be authorized to conduct such activities within time periods as determined by the Chief of Police. Such time periods are to be determined after giving due consideration to the nature of the peddling or soliciting activity, the location of such activity, and the effect of such activities on the peace, order and general welfare of the Borough.

§ 211-22. Sound devices.
No sound device or bell shall be allowed or used by any such vehicle except that amplified music or chimes are allowed provided that such are not audible any distance greater than 300 feet and that they be turned off when the vehicle is stationary for the purpose of making sales or otherwise. The use of amplified music or chimes is prohibited before 10:00 a.m. and after 8:30 p.m. of each day.

§ 211-23. Parking to dispense products.
It is unlawful for an operator to stop, stand or park such vehicle in any street, alley, avenue, boulevard or sidewalk or other public right-of-way for the purpose of dispensing its products to customers, so as to obstruct the free flow of traffic in the street, except that an operator may

stop, stand or park such vehicle, consistent with posted law, rules and regulations, with its right wheels next to the curb, but that no vehicle will remain standing in any one location for a period exceeding 10 minutes.

§ 211-24. Conformance to statute.
Operators must conform to the Pennsylvania Vehicle and Traffic Law, and all other applicable provisions of Pennsylvania State law and the Borough Code of the Borough of Downingtown. Violations of the provisions of said laws may be grounds for the suspension and revocation of a permit issued pursuant to this article.

Article III. Suspension, Revocation and Appeals

§ 211-25. Permit suspension or revocation.
A. Any permit issued under this chapter may be revoked or suspended by the Chief of Police or the Codes Office for any of the following reasons:

(1) Fraud, misrepresentation or false statement contained in the application for a permit;

(2) Fraud, misrepresentation or false statement made by the permittee in the course of peddling or soliciting;

(3) Peddling or soliciting in violation of this chapter or contrary to the provisions contained in the permit;

(4) Conviction for any crime involving moral turpitude; or

(5) Peddling or soliciting in such a manner as to create a public nuisance, a breach of the peace, endanger the health, safety or general welfare of the public, or otherwise in violation of local, state or federal law.

B. In the case of an ice cream or frozen dessert vendor, a license may also be suspended or revoked for a violation of any of the provisions of §§ **211-16** through **211-23** of this chapter.

C. The Chief of Police may immediately suspend any permit, pending the suspension or revocation hearing, if the public health, safety, or welfare is deemed by him/her to be best served by such a temporary suspension.

§ 211-25. Appeals.
A. Any person aggrieved by the action or decision of the Chief of Police to deny, suspend or revoke a permit applied for under this article shall have the right to appeal such action or decision to the Borough Council within 10 days after the notice of the action or decision has been mailed to the person.

B. An appeal to the Borough Council shall be taken by filing with the Code Enforcement Office a written statement setting forth the grounds for the appeal.

C. Any person whose premithas been revoked shall be entitled to appear, with counsel if he so desires, before the Borough Council at a regular meeting and be heard pursuant to a request for reinstatement of his registration.

D. The decision of the Borough Council on the appeal shall be final and binding on all parties concerned.

§ 211-26. Eligibility for new permit restricted

Any person denied a license or permit or whose license or permit has been suspended or revoked in accordance with § **211-23** of this chapter shall be ineligible to apply for a new license or permit for a period of six months from the date of such denial, revocation or suspension, unless the applicant shows that the conditions upon which such action was based have been remedied or removed.

Article IV. Enforcement and Penalties

§ 211-27. Penalties for offenses.

Unless otherwise stated, any person violating any of the provisions of this Chapter is guilty of a violation and upon conviction thereof shall be subject to a fine of at least $50 and not to exceed $250, or imprisonment of not more than 15 days, or both such fine and imprisonment, and any such license issued pursuant to this chapter shall be deemed to be revoked for cause. A second offense by a person under this chapter shall constitute a summary offenseand upon conviction thereof shall be subject to a fine of not less than $250 and not more than $1,000, or imprisonment of not more than 90 days or both such fine and imprisonment.

§ 211-28. Administration and enforcement.

A. The Code Enforcement Office will administer the application and permit issuance function as designated herein, and will promulgate the forms and applications to be used to carry out the permit processes herein.

B. Prior to the issuance of any permit, the Code Enforcement Office will forward such applications to the Chief for review and approval.

C. The Police Department will bear primary responsibility for enforcement of violations of this chapter pertaining to aggressive peddling, violations of the terms and conditions of any permit and for violations by door-to-door solicitors and peddlers.

D. The Borough Code Enforcement Office will bear primary responsibility for identifying violations of the permit requirement as well as for violations of the terms and conditions of any permit issued pursuant to this Chapter pertaining to sales in public places and during public events and will conduct inquiries and inspections in order to determine compliance with the requirements of this chapter.

§ 211-29. Borough Endorsement.

The registration procedure established hereunder shall not be construed as an endorsement of approval by the Borough of the individual's integrity, honesty or conduct, nor shall it be considered an endorsement of the goods, services or occupation of the registrant. Borough residents must make their own, independent evaluation of the goods, services, occupation and character of such registrants and the Borough assumes no responsibility for conduct of such persons. This section is solely and expressly designed only to meet the identification objectives outlined herein.

Section 2. 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 hereof. It is hereby declared as the intent of Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section 3. All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.

Section 4. This Ordinance shall become effective upon enactment as provided by law.

Section 5. General Code is hereby authorized to make non-substantive formatting and numbering changes necessary to clarify references to other sections of the Downingtown Borough Code and to bring the Ordinance into conformity with the Downingtown Borough Code.

PASSED by Borough Council this 5th day of February, 2014.

BOROUGH OF DOWNINGTOWN

By: _____
Anthony Gazzerro
President, Borough Council

APPROVED by the Mayor, this 5th day of February, 2014.

By: _____
Josh Maxwell, Mayor

ENACTED this 5th day of February, 2014.

By: _____
Stephen T. Sullins, Borough Manager/Secretary