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PART 1

GARAGE AND YARD SALE PERMIT

§10-101. Purpose

The Rules and Regulations set forth herein are designed to control and restrict auction, garage and yard sales in order to protect the public health, safety and convenience and to restrict such sales to casual and/or occasional occurrences only, in keeping with the character of the neighborhood wherein this activity is carried on and in compliance with the Zoning Ordinance of the Borough of Ebensburg, Cambria County, Pennsylvania. The intent of this Ordinance is to eliminate unregulated, perpetual, prolonged and extended auction, garage and yard sales in residential areas and to maintain regulatory powers over auction, garage and yard sales in all areas. Such sales, if continued indefinitely, tend to become retail businesses in residential areas and zones, create a nuisance, and often violate the zoning regulations of this Borough.

The provisions of this Ordinance arise from the need to limit, restrict and control auction, garage and yard sales. It is not the intent of this Ordinance to change or amend the Zoning Ordinance or any other Ordinances within the Borough of Ebensburg which may, in any manner or fashion, regulate businesses.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-102. Definitions

As used in this Ordinance, the following terms will have the meanings indicated:

Garage Sales - The sale or offering for sale to the public of any new, used or second hand goods, items, or merchandise of any nature whatsoever at any one residential premise, including, but not limited to, all sales in residential areas entitled “auction sales”, “garage sales”, “yard sales”, “tag sales”, “porch sales”, “lawn sales”, “attic sales”, “basement sales”, “rummage sales”, “flea market sales”, or any other similar or casual sale of tangible personal property.

Goods - Any goods, warehouse merchandise or other personal property capable of being the object of a sale regulated hereunder.

Municipalities - All residential dwellings located within any type of zone, zoned area, zoning district, whether or not said areas or zones are residential, business, commercial, or otherwise, within the geographical boundaries of the Borough of Ebensburg.

Persons - Individuals, Partnerships, Family Groups, Voluntary Associations, and Corporations.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-103. Application

Every person, firm or corporation seeking a permit to hold a garage sale shall file an application with the Secretary of the Borough setting forth the location of the premises where the sale will be held, the name and address of the person or persons holding the sale, and the date and time when the sale will be held. The applicant shall be solely responsible for compliance with all regulations set forth in this Chapter.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-104. Frequency and Duration Limitations

- A. No more than two (2) garage sales are permissible per household in any calendar year.
- B. The maximum duration of any garage sale will be two (2) consecutive calendar days.
- C. The permissible hours for any garage sale herein shall be 7:00 a.m. until sunset.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-105. Signs and Advertising

- A. Only the following specified signs may be displayed in relation to a pending garage sale.

- 1. No more than one (1) sign not more than four (4) square feet may be displayed on the property of the residence where the garage sale is being conducted.

- 2. No more than two (2) directional signs of not more than two (2) square feet each shall be permitted, provided that the premises upon which the garage sale is conducted is not on a major thoroughfare, and permission to erect such signs is received from the property owners upon whose property such signs are to be placed.

- 3. No notice, directional sign or advertisement of any kind whatsoever pertaining to such sale shall be placed, posted or affixed to any post or pole used for traffic signs, signals, street lights, or public utilities; or on the surface of any street, curb or sidewalk.

- 4. Any individual, group or corporation conducting a garage sale within the Borough, or any individual group or corporation posting advertisements within the Borough limits for a garage sale to be held inside or outside the Borough limits will remove within the Borough all signs, flyers, posters and bulletins no later than the conclusion of the sale. Should the garage sale for any reason not be held, all signs, flyers, posters and bulletins advertising the garage sale must be removed no later than the scheduled last day for the garage sale.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-106. Display of Sale Property

Personal property offered for sale may be displayed within the residence, porch, garage and/or in any yard, but shall not be permitted within the public right-of-way.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-107. Exemptions

This Chapter shall not be applicable to:

- A. Persons selling goods pursuant to an order of process or a Court of competent jurisdiction.
- B. Persons acting in accordance with their powers and duties as public officials.
- C. Any person selling or advertising for sale an item or items of personal property which is specifically named or described in the advertisement.
- D. Any sale conducted by any legitimate business or commercial or industrial establishment on property zoned under the zoning regulations of the Borough of Ebensburg with or without the protection of the non-conforming use section of the zoning laws, or any sale conducted by any other vendor or dealer when the sale is conducted in a properly zoned area and not otherwise prohibited by the laws of the Commonwealth of Pennsylvania and ordinances of the Borough of Ebensburg, including this Chapter.
- E. Any public auction having a duration of two days or less and conducted by an auctioneer, licensed by the Commonwealth of Pennsylvania.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-108. Enforcement

