

Resolution #177-21, December 20, 2021

Amend Resolution 135-01, Chapter 160, Peddler and Soliciting ordinance

By Mr. Bush

Seconded by Mr. Lucarelli

Chapter 160, Peddler and Soliciting ordinance to read

Chapter 160

Peddling and Soliciting

[HISTORY: Adopted by the Town Board of the Town of Elmira 8-20-2001 by L.L. No. 1-2001. Amended 12-20-2021

GENERAL REFERENCES

Streets and sidewalks — See Ch. 193.

§ 160-1 Definitions.

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

ESTABLISHED PLACE OF BUSINESS

Includes a building or store in which or where a person transacts business and deals in the goods or services, he or she offers for sale for during regular business hours.

PEDDLER

Includes, except as hereinafter expressly provided, any person, either principal or agent, who goes from place to place, or house to house, who stands in any street or public place, and sells or barter, offers for sale or barter, or carries or exposes for sale or barter any goods, or services, including making, manufacturing or repairing any article, to be performed now or in the future.

SOLICITOR

Any person, either principal or agent, traveling either by foot or by any conveyance from place to place, from house to house or from street to street or any combination thereof, who takes or offers to take orders for the sale of any goods, wares or merchandise, for present or future delivery or for the performance of future service, whether or not he or she collects advance payments for such sale or service. For the purposes of this chapter, the entity which engages a person or his or her agent for the purpose of soliciting, is also considered a solicitor within the meaning of this section and is subject to the provisions of this chapter.

CANVASSER

Any person who, by going from house to house thereof, seeks to raise funds, petitions, solicits membership, disseminates information or conducts activities which would not be characteristic of a peddler or solicitor

§ 160-2 Exceptions.

Nothing in this chapter shall be held to apply:

- A. to any sales conducted pursuant to statute or by order of any court; or
- B. to any person selling personal property at wholesale to dealers in such articles; or
- C. to merchants having an established place of business within the Town or their employees

- for soliciting orders from customers and delivering the same;
- D. to farmers and truck gardeners who themselves or through their employees vend, sell or dispose of products of their own farms and gardens; or
 - E. so as unlawfully to interfere with interstate commerce: or
 - F. any candidate running for a governmental office, or his or her representative.
 - G. A person who solicits, canvasses or peddles on behalf of a charitable, religious, athletic, educational or civic organization, including but not limited to groups or clubs, classes or organizations sponsored by public or private school.
 - H. Nonprofit charitable organizations. However, such organizations shall register annually with the Clerk, and will indicate the type of activities to be undertaken and the times when they will be performed.

§ 160-3 License required.

No person shall act as a peddler, canvasser or solicitor within the Town of Elmira without having in force and effect a license therefor issued to him or his employer.

§ 160-4 Application for license.

- I. Any person desiring a license as herein provided shall file with the Town Clerk upon a form furnished by the Town a written application containing the name and residence address and business address of the applicant, the kind of business, the wares and merchandise to be sold or the kind of service to be performed, the method of distribution, the number and kind of vehicle to be used in carrying out the activities listed and such other information as may be required by the Supervisor. Such application shall be accompanied by a cash deposit of the fee for the license, which fee shall be \$100.00 for an applicant using not more than one motor vehicle and a further fee of \$25.00 for each additional person to be used in carrying out the activities.
- J. Upon the receipt of a properly completed application and of the required fee, the Clerk shall grant a license authorizing the applicant to act as a peddler within the Town for a period expiring December 31st of the year the license is issued or the Clerk, and/or the Supervisor, may refuse to grant such license for a specific reason specified in section 161-10 for the protection of the public safety, health, property, morals or general welfare and return the fee to the applicant.
- K. Any person filing for a license shall remit to the Town Clerk a Certificate of Liability naming the Town of Elmira as an additional insured with an amount of no less than \$1 Million.
- L. Any person filing for a license shall be subject to a background check administered by the West Elmira Police Department. Each person whom will be canvassing, soliciting or peddling is required to turn in a copy of their current driver's license.

