

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one:)

FILED
STATE
JAN 20 2023

of

DEPARTMENT OF STATE

Local Law No. 1 of the year 20 23

A local law Authorize Amendment of the Zoning Code -
(Insert Title)
Add Chapter 129 - Peddling + Soliciting Local Law
#1

Be it enacted by the Marion Town Board of the
(Name of Legislative Body)

County City Town Village
(Select one:)

TOWN OF MARION

of

as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 20 23 of the (County)(City)(~~Town~~)(Village) of Marion was duly passed by the Marion Town Board on January 3 20 23, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 ____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 ____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20 ____ *(Elective Chief Executive Officer*)*.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20 ____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 ____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20 ____ *(Elective Chief Executive Officer*)*. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 ____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

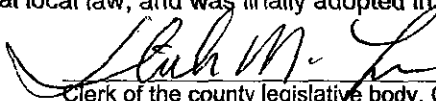
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.


Clerk of the county legislative body, City, town or Village Clerk or officer designated by local legislative body

Date: 1-3-2023

(Seal)



TOWN OF MARION
3823 North Main Street
PO Box 260
Marion, NY 14505
hlevan@townofmarionny.com

Heidi M. Levan
Town Clerk/Tax Collector/Notary Public/Registrar

Office: 315-926-4271
Fax: 315-926-3502

**Resolution #107-23 Authorize Amendment of the Zoning Code - Add Chapter
129 – Peddling & Soliciting Local Law #1-2023**

On a motion by Councilman Lonneville and seconded by Councilman Blik
ADOPTED: Long Roll:

Councilman Lonneville - Aye
Councilwoman Cramer – Aye
Councilwoman Herman – Aye
Councilman Blik - Aye
Supervisor Bender – Aye

Ayes: 5
Abstained: 0
Nays: 0

The following resolution was adopted

Chapter 129
Peddling and Soliciting

This chapter is intended to regulate peddling and soliciting activities in the Town of Marion to ensure the public welfare and to protect against criminal activity, including fraud and burglary; minimize the unwelcome disturbance of citizens and the disruption of privacy; and to otherwise preserve the public health, safety, and welfare by regulating, controlling, and licensing peddlers and solicitors, including but not limited to door-to-door peddlers and solicitors. This chapter also provides a means by which property owners may enjoy the use of their properties by allowing seasonal sales of various items while at the same time protecting pedestrians, traffic and motorists on roadways and intersections.

§ 129-1.2 Definitions and word usage.

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

CHARITABLE

Patriotic, philanthropic, social service, health, welfare, benevolent, educational, civic, cultural, or fraternal.

CLERK

The Town of Marion's Town Clerk.

CONTRIBUTIONS

Alms, money, subscriptions, property, or any donations.

FIXED LOCATION

Any permanent structure.

HAWKER

One who offers for sale his or her goods by calling out in the streets.

HAWKING

The selling or vending or offering for sale of any goods, wares, or merchandise for immediate delivery, which the person selling or offering for sale carries with him or her in traveling or has in his or her possession or control, upon any of the streets or sidewalks or from house to house in the Town of Marion.

PEDDLER

Any person who goes upon the premises of any property, not his or her own, carrying or transporting goods, wares, merchandise, or

personal property of any nature and offering the same for sale. This includes any person who solicits orders and as a separate transaction makes deliveries to purchasers. The word "peddler" shall not apply to the following:

1. Farmers seeking or taking orders for or selling or offering the sale of their own produce.
2. The seeking or taking of orders for or the selling or offering for sale of bread or bakery products, meats or meat products or milk or milk products by any manufacturer or producer to a commercial business for resale.

PEDDLING

All activities described under the definition of "Peddler"; of this section.

PERSON

A person or any firm, corporation, association, club, society, or organization.

SOLICITATION

All activities described under the definition of "Peddler"; of this section.

SOLICITOR

Any person who goes upon the premises of any private property, not his or her own, for the purpose of taking or seeking or attempting to take orders or make contracts for the sale of goods, merchandise, wares, or other personal property of any nature for future delivery or for services to be performed in the future. This includes any person who, without invitation, goes to upon private property to request subscriptions or contribution of funds or anything of value or to sell goods or services for political, charitable, religious, or other noncommercial purposes.

