

Peddling & Soliciting

Chapter 187, PEDDLING AND SOLICITING

[HISTORY: Adopted by the Town Board of the Town of Niagara 12-14-1976 by L.L. No. 3-1976. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 212.

§ 187-1. Purpose.

This chapter is enacted for the purpose of regulating itinerant merchandising in order that the peace, health, safety, welfare and good order of the Town of Niagara and the inhabitants thereof shall not be endangered or unduly disturbed.

§ 187-2. Definitions.

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

ESTABLISHED PLACE OF BUSINESS — A permanent building, store or depository in which or where the person transacts business and deals in products or services he or she merchandises in the ordinary and regular course of business.

MERCHANDISING

A. Selling, bartering or trading;

B. Offering to sell, barter or trade; or

C. Taking or offering to take orders for any goods, wares, commodities or services.

PEDDLER AND SOLICITOR — Any person who engages in merchandising in any public street or public place or by going from house to house or place of business to place of business or by temporarily occupying a room, building, structure or other premises therefor, including but not limited to those persons commonly known as "peddlers," "solicitors," "hucksters," "hawkers," "canvassers" or "itinerant merchandisers" or "vendors."

PERSON — Any individual, firm, partnership, corporation or association and the principal and agent thereof.

ROADSIDE STANDS[Added 6-20-2000 by L.L. No. 1-2000] — Any temporary structure, device, truck, trailer or any vehicle placed or parked or located for the purpose of selling home-grown agricultural products, or any other product, at retail or wholesale to the general public.

A. Such roadside stand shall be located in a location as approved by the Town Clerk, which stand shall be placed to encourage safety and discourage traffic congestion. The construction shall comply with all local laws and ordinances applicable.

B. No portion of the stand, or any accessory use of land, shall be closer than 35 feet to the paved highway or road.

C. Parking spaces for no less than three vehicles shall be maintained in connection with such a roadside stand in a manner which is easily discernable from or by an approaching motorist; the parking area shall be located at least a minimum of 10 feet from the paved road or highway.

TEMPORARILY OCCUPYING — To occupy any enclosure or premises for the purpose of merchandising with the intent to merchandise at said enclosure or premises:

A. Only so long as it takes to sell, barter or trade the merchandise or products therein housed initially without the intent to replenish or restock such merchandise or products; or

B. For a period of less than 30 days.

TOWN — The Town of Niagara, New York.

§ 187-3. License required.

It shall be unlawful for any person to act as a peddler or solicitor, as herein defined, except in conformity with the provisions of this chapter and without first having obtained and paid for and having in force and effect a license issued to said person as provided for herein.

§ 187-4. Exemptions.

A. The provisions of this chapter shall not apply to the following: [Amended 6-20-2000 by L.L. No. 1-2000]

- (1) Any person soliciting at the express invitation of the person solicited or serving an established customer.
- (2) A wholesaler selling articles to dealers or merchants who have an established place of business within the town.
- (3) Any person merchandising daily newspapers.
- (4) Any resident of the town while engaged in merchandising on his or her own property.
- (5) The following children and members of organizations, provided that the provisions of this exception shall only be applicable to said persons while peddling or soliciting in connection with an authorized activity of the organization of which they are members or the school which they attend.
 - (a) A child attending any public or private school located within the town.
 - (b) A child residing in the town and attending any public or private school within or without the town.
 - (c) A representative of any established church maintaining a place of worship within the town.
 - (d) A member of a veteran's organization, volunteer fire department, fraternal organization or civic group, provided that such organization, department or group has and maintains a chapter, post, lodge, camp or other local organization within the town,
- (6) Auction sales held pursuant to law by a sheriff or other officer authorized by law to conduct such sale.

