

TOWN OF WESTERLO

Local Law #3 of 2018: A Local Law to regulate peddlers, solicitors and transient merchants while transacting business in the Town of Westerlo

BE IT ENACTED by the Town Board of the Town of Westerlo as follows:

SECTION 1: The purpose of this law is to regulate the activities of peddlers, solicitors, street vendors and transient merchants, as defined herein,

SECTION 2: DEFINITIONS

1. The terms "hawker" and "peddler" as used in this ordinance shall mean and include, except as hereinafter expressly provided, any person, either principal or agent, who, in any public street or public place or by going from house to house or place of business to place of business on foot or on any animal or vehicle standing in a street or highway, for the purpose of offering for sale, displaying to exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property, that the person is carrying or otherwise transporting, except as hereinafter exempted.
2. The term "solicitor" as used in this ordinance shall mean and include any person who goes from place to place or house to house or who stands in any street or public place taking or offering to take orders for goods, wares, products, merchandise, other personal property or services, of which s/he may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time, except as otherwise exempted herein. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as set forth herein.
3. The term "transient merchant" shall mean a person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property, and who does not remain or intend to remain in any one location for more than seven (7) consecutive days.
4. The term "established place of business" as used in this ordinance shall mean and include a building or store in which the person transacts business and deals in the goods, wares and merchandise he hawks, peddles or solicits for during regular business hours.
5. The word "person" as used in this ordinance shall mean and include natural persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued.

SECTION 3: LICENSE REQUIRED

It shall be unlawful for any person, within the territorial limits of the Town of Westerlo to act as a hawker, peddler, solicitor or transient merchant, as herein defined, without first having obtained and paid for, and having in force and effect, a license therefor.

SECTION 4: EXEMPTIONS

Nothing herein shall be held to apply to:

- any person selling or attempting to sell at wholesale and goods, wares, products, merchandise, or other personal property, to a retailer of the item(s) being sold by the wholesaler.
- any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods, milk, heating oil, propane and daily newspapers.
- to any person making deliveries of perishable food and dairy products to the customers of his or her established regular delivery route.
- To any person conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multi-person bazaar or flea market.
- To any person conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court ordered sale.
- To any sales conducted pursuant to statute or by order of any court
- To any person peddling of meats, fish, fruit and similar produce by farmers and persons who produce such commodities.
- To any person soliciting or collecting for any bona fide charitable organization.

Nothing in this Local Law shall be intended or construed to interfere with interstate commerce.

SECTION 5: APPLICATION FOR LICENSE

Every applicant for a license as herein provided shall submit to the Town Clerk a written application, in a form prescribed by the Town Board of the Town of Westerlo, under affidavit, setting forth the following information, to wit:

- That s/he is a citizen of the United States
- that s/he has never been convicted of a felony or a misdemeanor (or if so, giving the details)
- a detailed statement of the particular business, trade or occupation for which the license is requested
- the number and kind of vehicles, if any, to be used by the applicant in carrying on the business for which the license is requested
- the kinds of goods, wares and merchandise s/he desires to sell or the kind of service s/he desires to render
- the name, address and age of the applicant

- the name and address of the person, firm or corporation s/he represents
- the names and addresses of all partners, if a partnership, the names and addresses of the principal officers, if a corporation, and the name and address of a person upon whom a legal notice may be served
- and such other information as may be required by the Town Clerk.

SECTION 6: LICENSE

Upon the filing of the application, as provided in the preceding section, the Town Clerk shall, upon his/her approval of such application, issue to the applicant a license as provided in Section 3, signed by the Town Clerk. Except as hereinafter provided, no licenses shall be refused except for a specific reason and for the protection of public safety, health, morals or general welfare. A license shall not be assignable. Any holder of such license who permits it to be used by any other person, and any person who uses such license granted to any other person, shall be guilty of a violation of this Local Law, and shall be prosecuted in the Justice Court of the Town of Westerlo. Such license shall automatically expire on January 1 following the date of issuance of such license, but such license may provide for an earlier expiration date. No license shall be granted to a person under eighteen years of age. No applicant to whom a license has been refused or who has had a license which has been revoked shall make further application until a period of at least six months shall have elapsed since the last previous rejection or revocation, unless he can show that the reason for such rejection or revocation no longer exists. Every licensee, while exercising his license, shall the carry the license with him and shall exhibit the same upon demand to any police officer or citizen.