TRANSIENT MERCHANT

A person who engages or proposes to engage temporarily in merchandising business in the Town of Marion and occupies a room, building, tent, lot, stand, table, or other premises for the purpose of selling, trading, or bartering goods, wares, and merchandise.

B. Usage. The singular shall include the plural.
§ 129-2 Permit requirements; exemptions.

A. It shall be unlawful for any person to engage in peddling or soliciting activities within the Town of Marion without first obtaining a permit issued by the Town Clerk; provided, however, that the following are exempt from the provisions of this section:

1. Any solicitation made upon premises owned or occupied by an organization upon whose behalf the solicitation is made.
2. Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation.
3. Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable person or organization.
4. Any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected shall be turned over to the named beneficiary.
5. Yard sales, garage sales or conducted residential auctions of personal household property or sales of a like nature conducted in connection with a dwelling in a zoned residence district shall not be deemed to be conducting a transient retail business so long as no more than two such sales of not more than three days each per year are conducted on any parcel or private property. The person conducting such sale, whether resident or auctioneer, shall not require a permit.

6. The seasonal sale of fireworks, chicken barbecues and the like held on private property with the consent of the owner of said property shall not be deemed to be conducting a transient retail business. The Code Enforcement Officer for the Town of Marion shall have the authority to regulate the location of any tent, stand or booth to be utilized for any seasonal sales so as not to impede pedestrians, traffic or motorists; unobstructed view of public roadways and intersections.

7. Students of local schools engaged in selling or soliciting subscriptions, books, magazines, or periodicals for fund-raising activities.

B. This permit applies to any and all persons who wish to engage in peddling or solicitation, including but not limited to transient merchants as defined in

§ 129-1. This includes transient merchants who wish to offer for sale wares at any type of carnival, festival, flea market, craft show, etc.

C. No person engaged in the peddling, solicitation, hawking or selling of goods shall occupy any fixed location upon any of the streets, highways, sidewalks, or other locations for the purpose of hawking, peddling, vending, or soliciting. No permittee may enter upon any public park, Town property, municipal recreation facility, golf course, or municipal off-street parking areas, nor premises of educational institutions for the purpose of hawking, peddling, vending, or soliciting.

D. Any person who engages in the hawking or sale of goods during any community-wide or community-endorsed event or festival shall be required to obtain a peddlers permit for such event; such permit may be obtained and issued by the Town Clerk.

E. No person engaged in the peddling, solicitation, hawking or selling of goods shall do so within the Town of Marion on Sundays or any other days before 9:00 a.m. or after sunset.

F. Requirements of this chapter shall not apply to:

1. Marion Fall Festival.
2. Pioneer Gas Engine Shows.
3. Marion Car Show.

§ 129-3 Permit application.

Every person subject to the provisions of this chapter shall file with the Town Clerk an application in writing on a form to be furnished by the Town Clerk, which shall provide the following information:

- A. Proof of name, date of birth, address, and telephone number.
- B. A brief description of the business or activity to be conducted.
- C. The house, location, or event for which the right to peddle or solicit is desired.

D. Whether there is parking located at the site of the proposed solicitation location, and if so, the type of parking provided.

E. If self-employed or acting as an agent, the name, address, and telephone number of the principal who is being represented, with credentials in written

form establishing the relationship and the authority of the employee or agent to act for the employer or principal, as the case may be.

F. Each employee or agent shall sign a statement as to whether or not the applicant has been convicted of a felony, misdemeanor or local law violation, the nature of the violation, the penalty or punishment imposed, the date and place where such offense occurred, and other pertinent details thereof.

G. Proof of possession of any permit which, under federal, state, or local laws or regulations, the applicant is required to have in order to conduct the proposed business or which, under any such law or regulations, would exempt the applicant from the licensing requirements of this chapter.

H. The type of article, device, subscription, contribution, service, goods, wares and/or merchandise he or she desires to sell or for which he or she wishes to solicit within the Town of Marion.

I. The type of vehicle(s) he or she wishes to use, if any. The applicant must provide a valid registration and insurance card on each vehicle to be used.

J. Each person shall execute the application under oath or affirmation with a written and printed signature and, if for an organization, his or her title. He or she shall provide written proof of authorization to apply for a permit on behalf of said organization.

K. Exclusive of religious, charitable, or not-for-profit corporations, a recent photograph of the applicant showing the face of the applicant in a clear and distinguishing manner will be required.

§ 129-4 Fees.