- A. This Ordinance will be enforced by the Code Enforcement Officer of the Borough of Ebensburg and it will be the duty of that officer to investigate and prosecute any violation of this Ordinance.
- B. If after investigation, a violation is found to exist, the Code Enforcement Officer will prosecute a complaint before the District Justice serving the Borough of Ebensburg pursuant to the provisions of this Ordinance.
- C. The person conducting the sale, the owner or occupant of the premises where the sale or activity is conducted, will be jointly or severally, responsible for the maintenance of good order and decorum on the premises during the hours of such sale or activity. In that regard, (a) no person will permit any loud or vociferous conduct on such premises or street to impede the passage of the traffic on any roads or streets in the area of the premises where the sale is being conducted; (b) in the event of an emergency, all such persons will obey reasonable orders from any members from the Police Department or Fire Department or any emergency or rescue departments to maintain the public health, safety and convenience.

(Ord. 397, 9/24/1984, §1; as amended by Ord. 455, 10/28/1996. Repealed and replaced by Ord. 608, 9/23/2013.)

§10-109. Penalties

Any person, firm or corporation who will violate the provision of this Ordinance will, upon conviction thereof, be sentenced to pay a fine of not more than Six Hundred (\$600.00) Dollars plus costs, and in default of such payment, to imprisonment for a term not to exceed thirty (30) days.

(Ord. 397, 9/24/1984, §5; as amended by Ord. 424, 8/3/1993, §3; and by Ord. 494, 11/27/2000. Repealed and replaced by Ord. 608, 9/23/2013.)

PART 2

SEXUALLY ORIENTED BUSINESS OPERATIONS

§10-201. Purpose and Intent

It is the purpose of this Part to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Borough and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Borough. The provisions of this Part have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Part to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors or exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Part to condone or legitimize the distribution of obscene materials.

(Ord. 468, 4/27/1998, §1)

§10-202. Definitions

ADULT ARCADE – any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five 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 BOOKSTORES or **ADULT VIDEO STORES** – a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- A. Books, magazines, periodical or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe 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 categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration for specified materials which depict or describe specified sexual activities or specified anatomical areas.

ADULT CABARET – a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- A. Persons who appear in the state of nudity.
- B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT MOTEL – a hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions.
- B. Offers sleeping rooms for rent four more times in 1 calendar day during 5 or more calendar days in any continuous 30 day period.

ADULT MOTION PICTURE THEATER – a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown on which are characterized by the depiction or description 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 live performances which are characterized by the exposure of specified anatomical or specified sexual activities.

CHILD ORIENTED BUSINESS – a commercial establishment which, as one of its principal business purposes, serves and/or sells to children and their families food, apparels, goods, services, play and/or entertainment.

ESCORT – a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY – a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

PERMITTEE and/or LICENSEE – a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

NUDE MODEL STUDIO – any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

NUDITY or a STATE OF NUDITY – the appearance of a human bare buttock, anus, male genitals, female genitals or female breast.

PERSON – an individual, sole proprietorship, partnership, corporation, association or other legal entity.

SEMI-NUDE – a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER – a business or commercial enterprise that, as one of its primary 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 or more of the persons is in a state of nudity or semi-nude.

This term does not include the following types of commercial enterprises:

- A. An enterprise in which massage therapy that does not involve specified sexual activities is provided by a physician, chiropractor, registered nurse or other medical practitioner licensed or certified by the Commonwealth of Pennsylvania.
- B. An enterprise in which therapy that does not involve specified sexual activities is provided by a professional massage therapist who is licensed or certified by a national massage therapist professional organization that has an explicit and enforced policy statement which fully deals with the concerns raised by this Part and furthers the purposes of this Part.

SEXUALLY ORIENTED BUSINESS – an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

SPECIFIED ANATOMICAL AREAS – the male genitals in a state of sexual arousal and/or vulva or more intimate parts of the female genitals.

SPECIFIED SEXUAL ACTIVITIES – includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast.
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.
- C. Masturbation, actual or simulated.
- D. Excretory functions as part of or in connection with any of the activities set forth in subsections (A) through (C).

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS – the increase in floor area occupied by the business by more than 25% as the floor areas exist on date of enactment of this Part.

TRANSFER OF OWNERSHIP or CONTROL OF A SEXUALLY ORIENTED BUSINESS – includes any of the following:

- A. The sale, lease or sublease of the business.
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means.
- C. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 468, 4/27/1998, §2)

§10-203. Classifications

Sexually oriented businesses are classified as follows:

- A. Adult arcades.
- B. Adult bookstores or adult video stores.
- C. Adult cabaret.
- D. Adult motels.
- E. Adult motion picture theater.
- F. Adult theaters.
- G. Escort agencies.
- H. Nude model studios.
- I. Sexual encounter centers.

