

**AN ORDINANCE OF EAST CONEMAUGH BOROUGH, CAMBRIA COUNTY,
PENNSYLVANIA FOR THE LICENSING AND REGULATION OF BOTTLE CLUBS
WITHIN THE BOROUGH OF EAST CONEMAUGH**

ORDINANCE NO. 15-02

I. FINDINGS, PURPOSE and SCOPE.

A. The Council of the Borough of East Conemaugh hereby finds that:

1. the Pennsylvania legislature has generally limited the number of liquor licenses for the retail sale of malt or brewed beverages and liquor to one (1) license for each three thousand (3,000) inhabitants in any county; and
2. once the number of existing retail licenses in a municipality exceeds one (1) license per three thousand (3,000) residents, then an applicant who wishes to move into that municipality must receive written approval, in the form of an ordinance or resolution following a hearing, from the municipality before the Board can consider the application.

B. Pennsylvania Liquor Code:

1. is confined to regulating the alcoholic beverage industry, and
2. is limited to the manufacture, sale and distribution of alcoholic beverages; and
3. does not regulate the use or possession of alcoholic beverages lawfully obtained by patrons of bottle clubs as the phrase Bottle Club is defined in this ordinance.

C. The Council of the Borough of East Conemaugh hereby concludes Bottle Club as the phrase is defined in this ordinance are not a part of the alcoholic beverage industry and local regulation by ordinance is appropriate.

D. The Council of the Borough of East Conemaugh hereby finds that bottle clubs and BYOB clubs has caused it to expend additional resources and required the use of resources from other municipalities thus taking away from the effectiveness of those resources provided to the residents of East Conemaugh Borough and the other municipalities.

E. In addition to its own findings, the Council of the Borough of East Conemaugh has found that other communities have realized the same or similar secondary effects from bottle clubs and BYOB clubs.

F. The Council of the Borough of East Conemaugh hereby declares the purposes of the within Ordinance are motivated by concerns for the public:

1. health,
2. safety, and
3. welfare.

G. The Council of the Borough of East Conemaugh hereby finds that the purposes of the within Ordinance are to mitigate, reduce, or limit the secondary effects associated with the operation of a Bottle Club and/or BYOB Club through:

1. licensing,
2. regulating the hours of operation,
3. regulating the hours of on-premise entertainment, and
4. health and safety inspections of the premises and its facilities.

II. DEFINITIONS

A. Alcoholic Beverages shall mean alcoholic liquors, alcohol and malt or brewed beverages as set forth in the Liquor Code, 47 P.S. §1-101, et seq.

B. Bottle Club or BYOB Club shall mean any:

1. sole proprietorship,
2. partnership,
3. limited liability partnership,
4. corporation,
5. limited liability corporation, or
6. any other type of entity or business entity recognized by the Internal Revenue Service or Pennsylvania Department of Revenue that operates:
 - a. as a profit making entity or
 - b. for pecuniary gain; and
7. That is not licensed by the Pennsylvania Liquor Control Board;
8. Wherein
 - a. Patrons,
 - b. Members,
 - c. Visitors, or
 - d. Guests that are:
 - (1) 21 years of age or
 - (2) older
 - (a) may after payment of:
 - i) an entry fee,
 - ii) cover charge,
 - iii) membership fee, or
 - iv) other:
 - a) fee or
 - b) charge
 - 1) that is related to or
 - 2) associated with:
 - (I) with the purchase of:

- (A) non-alcoholic beverages,
- (B) food, or
- (II) the consumption of alcoholic beverages which
 - (A) patrons,
 - (B) members,
 - (C) visitors,
 - (D) guests, or
 - (E) other persons have carried into the premises

C. Bottle Club Permit shall mean the permit issued by the Borough of East Conemaugh to a person pursuant to the provisions hereof for the operation of a Bottle Club.

D. Capacity shall mean the number of people allowed on the premises of the Bottle Club as determined by the Fire Marshal pursuant to NFPA 101 Life Safety Code, Place of Assembly.