A. At the time the application is filed with the Town Clerk, the applicant shall pay a fee as set forth from time to time by resolution of the Town Board of the Town of Marion to cover the cost of processing the application and investigating the facts stated therein, for a one-day permit, for a one-week

permit, or for an annual permit for each solicitor or peddler. The application fee shall be waived on one-day permits, for each applicant once per calendar year. An application fee will be charged for a second and subsequent application in a calendar year. This provision shall not apply to person soliciting orders for goods to be shipped into the state or otherwise involved in interstate commerce.

B. A New York State veteran, or resident surviving spouse of a Town veteran, may obtain a free permit to peddle upon the streets/highways of the Town so long as said veteran or resident surviving spouse of a veteran resides within the Town limits. Said permit is nontransferable.

C. Nonprofit organizations and persons working for such organizations, charitable, religious, and youth organizations shall be exempt from the payment of any fees under this chapter.

§ 129-5 Application review and permit issuance.

A. Upon receipt of an application, the Town Clerk shall review the application as deemed necessary to ensure the protection of the public health, safety, and general welfare.

B. If the Town Clerk finds the application to be satisfactory, the Town Clerk shall approve the application and shall, upon payment of the nonrefundable prescribed fee, deliver the required permit to the applicant.

§ 129-6 Denial of permit.

A. The Town Clerk may refuse to issue a permit or peddlers ID card to the applicant, agent, or employees under this chapter for any of the following reasons:

1. The location and time of solicitation or peddling would endanger the safety and welfare of the solicitors, peddlers, or their customers.
2. An investigation reveals that the applicant falsified information on the application.
3. The applicant has been convicted of a felony within the last five years preceding the date of the application.
4. The applicant, employee or agent offers no proof of authority to serve as an agent.
5. The applicant, agent or employee has been denied a permit under this chapter within the preceding past five years, unless the applicant can and does show to the satisfaction of the Town Clerk that the reasons for such earlier denial no longer exist.

B. The Town Clerk disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified that his or her application is disapproved and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form or at the applicant last known address.

§ 129-7 Permit expiration.

All permits issued under the provisions of this chapter shall expire one year from the date of issuance unless an earlier expiration date is noted on the permit.

§ 129-8 Identification badges.

Exclusive of any religious, charitable, or not-for-profit organization, any person soliciting or peddling within the Town of Marion shall wear an identification badge upon which shall show the name of the individual soliciting or peddling, the organization upon whose request the solicitation or peddling is made along with a recent photograph of the person so soliciting or peddling.

§ 129-9 Permit exhibition.

Every person required to obtain a permit under the provisions of this chapter shall exhibit the permit when requested to do so by any prospective customer or individual.

§ 129-10 Transfer prohibited.

It shall be unlawful for any person other than the permittee to use or wear any permit or badge issued under the provisions of this chapter. The person

designated on said permit or badge shall be the only person authorized to engage in such business thereunder.

§ 129-11 Entry upon signed premises unlawful.

It shall be unlawful for any person, whether permitted or unpermitted, while conducting the business of a peddler or solicitor, to enter upon any residential premises in the Town of Marion where the owner, occupant or person legally in charge of the premises has posted at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words “

Peddlers, solicitation; or words of similar import.

§ 129-12 Hours of solicitation.

No person, while conducting the activities of a peddler or solicitor, whether permitted or unpermitted, shall enter upon any private property, knock on doors or otherwise disturb persons in their residences on Sundays or any other days before 9:00 a.m. or after sunset.

§ 129-13 Permit revocation.

Any permit issued under this chapter may be revoked or suspended by the Town Clerk, after notice and a hearing of the Town Board, for any of the following reasons:

1. Fraud, misrepresentation, or false statement contained in the application for a permit.
2. Fraud, misrepresentation, or false statement made by the permittee while conducting solicitation or peddling activities.
3. Conducting peddling or solicitation activities contrary to the provisions in the permit.
4. Conviction for any felony.
5. Conducting peddling or solicitation activities in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety, or general welfare of the public.

Any fees paid are nonrefundable.

§ 129-14 Notice and hearing.

Notice of a hearing of the Town Board for revocation of a permit issued under this chapter shall be provided in writing and shall set forth specifically the grounds for the proposed revocation and the time and place of the hearing.

Notice shall be mailed, postage prepaid, to the permittee at the address shown on the permit application or at the last known address of the permittee.