(Ord. 468, 4/27/1998, §3)

§10-204. Location of Sexually Oriented Businesses

- A. A person is guilty of a violation of the Ebensburg Zoning Ordinance [Chapter 20] if he/she operates or causes to be operated a sexually oriented business outside of the zoning district in which sexually oriented business is allowed by that Ordinance. Sexually oriented businesses as defined herein are not permitted within ANY zoning district of the Borough of Ebensburg, but are permitted by special exception in certain zoning districts of Cambria Township and Jackson Township, whose comprehensive plans and zoning ordinances were developed in consonance and jointly with the zoning ordinance of Ebensburg Borough.
- B. A person is guilty of violating of the Ebensburg Zoning Ordinance if he/she operates or causes to be operated a sexually oriented business anywhere within Ebensburg Borough.
- C. A sexually oriented business that was lawfully operating on the date of the enactment of this Part or the relevant amendments to the Ebensburg Zoning Ordinance (whichever applies) that is in violation of this Section shall be deemed a nonconforming use. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use.

(Ord. 468, 4/27/1998, §12; as amended by Ord. 581, 11/22/2010)

§10-205. Exemptions

It is a defense of prosecution under 10-205 that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the Commonwealth of Pennsylvania, or a college, junior college or university supported entirely or partly by taxation.
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.
- C. In a structure:

1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.
2. Where in order to participate in a class, a student must enroll at least 3 days in advance of the class.
3. Where no more than one nude model is on the premises at any one time.

(Ord. 468, 4/27/1998, §13)

§10-206. Injunction

A person who operates or causes to be operated a sexually oriented business in violation of this Part is subject to an action in equity or a suit for injunction as well as citations for violations of this Part.

(Ord. 468, 4/27/1998, §14; as amended by Ord. 581, 11/22/2010)

PART 3

TRANSIENT RETAIL BUSINESS

§10-301. Definitions

As used in this Part, the term Transient Retail Business shall have the following meaning, unless a different meaning clearly appears from the text.

- 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.
- 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 limited to, such activities conducted at the time of special occasions or celebration for seasonal purposes or for 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. 439, 3/27/1995, §2)

§10-302. License Required

From and after the effective date hereof, it shall be unlawful for any person, firm or corporation not exempted by §10-306 hereof who is not the holder of a valid, unexpired and unrevoked license pursuant to this Part to engage in any transient retail business by visitation to private homes or residences, or on the public streets or highways of the Borough.

(Ord. 439, 3/27/1995, §2)

§10-303. Application for License; Issuance; Fee

- A. Any person not exempted by §10-306 hereof desiring to obtain a license to engage in the activities described in §10-302 hereof shall make application thereof in person to the Police Chief.
- B. The applicant shall supply, over his/her signature, the following information (if applicable):
 - 1. His name.
 - 2. His place and date of birth.
 - 3. His Social Security number.
 - 4. His address.
 - 5. His residence.
 - 6. The address at which he/she will receive notices under this Part.
 - 7. The name and address of his/her employer or principal, and the nature of his/her business activity.
 - 8. The types of goods, wares and merchandise he/she wished to deal with in such transient retail business.
 - 9. The nature of the business or activity in which the applicant wishes to engage within the Borough.

10. Type of license.
11. Days and hours of operation or solicitation.
12. His motor vehicle operator's number and the issuing State thereof.
13. The registration number, model, make and color of the vehicle or vehicles which the applicant intends to use.
14. The location and/or locations of business, if stationary or semi-stationary.
15. A statement as to whether the applicant has ever been convicted in any jurisdiction of any crime and, if so, what crimes, where and when.
16. In addition, the applicant shall supply to the Borough the following (if applicable):
 - a. A copy of his/her Pennsylvania State sales tax license.
 - b. Proof of food handler's license or health license.
 - c. Completed and fully executed State Police criminal record request form.

C. Upon submission of said application and the payment of a fee in the amount set by resolution of the Council, a license shall be issued within 15 days of such submission to the applicant in the form of a card which shall, unless revoked, entitle the licensee to engage in the activities specified for the period approved from the date of issuance, provided that the Police Chief may refuse to issue a license if he/she has reasonable grounds for believing the applicant to be of poor moral character, in which event the applicant shall be required to apply in person to the Borough Council.

D. Licenses may be renewed for additional periods upon payment of the fee herein above provided for and the submission of any amendment of the original application necessary to reflect any changes in the information therein contained.