E. Legal Holiday shall mean New Year's Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, First Day of Deer Hunting in Pennsylvania (Monday immediately following Thanksgiving Day), Christmas Eve, Christmas, New Year's Eve.

F. On Premise Entertainment shall mean any act or performance, such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition or striptease, whether performed by employees, agents, contractors or customers.

1. The term "entertainment" shall also mean bartenders, waiters, waitresses or other employees exposing "specified anatomical areas" or engaging in "specified sexual activities" in the presence of customers.

a. Specified anatomical areas shall mean:

(1) Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola.

(2) Human male genitals in a discernibly turgid state, whether or not covered.

b. Specified sexual activities shall mean:

(1) Human genitals in a state of sexual stimulation or arousal.

(2) Acts of human masturbation, sexual intercourse or sodomy.

(3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

G. Owner or Owners shall mean:

1. the proprietor if a sole proprietorship,

2. a. any or

b. all partners (general and limited) if a partnership, or

3. a. any or

b. all officers and/or directors if a corporation.

H. Patrons or Member or Visitor or Guest shall mean any person that is:

1. physically or
2. in any vehicle
 - a. located on the real estate where the Bottle Club is either:
 - (1) located or
 - (2) any
 - (a) abutting,
 - (b) adjoining, or
 - (c) nearby parcel of real estate owned by the Owner of the real estate where the Bottle Club is situate.
 - i) nearby parcel of real estate shall mean any parcel of real estate that is separated from the parcel of real estate where the Bottle Club is situate by a:
 - a) public or
 - b) paper
 - 1) street or
 - 2) alley

I. Person shall mean any natural person, partnership, association, corporation or other legal entity.

III. Bottle Club Permit

A. Any person desiring to operate a Bottle Club shall file an application for a Bottle Club Permit with the Secretary of the Borough.

B. The application for a Bottle Club Permit shall include the following information:

1. The name and address of the Bottle Club;
2. A statement as to whether the premises or real estate where the Bottle Club is to be located is:
 - a. leased
 - (1) In the event that the Bottle Club does not own the premises or real estate where the Bottle Club is to be located then:
 - (a) the Applicant shall furnish to the Borough Secretary:
 - i) the name
 - ii) address and
 - iii) telephone number of the lessor of the premises or real estate
 - iv) a copy of the deed on record at the Recorder of Deeds Office for Cambria County, Pennsylvania and
 - v) a copy of the executed lease between the Applicant and Record Owner;
or
 - b. owned by the Bottle Club;

- (1) In the event that the Bottle Club owns the premises or real estate where the Bottle Club is to be located then:
 - (a) the Applicant shall furnish to the Borough Secretary
 - i) a copy of the deed on record at the Recorder of Deeds Office for Cambria County, Pennsylvania
 3. The nature of the ownership of the Bottle Club, i.e., corporation, partnership, joint venture or association;
 4. The names and addresses of the officers and/or agents of the Bottle Club;
 5. The names and addresses of any and all persons who possess an ownership and/or financial interest in the Bottle Club; and
 6. The Borough Secretary shall within ten working days of the receipt of the application contact the:
 - a. Chief of Police;
 - b. Fire Chief;
 - c. Codes Enforcement Officer;
 - d. Department of Labor and Industry; and
 - e. Local health inspector
 - (1) to schedule an inspection of the premises or real estate for compliance with all building and construction, fire and safety codes
- C. In the event that either:
1. Chief of Police;
 2. Fire Chief;
 3. Codes Enforcement Officer;
 4. Department of Labor and Industry; or
 5. Local health inspector
 - a. determine that the Bottle Club either the
 - (1) application or
 - (2) premises or real estate
 - (a) does not fully and completely comply with the provisions and requirements of this hereof the Borough or its agent shall:
 - i) deny the issuance of a Bottle Club permit and
 - ii) furnish written statement with the reasons for the denial to the:
 - a) applicant and
 - b) owner of the premises or real estate
- D. The Applicant shall pay a non-refundable application/inspection fee of \$250.00 for a Bottle Club permit.
1. In the event of a subsequent inspection due to the applicant's failure to comply with the provisions and requirements hereof, the applicant shall pay an additional \$50.00 for every subsequent inspection.