B. This chapter shall not apply so as to interfere unlawfully with interstate commerce.

§ 187-5. Application for license. [Amended 6-20-2000 by L.L. No. 1-2000]

Every applicant for a license is required to submit to the Town Clerk a nonrefundable application fee in an amount as set forth from time to time by resolution of the Town Board to cover the cost of investigation and a written and signed application supplying, under oath, the following information:

- A. Name of applicant.
- B. Applicant's permanent home address.
- C. Applicant's local address, if any.
- D. Name, address and written authorization of the firm represented by applicant, if any.
- E. Length of time for which the license is desired.
- F. Description of goods, wares, commodities or services to be offered for sale, together with a true invoice of their quantity, quality and value.
- G. Present location and place of origin of the goods, wares or commodities.
- H. The area within the town where applicant intends to conduct his or her business.
- I. A statement as to whether or not the applicant has been convicted of any offense against the law or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.
- J. Dates of prior applications for licenses by applicant and outcome of such applications.

K. A description and license plate number of any vehicle sought to be used while engaged in the licensed activity.

L. Proof of accuracy of any scale or measure sought to be used in the licensed activity.

M. A photograph, two inches by two inches, taken within 60 days of the date of the application for such license. Such photograph shall show head, full face and shoulders of applicant and shall be submitted in triplicate. One copy of the photograph shall be attached to the application, one copy shall be attached to the license if granted and the third shall be delivered to the Chief of Police of the town.

N. A fingerprint impression of the fingers and thumbs on both hands taken by the Police Department of the town. Such fingerprint impression shall be attached to the photograph delivered to the Chief of Police and remain on file in the Town Police Headquarters.

§ 187-6. Investigation of applicant.

After the applicant has submitted to the Town Clerk the application, the Town Clerk shall deliver the application to the Chief of Police of the town. The Chief of Police shall then cause such investigation of the applicant's business and moral character as he or she deems necessary for the protection of the public good. The results of such investigation, along with the Police Chief's recommendations for approval or denial of the application, shall be noted on the application or attached thereto. The application with such additions shall be returned to the Town Clerk within 10 days after the Town Clerk delivers the application to the Chief of Police.

§ 187-7. Granting or denial of license.

Upon the return of the application from the Chief of Police, the Town Clerk shall, after reviewing the findings and recommendations of the Chief of Police, determine whether to grant or deny a license to the applicant as the Town Clerk deems necessary for the protection of the public good.

A. If the Town Clerk determines that a license should be granted, the Town Clerk shall collect the license fee and receive an instrument of authorization and, unless determined otherwise, a bond in the amount specified herein from the applicant. The Town Clerk shall then issue a license to the applicant, specifying the particular business authorized, the location wherein it may be conducted, the date the license expires, the license fee paid, whether a measuring device is to be used, whether a motor vehicle is to be used and any special authorizations granted or other limitations. The Town Clerk shall also attach a photo of the applicant to the license.

B. If the Town Clerk determines that the application for a license should be denied, the Town Clerk shall notify the applicant of the denial. Such notification shall be sent by regular mail to the permanent address supplied by the applicant in his or her application. A hearing upon such a denial shall, upon the applicant's valid request, be held as provided in § 187-15 herein.

§ 187-8. License fee. EN

In addition to the nonrefundable application fee, there shall be a license fee for all licenses issued hereunder to be fixed as set forth from time to time by resolution of the Town Board.

§ 187-9. Bond.

A. Prior to the issuance of a license, every applicant for a license must furnish the Town Clerk with a surety bond in the amount of \$1,000 in favor of the town and insuring the applicant's full compliance with all the laws and ordinances of the town and guaranteeing the payment of all fines, judgments and costs recovered by the town against the applicant. Such bond shall be executed by the applicant and a corporate surety regularly doing surety business in the State of

New York and shall be approved by the Town Attorney.

B. In the event that the Town Clerk specifically determines that the requirement of a bond is unnecessary for the protection of the public, the Town Clerk may issue a license without requiring a bond.

§ 187-10. Instrument of authorization.

Before any applicant shall be issued a license, such applicant shall submit to the Town Clerk an instrument nominating and appointing the Town Clerk of the Town of Niagara his or her true and lawful agent with full power and authority to accept service of process for and on behalf of the applicant in respect to any matters arising out of the activity required to be licensed. In the event that, pursuant to said instrument of authorization, process is served on the Town Clerk, the Town Clerk shall send to the licensee, by registered mail, a copy of said process to the permanent address supplied by the applicant in his or her application.

§ 187-11. Recordation of licenses.