(Ord. 439, 3/27/1995, §2)

§10-304. Conditions and Rules of Conduct

Every person to whom a license has been issued hereunder shall, in the carrying on of his/her business or activities in the Borough, comply with the following conditions and rules of conduct:

- A. He shall carry his/her license card at all times and exhibit it upon request to any peace officer or any person upon whom he/she shall call or with whom he/she shall talk in carrying on his/her licensed activities.
- B. His license card is not transferrable and he/she shall not permit or allow any other person to use the same and shall immediately report its loss to the Police Chief, should such event occur. His/her card shall not be altered or defaced, nor shall he/she permit it so to be.
- C. He shall not enter or attempt to enter any dwelling or business house without invitation or permission of the occupant and shall immediately leave any premises upon request.
- D. He shall not represent his/her license card to be an endorsement of him/herself, or his/her goods, wares or services, or the goods, wares or services of his/her employment.
- E. He shall immediately surrender his/her license card upon revocation of his/her license as hereinafter provided.

(Ord. 439, 3/27/1995, §2)

§10-305. Revocation of License

- A. Any license hereafter issued may be revoked by the Borough Council upon the failure of the licensee to comply with the standards of conduct established by §10-304, or upon ascertainment that the licensee has made any false statement in his/her application for a license hereunder. Notice of revocation shall be given by written notice served or sent by registered mail to the address designated for this purpose in the license application.
- B. Any person whose license has been revoked shall be entitled to appear with counsel, if he/she desires, before the Borough Council at a regular or special meeting and he/she will be heard on behalf of his/her request for a reinstatement of his/her license.

(Ord. 439, 3/27/1995, §2)

§10-306. Exemptions

The following persons are exempt from the licensing requirements of this Part:

- A. Persons soliciting contributions on behalf of organizations or nonprofit corporations exempted from the provisions of or duly registered pursuant to the Act of April 30, 1986, P.L. 107 (10 P.S. §161.1 et seq.), as amended who, while soliciting, are possessed of a card or other written evidence of their appointment or authority to solicit for said organization or corporation.
- B. Persons who have been licensed by the Commonwealth of Pennsylvania to engage in an activity described in §10-301 hereof, when so engaged, including, without limitation, real estate, insurance or securities broker and salesmen.
- C. Persons engaged in the sale of goods, wares and merchandise donated by the owner thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose.
- D. Farmers, dairies selling their own farm and dairy produce on or adjacent to their residence or farm.

(Ord. 439, 3/27/1995, §2)

§10-307. Violations and Penalties

Any person, firm or corporation who or which shall violate or fail to comply with any of the provisions of this Part shall be, upon conviction thereof, sentenced to pay a fine of not more than \$600 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days.

(Ord. 439, 3/27/1995, §2)

PART 4

JUNKYARDS

§10-401. Definitions

For the purpose of this Part, certain words and terms are defined as follows:

JUNK – any personal property which is owned, possessed, collected accumulated, dismantled or assorted, including but not limited to, used or salvaged base metal or metals, their compounds or combination, used or salvaged rope, bags, paper, rags, glass, rubber, lumber, millwork, brick and similar property except animal matter, and motor vehicles, machinery or equipment for the purpose of wrecking or salvaging parts therefrom.

JUNKYARD – any place at which junk, as defined in this Section, is or may be salvaged for reuse, resale or reduction or similar disposition, and is owned, possessed, collected, accumulated, dismantled or assorted for sale at retail or wholesale.

PERSON – a corporation, firm, partnership, association, organization or any other group acting as a unit, as well as a natural person.

ZONING OFFICER – the Zoning Officer of Ebensburg Borough.

(Ord. 381, 11/24/1980, §1)

§10-402. Registration List; Inspections

The Zoning Officer shall keep a registration list of all existing and future junkyards in the Borough. He/she shall periodically inspect such junkyards for compliance with these regulations and shall inspect each junkyard upon each annual application for a license.

(Ord. 381, 11/24/1980, §2)

§10-403. Permit Required; Annual License; Revocation

- A. No person shall maintain or operate a junkyard without first having obtained a permit therefore as hereinafter provided.
- B. Application for a permit shall be made to the Zoning Officer and shall contain the name and address of the applicant, the location of the premises where the business is to be carried on and such other information as the Zoning Officer shall require to determine compliance with this Part. A fee in an amount as established from time to time by resolution of Borough Council shall be charged for each application, which fee shall belong to the Borough regardless of whether the permit is issued.
- C. Every person operating a junkyard shall, on or before January 1 of each year, apply to the Zoning Officer for a license, and the Zoning Officer shall issue such license upon payment of a fee in an amount as established from time to time by resolution of Borough Council; provided, that a person commencing business after January 1 shall pay pro rata for the whole year as of the first day of the month such person begins business.