2. The permit shall be renewed annually upon compliance with the provisions and requirements hereof or any amendments hereto.
 - a. The annual renewal fee shall be \$150.00
3. At any time the Bottle Club fails any inspection the Bottle Club Permit for that Bottle Club shall be revoked immediately.
4. At any time the Bottle Club is:
 - a. not in compliance with any of the provisions of this Ordinance or
 - b. convicted upon any violation of this Ordinance
 - (1) the Borough shall have the authority to revoke the Bottle Club Permit.

E. The Bottle Club Permit holder shall have a period of 30 days from the date of service of such notice, which shall be the date of mailing, to request a hearing pursuant to Local Agency Law.

F. Bottle Club Permits that are issued shall not be transferable.

IV. Any and all Bottle Clubs to which this Ordinance applies shall comply with the following requirements:

- A. Obtain broad form general liability coverage, \$5,000,000 single limit per occurrence.
 1. Proof of said general liability coverage shall be filed with the Borough Secretary.
- B. Possess a valid certificate of occupancy issued by the:
 1. Pennsylvania Department of Labor and Industry and
 2. East Conemaugh Borough Codes Enforcement Office
 - a. that shall be prominently displayed in the public portion of the premises adjacent to the Bottle Club license.
- C. Obtain an annual fire inspection of the premises by:
 1. the Borough Codes Enforcement Officer and
 2. Local Fire Chief.
- D. Obtain a valid Bottle Club Permit pursuant to this Ordinance
 1. That shall be prominently displayed in the public portion of the premises adjacent to the certificate of occupancy.
- E. Conspicuously post the hours of operation at the premises in such a manner that the Patrons are sufficiently apprised of the same from:
 1. within and/or
 2. outside the premises.
- F. Obtain a valid business privilege and mercantile tax license from the City of Bethlehem and prominently display said license as required.

- V. It shall be unlawful for any person or persons who own, operate, lease, manage or control a Bottle Club to:
- A. Remain open and/or to transact business:
 - 1. between the hours of 10 p.m. and 12 noon the following day,
 - 2. at any time on Sunday, or
 - 3. on any Legal Holiday.
 - B. At any time to store Alcoholic Beverages on the premises, no matter who owns the Alcoholic Beverages.
 - C. Conduct activities to which this Ordinance applies without possessing a valid License as required elsewhere in this Ordinance.
 - D. To permit the operation or conduct of business outside of the closed-in structure or improvement that contains the Bottle Club.
 - E. To permit Patrons to consume or drink Alcoholic Beverages outside of the closed-in structure or improvement constructed that contains the Bottle Club.

VI. Abatement

- A. Any building or part of a building used in violation of this Part is hereby declared to be a common nuisance. The Borough of Courtdale is hereby authorized to institute an action to enjoin any person or entity that is in violation of this Part from continuing to operate his/its establishment in the Borough of Courtdale, and to enjoin any person or entity from committing any act which violates any provision of this Part.

VII. Liability

- A. In the event any of the unlawful and illegal activities specified herein are conducted by or in the name of a corporation, partnership, joint venture, trust, firm, or association, in addition to (corporate) entity liability, the officers, agents, or principals of said corporation, partnership, joint venture, trust, firm, or association shall be deemed in violation of this Part, as well as the person or persons engaged in the unlawful activity and upon conviction thereof, in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.
- B. The unlawful activities specified herein shall constitute separate and distinct offenses for each and every day in which said activities are conducted.

VIII. Severability

- A. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

Enacted and Ordained by East Conemaugh Borough Council this 17th day of December, 2015.