§ 129-15 Appeals.

A. Any person aggrieved by the action or decision of the Town Clerk to deny, suspend, or revoke a permit applied for under the provisions of this chapter shall have the right to appeal such action or decision to the Town Board within 15 days after the notice of the action or decision has been mailed to the person address as shown on the permit application form or to his or her last known address.

B. An appeal shall be taken by filing with the Town Clerk a written statement setting forth the grounds for the appeal.

C. The Town Clerk shall transmit the written statement to the Town Supervisor within 10 days of its receipt, and the Town Supervisor shall set a time and place for a hearing on the appeal.

D. A hearing shall be set not later than 20 days from the date of receipt of the appellant written statement.

E. Notice of the time and place of the hearing shall be given to the appellant in the same manner as provided for the mailing of notice of action or decision.

F. The decision of the Town Board on the appeal shall be final and binding on all parties concerned.

G. The Town shall not be responsible for any lost sales opportunities due to the appeals process.

§ 129-16 Penalties for offenses.

A. Violation of any of the provisions of this chapter shall be treated as a violation and shall, upon conviction, be punishable by a fine of not more than \$250 and up to 15 days in jail.

B. In addition to any criminal enforcement, the Town of Marion or any individual may pursue any available civil remedies deemed appropriate and necessary.

§ 129-17 Severability.

The provisions of this chapter are deemed and declared to be severable. If any section, sentence, clause, or phrase of this chapter shall, for any reason, be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this chapter, but they shall remain in effect, it being the legislative intent that this chapter shall remain in effect notwithstanding the validity of any part.

§ 129-18 Disabled veterans.

A disabled veteran, who has obtained a permit pursuant to this chapter, shall not be subject to the terms and conditions of this chapter (other than the permit requirement), so long as he or she conducts his or her business without the use of a motorized vehicle.

§ 129-19 Prohibited acts.

A. No person engaged in soliciting or peddling or acting as a transient merchant shall occupy the streets or alleys or sidewalks of the Town of Marion for purposes of soliciting or peddling, with or without any type of stand, counter, cart, etc.

B. No peddler or solicitor shall peddle, vend, or sell his or her goods or wares within 200 feet any church or place of worship or public or private school during regular business hours.

C. No person shall solicit any business whatsoever at the scene of any accident within the Town of Marion.

D. All permittees offering for sale any ice cream or frozen food product, or water ices shall observe the following specified requirements:

1. No bell, whistle, horn, or other noisemaking device shall be used for vending purposes.
2. No vending shall be permitted from vehicles located on state highways.
3. No product shall be sold or dispensed to any child who must cross any street or highway to the vehicle from which products are sold or dispensed unless such child is accompanied by and under the immediate supervision and protection of the driver of said vehicle or other adult and such child is returned across such street or highway in the same manner before such vehicle shall leave the immediate location from which products are sold or dispensed. The driver of such vehicle shall not leave any area where he or she has sold or dispensed any product until all empty cartons, paper containers or other waste materials originating from said vehicle have been removed and placed in a container inside the vehicle.

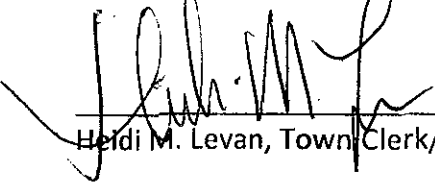
E. No vending shall be conducted within a distance of 75 feet of the radius curve of any street or highway intersection or from any other location which may obstruct the normal flow of traffic.

WHEREAS, the Town Clerk has recommended adding Chapter 129 Peddling & Soliciting to the Zoning Code; now

BE IT RESOLVED, that the Marion Town Board authorizes amending the Zoning Code effective January 3, 2023; and

BE IT RESOLVED, that the Marion Town Board directs the Clerk of the Board to give a copy of this resolution to the Code Enforcement Officer and the Town Clerk.

I, Heidi M. Levan, Town Clerk/Clerk of the Board do hereby certify that this is a true and exact copy of the resolution presented and adopted at a regular meeting of the Town of Marion Board held on Tuesday, January 3, 2023 in the Marion Municipal Room.



Heidi M. Levan, Town Clerk/Clerk of the Board

Town of Marion is an equal opportunity provider and employer.
Complaints of discrimination should be sent to:
USDA Director, Office of Civil Rights, Washington, DC 20250-9410