- D. The issuance of a building permit or of an annual license may be revoked by the Zoning Officer for failure to comply with this Part, subject to the applicant's right of appeal under §10-405.

(Ord. 381, 11/24/1980, §3; as amended by Ord. 494, 11/27/2000)

§10-404. Effect Upon Existing Junkyards

Persons owning, leasing, having control of or operating junk yards existing on the effective date of this Part shall not be required to make application for a building permit for the operation thereof, but shall be required to register such junkyard with the Zoning Officer, and shall otherwise comply with the provisions of this Part, but no such existing junkyard shall be enlarged except upon strict compliance with the provisions of this Part.

(Ord. 381, 11/24/1980, §4)

§10-405. Appeals

- A. Whenever the Zoning Officer refuses to grant a permit or revokes a permit or a license, the applicant may appeal to the Zoning Hearing Board within 30 days from the date of notice of the decision.
- B. The appeal shall be in form of a verified petition, filed in triplicate, which shall set forth a concise statement of the relevant facts, the decision appealed from and the basis of the appeal.
- C. The Board shall forthwith transmit to the Borough Solicitor and to the Zoning Officer, who shall be deemed to be a party to the appeal, a copy of the petition and shall set a date for a hearing and give notice thereof to the parties, which hearing shall be not less than 10 nor more than 30 days after the date of filing the petition. The Board may grant continuances upon cause shown. Any party in interest may, prior to the hearing, file such answer to the petition as he/she deems desirable.
- D. At the hearing the Board shall hear testimony, receive evidence and hear argument on the merits of the appeal. If any party requests that a record be made of the hearing, the Board shall employ a stenographer at the expense of the party requesting the record. Any other party may secure a copy of the record by making timely requests and by paying a pro rata share of the cost.
- E. The Board shall render its decision in writing, and give notice thereof to the parties.
- F. This Section shall not be construed to limit or deny any judicial remedies to which a party may be entitled by law or equity, but a person having an appeal available under this Section shall first avail him/herself of the appeal.

(Ord. 381, 11/24/1980, §6)

§10-406. Requirements for Use

In granting a building permit for the location and use of premises or land for a junkyard, the Zoning Officer shall require the following:

- A. The area to be occupied by the junkyard shall be located at least 100 feet from any residence.

- B. Every junkyard shall be conducted either wholly within a substantially constructed building or within an area which shall be surrounded completely on all sides by a continuous fence of uniform height, except for entrances and exits, uniformly constructed of brick, block, metal, concrete or wood and kept in repair. Such fence shall be at least 6 feet in height and shall be constructed at street corner intersections so as to permit adequate vision clearance on the street. The fence, when constructed of wood, shall be completely and uniformly painted and treated, and when constructed of other material shall be appropriately and uniformly maintained.
- C. No junk shall be loaded, unloaded or placed outside the enclosure fence, temporarily or permanently, either on the property or in the public right-of-way.
- D. Every junkyard shall be conducted so as not to create a nuisance by reason of noise or disagreeable odors or fumes or so as to attract rats or vermin. The loading or unloading of junk and the use of breakup hammers shall be carried on only during the hours of 7:00 a.m. and 6:00 p.m., as so determined by the prevailing time designation.
- E. All junkyards shall be maintained in a clean, sanitary and neat condition. The accumulation of any thing not defined as junk, including but not limited to, foodstuff, animal matter and similar materials, shall not be permitted.
- F. The owner of any junkyard in the Borough shall keep or shall require the operator thereof to keep an up-to-date list of all acquisitions of junk, including the names and addresses of all persons from whom acquired, together with a description of such junk which will permit re-identification thereof. Such list shall date back at least 1 year at all times and shall be kept available to police officers of the Borough and all other authorized police officers during the hours of business. This provision shall be in addition to any statutory requirement.

(Ord. 381, 11/24/1980, §6)

§10-407. Violations and Penalties

Any person, firm or corporation who shall violate any provision of this Part shall be, upon conviction thereof sentenced to a fine of not more than \$6000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation continues shall constitute a separate offense.

(Ord. 381, 11/24/1980, §7; as amended by Ord. 424, 8/3/1993, §2; and by Ord. 494, 11/27/2000)

PART 5

SPECIAL EVENTS AND PARADES

§10-501. Purpose

This Part shall be known and may be cited as the "Special Event Ordinance of the Borough of Ebensburg." The purpose of the permit system is not to exclude communication of a particular content but to coordinate multiple uses of limited space; to assure preservation of the street, park and public facilities; to prevent uses that are dangerous, unlawful, or impermissible; and to assure financial accountability for damage caused by the event.