SECTION 7: LICENSE FEES

The license fee to hawkers, peddlers, solicitors and transient merchants shall be as follows: \$100.00 for the period to expire from the date of issuance to January 1 of the next year. The Town Board shall periodically review the fee set forth herein, and may increase or decrease the same by a resolution thereof.

SECTION 8: EMPLOYEES OF LICENSEE

Any licensee using an animal, bicycle or motor vehicle may employ not more than two persons to assist in selling and delivering the wares, but such persons shall so act only while accompanying a licensed peddler, hawker, solicitor or transient merchant.

SECTION 9: NAME AND ADDRESS ON VEHICLE

Every vehicle used by a licensed hawker, peddler, solicitor or transient merchant in or about his business shall have the name of the licensee and his/her address plainly, distinctly and legibly displayed on his vehicle at all times while such vehicle is in use during the continuance of the license.

SECTION 10: REFUSAL OR REVOCATION

Upon the refusal of the Town Clerk to issue a license to any applicant or upon the determination of the Town Board that any license should be revoked, the procedure, as set by state and local statute, shall be complied with. When a license shall be revoked, no refund of any unearned portion of the license fee shall be made. Notice of such revocation and the reason therefor in writing shall be served by the Town Clerk upon the person named in the application or by mailing the same to the address given in the application, and a copy of such notice shall be filed with the Town Clerk.

SECTION 11: RESTRICTIONS

A licensed hawker, peddler, solicitor or transient merchant shall:

- not falsely or fraudulently misrepresent the quantity, or quality or any article offered for sale; or offer for sale any unwholesome, tainted or diseased provisions for merchandise.
- keep the vehicles and receptacles used by him in a clean and sanitary condition and the food stuffs and edibles offered for sale well covered and protected from dirt, dust and insects.
- not stand or permit the vehicle used by him/her to stand in one place in any public place or street for more than ten minutes, or in front of any premises for any time if the owner or any lessee of the premises objects.
- not sell any confectionary or ice cream within 250 feet of any school between the hours of 8:00 A.M. and 4:00 P.M. on school days.
- not permit any vehicle used by him to stop or remain on any cross walk.
- not create or maintain any booth or stand or place any barrels, boxes, crates or other obstruction upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.
- not blow a horn, ring a bell or use any other noisy device to attract public attention to his wares, or shout or cry out his wares.

SECTION 12: ORDERS

All orders taken by licensed solicitors who demand, accept or receive payment or deposit of money in advance of final delivery, shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser at the time the deposit of money is paid to the solicitor.

SECTION 13: RECORDS

It shall be the duty of the Town Clerk to keep a record of all applications and of all licensees granted under the provisions of this ordinance, giving the number and date of each license, the name and residence of the person licensed, the amount of the license fee paid and also the date of revocation of all licenses revoked.

SECTION 14: PENALTY

Any person, who himself or by his agent, or employee, shall act as a hawker, peddler, solicitor or transient merchant as herein defined, without a license, or shall violate any of the provisions of this

ordinance, or who, having had his license revoked, shall continue to act as a hawker, peddler or solicitor, shall upon conviction, be punished by a fine of not less than \$50.00 or more than \$250.00 and each day on which such violation continues shall constitute a separate offense.

SECTION 15: SEVERABILITY CLAUSE

The provisions of this Local Law are severable. If any provision of this Local Law or its application to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Local Law which can be given effect without the invalid provision or application of this Local Law.

SECTION 16: EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the New York State Secretary of State's Office.

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