§ 160-5 Use of license.

A license issued under this chapter shall extend only to the person to whom it is issued or, if the licensee is other than a natural person, to its agent or employee acting in the course of the

business of the licensee, and a license shall be valid only for the purposes contained on the application for such license.

§ 160-6 Display of license.

Every person under this chapter shall produce for inspection the license required by this chapter upon demand of any resident, town official, magistrate or police officer, and a failure to produce a valid license shall be a violation of this chapter.

§ 160-7 Permitted hours.

No peddlers shall perform any permitted activity in the Town of Elmira before 10:00 a.m. and after 7:00 p.m.

§ 160-8 Revocation of license.

The Clerk, and/or the Supervisor, may revoke any license issued under this chapter at any time for a violation of this chapter. When a license is revoked, no refund of any portion of the license fee shall be made. Notice of such revocation and the reason or reasons, in writing, shall be served upon the licensee named in the application, personally or by mailing in a postpaid wrapper, to the business or residential address given in the application for such license.

The license shall not be transferable or assignable. Should a licensee permit any other person to possess or use such license, such license shall automatically be revoked, the licensee shall thereby be guilty of violating this chapter, and no application for future license may be made within two years of revocation.

§160-9 Regulations.

- A. Unlawful sales. A licensee shall not falsely or fraudulently misrepresent the quantity, character or quality of any article offered for sale or offer for sale any unwholesome,
- B. tainted or diseased provisions or merchandise.
- C. Sanitary Conditions. A licensee shall keep the vehicle or receptacle used by him or her in a clean and sanitary condition and the food stuff and edibles offered for sale well covered and protected from dirt, dust and insects.
- D. Noise. A licensee shall not blow a horn, ring a bell or use any other noisy devise so as to create a public nuisance.
- E. Obstructions. A licensee shall not create or maintain any booth or stand or place any barrels, boxes, crates or other obstructions upon any street, sidewalk, right-of-way, or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.
- F. Hours. A licensee may not sell or vend within 250 feet of any school property between the hours of 8:00am and 4:00pm on school days nor enter upon private property for the purpose of peddling, soliciting or canvassing before the hours of 10:00am or after the hours of 7:00pm any day.
- G. Permitted Place. The licensee may perform his or her respective acts and occupations at any place in the Town of Elmira except on property owned or leased by the Town of Elmira or any district thereof or on property owned by any school district, or otherwise prohibited by the owner for the conduct of business.
- H. Use of public streets. None of the foregoing licensee shall use any of the public streets or

government property within the Town of Elmira as standing places for their vehicles, handcarts or pushcarts for the conduct of business.

- I. Identification. The licensee shall wear or exhibit identification for their company or self. They shall not portray in any way they are affiliated as a Town of Elmira employee.

§ 160-10 Appeal

- A. Any person aggrieved by the action of the Town Clerk and/or Supervisor in the denial of an application for a license or revocation of a license, as provided in this chapter, shall have the right to appeal to the Town Board.
- B. Such appeal shall be taken by filing, within 14 days after notice of the action complained of has been mailed to such person's last known address, as shown on the application, a written statement setting forth fully the grounds for the appeal.
- C. The Town Board shall set a time and place for a hearing on such appeal, and notice of such hearing shall be mailed to the applicant at his or her last known address at least 5 days prior to the date set for the hearing.
- D. The granting, refusal, revocation or suspension of a license or permit by the Town Board shall be subject to review pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York. Any such Article 78 proceeding must be commenced within 30 days of the mailing of notice of the action sought to be reviewed.
- E. The decision of the Town Board on such appeal shall be final and conclusive.

§ 160-11 Penalties for offenses.

Any person, firm or corporation who or which violates any provision of this chapter shall, upon conviction, be punished by a fine not to exceed \$500.00.

Aye-Bush, Milliken, Lucarelli, Allison

No- None