(Ord. 653, 8/24/2020, §1)

§10-502. Definitions

For the purpose of this Part, certain words and terms are defined as follows:

BOROUGH - The Borough of Ebensburg, a municipality.

BOROUGH MANAGER - The Borough Manager of the Borough of Ebensburg, Pennsylvania, or designee.

CHIEF OF POLICE - The Chief of Police of the Borough of Ebensburg, or designee.

FIRST AMENDMENT ACTIVITY - Includes all expressive and associative activity protected by the United States and Pennsylvania Constitutions, including speech, press, assembly, and/or the right to petition

PARADE - Any parade, march, ceremony, show, exhibition, block party, carnival, pageant or procession of any kind or any similar display in or upon any street, park or other public place in the Borough; any gathering in or upon which the streets are occupied for the purpose of a march, procession or demonstration. Gatherings on sidewalks that do not block the sidewalk are not parades.

PERSON - Any individual or group of individuals, firm, partnership, association, corporation, company or organization of any kind.

PROCESSION - A group of individuals moving along in an orderly or disorderly way in a manner other than for normal pedestrian or vehicular traffic.

PUBLIC GATHERING - Any assembly of people for the purpose of public amusement, entertainment, business purpose, community festival or event, or similar gathering in or upon any street, park, or other public park in the Borough. Gatherings on sidewalks that do not block sidewalks are not public gatherings.

SPECIAL EVENT – A parade, public assembly, performance, meeting, contest, exhibit, athletic competition or presentation, community event, block party, or ceremony, which event is to be held wholly or partially on property owned or maintained by the Borough which is in a traditional public forum; on a street/alley/sidewalk within the Borough and will likely result in obstruction of such

streets/alleys/sidewalks or will likely compromise the ability of the Borough to respond to a public safety emergency; or on any other property, which requires for its successful execution the provision and coordination of Borough services to a degree over and above that which the Borough routinely provides. A special event is not intended to include:

1. An activity held solely on private property;
2. Programmed activities provided/managed by the Borough;
3. Any event which falls within the definition of a special event held in a Borough park but which does not interfere with regular use of the park by the general public; and
4. First Amendment activity on Borough streets/alleys/sidewalks, including within a park, which will not result in obstruction of streets/alleys/sidewalks nor compromise the ability of the Borough to respond to a public safety emergency.

SPECIAL EVENT PERMIT - A permit as required by this Ordinance.

STREET - A public right-of-way or portion thereof intended for general public use to provide means or travel for vehicles and pedestrians. The word "street" shall include the words "street," "avenue," "road," "highway," "thoroughfare," "way," "drive," "lane," "court," "cul-de-sac," and "alley" but shall not include "driveway" or "sidewalk."

(Ord. 653, 8/24/2020, §1)

§10-503. Permit Required

No parade or public gathering shall be conducted by any person upon any street, park, or other public place in the Borough of Ebensburg without first obtaining a special event permit from the Borough Manager, or designee. No person shall participate in a parade or public gathering prior to full compliance with the provisions of this Ordinance. The Borough Manager shall inform the Borough Council concerning the granting and issuance of any special event permit. The granting of a special event permit shall not constitute an endorsement of the applicant by the Borough of Ebensburg.

(Ord. 653, 8/24/2020, §1)

§10-504. Exceptions

This Ordinance shall not apply to funeral or wedding processions.

(Ord. 653, 8/24/2020, §1)

§10-505. Permit Application

1. An application for a special event permit shall be filed with the Borough Manager, or designee, not fewer than 28 days in advance of the proposed parade or public gathering date. Where good cause is shown, the Borough Manager, or designee, shall have the authority to consider any application hereunder which is filed fewer than 28 days in advance of the proposed parade or public gathering date.
2. The following information shall be included on said application:
 - a. Name, address and telephone number of the person seeking to conduct such parade or public gathering and requesting the special event permit.
 - b. If the parade or public gathering is proposed to be conducted for, on behalf of or by any organization, the name, address and telephone number of the headquarters of the organization and of the authorized and responsible heads of such organization.