The Town Clerk shall keep a record of all the applications for licenses, noting thereon whether granted or denied, the amount of fee paid, the date, if any, of revocation and attaching thereto any necessary bond and instrument of authorization.

§ 187-12. License terms and conditions.

All licenses shall expire one year from the date of issuance, except that a license issued for a shorter period than one year shall expire at the expiration of the period for which it is issued. All licenses shall be nontransferable and shall be in the continuous possession of the licensee while engaged in the business licensed. A licensed peddler or solicitor shall:

- A. Produce his or her license upon the demand of any person.
- B. Not willfully misstate the quantity or quality of any article offered for sale.
- C. Not offer for sale any article of an unwholesome or defective nature.
- D. Not call attention to his or her goods or services by, personally or through the use of another person, blowing a horn, by ringing a bell other than a house doorbell, by shouting, crying or using sound amplification equipment or by any loud or unusual noise.
- E. Keep the vehicle, premises and receptacles used by him or her in the furtherance of his or her licensed business in a sound, clean and sanitary condition.
- F. Keep his or her edible articles offered for sale well protected from dirt, dust and insects.
- G. Not operate his or her business so as to cause a nuisance.
- H. Not stand or permit any vehicle used by him or her to stand in one place in any public place or street for more than 10 minutes or in front of or adjacent to any private premises if the owner of occupier thereof objects.
- I. Not create or maintain any booth or stand, or place any barrels, boxes, crates or other obstructions, upon the street or public place for the purpose of merchandising.
- J. Leave any premises used for merchandising in a clean and safe condition upon the completion of his or her merchandising on such premises.
- K. Not engage in any licensed activity between sunset and 9:00 a.m. local time without special authorization from the Town Clerk. Any such special authorization is effective only to the extent that it has been specified by the Town Clerk on the license.

§ 187-13. Duty of police to enforce.

It shall be the duty of any police officer of the town to:

- A. Require any person seen acting as a peddler or solicitor and who is not known to such officer

to be duly licensed to produce his or her peddling and soliciting license.

B. Enforce the provisions of this chapter against any person found to be violating the same.

§ 187-14. Revocation of license.

A license may be summarily revoked by the Town Clerk by reason of a violation of the terms and conditions of the license, the violation of any municipal ordinance or state or federal statute or falsification in applying for a license. Written notice of such revocation specifying the grounds of complaint shall be personally served upon the licensee or mailed by regular mail to the permanent address given in licensee's application. Said revocation shall be effective when the notice of revocation and an affidavit of service are filed in the Town Clerk's office. A hearing upon the revocation of the license shall be granted the licensee, if said licensee shall request such a hearing as hereinafter provided.

§ 187-15. Appeal hearing.

In the event of the denial of a license, or the revocation of a license, the applicant or licensee may request an appeal hearing within a period of 14 days after such denial or revocation. Such request shall be in writing and shall specify the grounds for disputing the determination of the Town Clerk and shall be made to the Town Board of the town and filed with the Town Clerk within the fourteen-day period provided for herein. At the time of filing such request, the Town Clerk shall inform the appellant by reasonable means of the place and time at which such appeal will be heard. The Town Board shall hear such appeal of the determination of the Town Clerk at the next regularly scheduled meeting of said Town Board following the filing of the request for an appeal hearing with the Town Clerk. The Town Board may grant or reinstate a license for the person requesting review if it should determine that the refusal or revocation on the part of the Town Clerk was arbitrary or otherwise in error. If the Town Board shall determine the action of the Town Clerk to have not been arbitrary or not otherwise in error, the Board shall refuse to grant or reinstate such license. The decision on any hearing shall be rendered by the Town Board within 45 days after the hearing thereof and shall be entered in the minutes of the Town Board.

§ 187-16. Penalties for offenses.

Any person committing an offense against any provision of this chapter shall be guilty of a violation punishable as follows: by imprisonment for a term not exceeding 15 days or by a fine of \$250, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute for each day the offense is continued, a separate and distinct offense hereunder. In the event that the town recovers any fine or judgment against a licensee of this chapter for a violation of any law or ordinance of the town, such fine or judgment shall be collectable by the town directly from the corporate surety executing the subject licensee's surety bond.