- c. The name, address and telephone number of the person or persons who will be in charge of and who will be responsible for its conduct; a concise statement of the purpose of the parade or public gathering.
- d. The date when the parade or public gathering is to be conducted and the hours when such parade or public gathering will start and terminate.
- e. The route to be traveled, the starting point and the termination point, including a map depicting the course of the parade or the location of the parade or public gathering.
- f. A statement as to whether the parade or public gathering will occupy all or only a portion of the width of the streets or public land proposed to be traveled.
- g. The location, by streets, of any assembly (formation and disbanding) areas for such parade or public gathering, including time at which units of the parade or public gathering will begin to assemble. If the assembly area is on private property, the name, address and telephone number of the property owner and/or a letter of permission for the assembly or gathering.
- h. The approximate size and length of the parade or the geographic area of the public gathering, including the approximate number of persons and vehicles involved in the parade or public gathering, including number and types of animals (if any).
- i. Applicant's statement that they shall abide by the terms and provisions of this Ordinance and all laws and regulations of the United States, the Commonwealth of Pennsylvania, the County of Cambria and the Borough of Ebensburg.
- j. Any additional information which the Borough Manager shall find reasonably necessary in order to make a determination as to whether a special event permit application is in compliance with the requirements of this Ordinance and the rules and regulations adopted pursuant hereto.

(Ord. 653, 8/24/2020, §1)

§10-506. Limitation on Permit

No permit issued hereunder shall authorize or excuse any breach of the law or any trespass upon the rights of others or render the Borough of Ebensburg liable for any damage committed or caused.

(Ord. 653, 8/24/2020, §1)

§10-507. Permit Fee

The cost of a special event permit shall be established by resolution from time to time. In addition to any special event permit fee, a person sponsoring a parade or public gathering will be informed prior to the issuance of a special event permit that if the cost of any services provided by the Ebensburg Police and Public Works departments for the event exceed \$300, the person will be responsible for those costs exceeding \$300. Direct costs incurred by the Borough to control traffic as a result of a parade or public gathering shall be borne by the applicant. All costs related to other services provided by the Borough for the event, including, but not limited to, code enforcement, sanitation, and auxiliary police, shall be borne by the applicant. Costs shall be limited to direct out-of-pocket expenses incurred by the Borough, such as, but not limited to, wages paid to Borough employees. No special event permit shall be issued until all costs for any prior special event permits issued to the applicant have been paid in full.

(Ord. 653, 8/24/2020, §1)

§10-508. Insurance

1. Each person filing an application for a special event permit shall provide the Borough with a certificate of insurance evidencing that said person maintains insurance which will protect that person

and the Borough of Ebensburg from claims for damages for personal injury, including accidental death, as well as claims for property damages which may arise from the conduct of the special event. Excluded from any claim for damages will be damages related to persons objecting to the content of the proposed or actual message of the applicant. The amounts of such insurance shall be as follows: public liability insurance in an amount of not less than \$1,000,000 for injuries, including accidental death, to any one person, and property damage insurance in an amount of not less than \$1,000,000. The certificate of insurance shall name the Borough of Ebensburg as an additional insured and shall be provided by an insurance company authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Borough.

2. If the parade or public gathering will include the sale, service, or consumption of alcohol, proof of liquor liability insurance coverage in an amount of not less than \$1,000,000 per occurrence must also be provided, with such policy naming the Borough of Ebensburg as an additional insured, with said policy being provided by an insurance company authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Borough.
3. If a public gathering is to be located at a public place other than within a street, or is a block party involving the closure of one block of a street maintained by the Borough, and the public gathering involves fewer than 300 participants or spectators and does not involve the sale, service, or consumption of alcohol, the Borough Manager is authorized to waive the insurance requirements set forth herein, in his/her discretion. However, in the event the insurance requirements are waived, the applicant shall provide, prior to special event permit issuance, an indemnification agreement in a form acceptable to, and established by, the Borough Manager.
4. The special event permit will not be issued prior to receipt of the required certificate of insurance.
5. If the parade or public gathering will include the sale, service, or consumption of alcohol, the Borough may require the applicant to provide private security for the event in an amount as determined to be necessary by the Chief of Police.

(Ord. 653, 8/24/2020, §1)

§10-509. Conditions

1. The Borough Manager, or designee, shall have the authority to designate an alternate date, time, duration, or course for any parade or public gathering for which a special event permit is requested. This authority shall be exercised to accommodate competing demands on the use of public streets, parks, and public places. In addition, the Borough Manager may adopt any reasonable conditions to better protect the public and ensure compliance with this Ordinance. Any time, place, and manner limitations must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication.
2. The Chief of Police, or a designee thereof, shall have the authority to determine the necessary law enforcement personnel, supplies, and equipment for any parade or public gathering. Acceptance of the special event by the applicant shall constitute acceptance of all permit conditions. NOTE: The Borough is not required to close streets for security purposes (i.e., protection of the applicant or the participants or spectators of the parade or public gathering related to their actual or proposed message) and is not required to provide police for security purposes at parades or public gatherings.

(Ord. 653, 8/24/2020, §1)

§10-510. Denial or Revocation of Permit

1. A permit shall be denied if:
 - a. The application for permit (including any required attachments, submissions or fees) is not fully completed and executed.
 - b. The applicant has not tendered the required insurance certificate.

- c. The application for permit contains a material falsehood or misrepresentation.
 - d. The applicant is legally incompetent to contract or to sue and be sued.
 - e. The applicant or the person on whose behalf the application for permit was made has on prior occasions damaged Borough property and has not paid in full for such damage or has other outstanding and unpaid debts to the Borough.
 - f. A fully executed prior application for permit for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy at the proposed location of the parade, or part thereof.
 - g. The use or activity intended by the applicant would conflict with previously planned and scheduled programs.
 - h. The proposed use or activity is prohibited by or inconsistent with the classifications and uses of any street, park or other public place in the Borough, or part thereof.
 - i. The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, or other users of any street, park or other public place in the Borough, of Borough employees or of the public.
 - j. The applicant has not complied or cannot comply with applicable requirements, ordinances or regulations of the Borough concerning the sale or offering for sale of any goods or services.
 - k. The use or activity intended by the applicant is prohibited by law, by this Ordinance and ordinances of the Borough, or by the regulations of any borough department.
2. If a permit is denied, then the denial shall clearly explain the reason for the denial and what, if anything, must be done to correct the reason for the denial.
 3. The Chief of Police, or designee, shall have the authority to withdraw permission to conduct the event if he feels that, due to severe adverse weather and/or traffic conditions, the event would be unsafe.
 4. The Borough Manager or Chief of Police, or their designees, may at any time revoke any permit if there shall have been committed any breach of the terms and conditions under which the same was issued or a violation of the terms of this Ordinance, upon giving notice to the person to whom the permit was issued of such revocation. From the time of such notice of revocation, any act done under color of such permit shall subject the person doing or allowing it to be done to the same penalty as if he or she had done such act without such permit, unless such revocation is disapproved as hereinafter provided. If a permit is revoked, then the revocation shall clearly explain the reason for the revocation and what, if anything, must be done to correct the reason for the revocation.

(Ord. 653, 8/24/2020, §1)

§10-511. Appeals

Any person aggrieved shall have the right to appeal the denial or revocation of a parade or special event permit to the Borough Council. The appeal shall be taken by sending a letter to the Borough requesting that the Borough Council hear an appeal of the decision to deny a parade or special event permit. The letter must be sent by certified mail or hand-delivered to the Borough Office at 300 West High Street, Ebensburg, Cambria County, Pennsylvania, and must be received by the Borough within 10 days from the date on which the applicant received notice of the denial of the application for a parade or special event permit. The Borough Council must render a decision on said appeal, in writing, within 10 days of receipt of the appeal. If the applicant is not satisfied with the Borough Council's decision, then he or she may appeal to the Court of Common Pleas of Cambria County, within 30 days of the Borough Council's written decision.

(Ord. 653, 8/24/2020, §1)

§10-512. Standards for Permit Issuance

The Borough Manager, provided the other requirements of this Ordinance are met, shall issue a special event permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, it is determined that:

1. The conduct of the parade or public gathering will not so substantially interrupt the safe and orderly movement of traffic within the Borough on and contiguous to the proposed route, or at the proposed location, so as to create a real and present danger to the health, safety and welfare of the residents of the Borough.
2. The conduct of the parade or public gathering will not create a real and present danger to the health, safety and welfare of the citizens of the Borough by preventing firefighting equipment, ambulances, rescue vehicles and/or police vehicles from being able to reach any property in the Borough.
3. The conduct of such parade or public gathering will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the Borough other than that to be occupied by the proposed line of march and areas contiguous thereto.
4. The conduct of a parade or public gathering shall not require the diversion of so great a number of personnel as to impair normal police services within the Borough.
5. The concentration of persons, animals and vehicles at assembly points of the parade or public gathering will not unduly interfere with proper fire and police protection or ambulance services to areas contiguous to such assembly areas.
6. The conduct of such parade or public gathering will not interfere with the movement of emergency services enroute to an emergency.
7. The conduct of the parade or public gathering is not reasonably likely to cause injury to person or property, to provoke disorderly conduct or to create a disturbance. This excludes content of message.
8. The parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route, or the public gathering will not unduly interfere with the movement of the public or emergency services.
9. The parade or public gathering is not designed to be held primarily for private profit.

(Ord. 653, 8/24/2020, §1)

§10-513. Violations and Penalties

Any person, association, organization, firm or corporation who or which shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600 and costs of prosecution and, in default of payment of such fine and costs, to imprisonment for not more than 30 days.

(Ord. 653, 8/24/2020, §1)