

# **TOWN OF ULSTER**

Local Law No. \_\_\_\_\_ of 2010

A Local Law Providing for the Adoption of a New Chapter 131 of the Town Code

Be it enacted by the Town Board of the Town of Ulster as follows:

## **Section I. Repeal of Current Chapter 131 of the Town Code**

The current provisions of Chapter 131 of the Code of the Town of Ulster are hereby repealed.

**Section II.** A new Chapter 131 is hereby enacted as appears in Schedule “A” attached hereto.

## **Section III. Severability**

If any clause, sentence, paragraph, section, article or part of this Local Law shall be adjudicated in any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered, and such invalidity shall not be deemed to affect the remaining portions thereof.

## **Section IV. Effective Date**

This Local Law shall be effective as provided by law, upon filing and acceptance by the New York State Secretary of State.

## **SCHEDULE "A"**

### **CHAPTER 131. PEDDLING AND SOLICITING**

#### **§ 131-1. Findings; intent.**

A. The Town Board of the Town of Ulster finds that there has been an increase in the number of roadside peddlers selling their wares from vehicles on vacant and improved land adjacent to major roadways within the Town.

B. It is necessary and proper, pursuant to the powers granted unto the Town of Ulster by virtue of Town Law § 136, to regulate the practice of peddling. It is the intent of this chapter to regulate peddling and soliciting in the Town of Ulster, and this chapter is enacted pursuant to Town Law § 136.

#### **§ 131-2. Definitions.**

As used in this chapter, the following terms shall have the meanings ascribed to them:

##### **ESTABLISHED PLACE OF BUSINESS**

A building or store in which a person transacts business and deals in the goods, wares and merchandise he hawks, peddles or solicits.

##### **HAWKER and PEDDLER**

Includes any person, either principal or agent, who from any vehicle or any public street or public place or by going from house to house, on foot or on or from a vehicle, sells or barter or offers for sale or barter or carries or exposes for sale or barter any goods, wares or merchandise.

##### **PUBLIC GROUNDS**

Lands in addition to Town rights-of-way owned by the Town of Ulster and used for public purposes, such as parks and recreation areas.

##### **PUBLIC WAY**

Any publicly owned land adjacent to and abutting any public street, road or highway.

##### **SOLICITOR**

Includes 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 or merchandise.

##### **SPECIAL PERMIT**

A permit issued by the Town Clerk subject to the terms and conditions of this chapter for the sale of food and drink items from a vehicle parked on public grounds.

##### **VEHICLE**

Includes any automobile, truck, wagon or cart, either propelled by hand, motor power or

animals, or any other means of transportation of commodities or locomotion.

**§ 131-3. Exempt sales.**

The provisions of this chapter shall not apply to political, charitable, or not-for-profit organizations involved in activities covered by this statute, and shall not apply to peddling of meats, fish, fruits or farm produce. This exemption shall apply to farmers and producers thereof or his or her servants or employees and shall not be construed to include other persons who buy goods for resale.

**§ 131-4. Veteran's license exemption.**

Any honorably discharged veteran of the armed services of the United States who has obtained a veteran's license from the Ulster County Clerk, under § 32 of the General Business Law, to hawk, peddle, vend or solicit trade on the streets and highways within the County of Ulster shall be exempt from the provisions of § 131-8 of this chapter. Upon approval of the veteran's application, the Town Clerk will issue the license to said veteran to ply his or her trade in the Town of Ulster, subject to all other provisions of this chapter. However, said individual will need a special permit as herein required; provided, however any honorably discharged veteran is exempt for paying any fee under this chapter.

**§ 131-5. License required.**

A. It shall be unlawful for any person, except as exempted herein, to peddle within the Town of Ulster without first having obtained a license from the Town Clerk as hereinafter provided for each vehicle, and it shall be unlawful for an individual to peddle on public grounds without a special permit for each vehicle from the Town Clerk in addition to said license.

B. The applicant shall submit and maintain a current list of drivers of said vehicles.

**§ 131-6. License and special permit application requirements.**

A. Applicants for a license and a special permit to peddle or a renewal thereof shall file with the Town Clerk a verified application upon a form supplied by the Town Clerk, which shall contain the following:

- (1) The name, address and telephone number of the applicant.
- (2) The applicant's place of residence for the past five years.
- (3) The applicant's business or employer for the past five years.
- (4) The applicant's age, height, weight, color of eyes, color of hair and place of birth.
- (5) Two full-face photographs of the applicant taken within 30 days of the application and

measuring at least 1 1/2 inches by 1 1/2 inches.

(6) [Reserved]

(7) Whether or not the applicant has ever been convicted of a felony, misdemeanor or violation of any municipal ordinance, except traffic violations, and if so, the date, court, ordinance violated and sentence of the court.

(8) Whether the applicant has been previously licensed in any occupation, and if so, when, where and for what periods, and if such previous license was ever revoked, the date of revocation and the reason therefor.

(9) The name and address of the person, firm or corporation the applicant represents or is employed by.

(10) The particular business, trade or occupation for which the license is requested, including a brief description of the nature of the business and the kind of goods or property to be peddled or solicited.

(11) The manner or means of conveyance in which said business or trade or occupation shall be conducted.

(12) If the application is for a license to handle food in any form, the applicant shall submit a valid permit issued by the Ulster County Health Department indicating compliance with the provisions of the Ulster County Public Health Regulations.

(13) If the applicant requires the use of weighing and/or measuring devices, such application shall be accompanied by a certificate, not more than six months old, from the County Sealer of Weights and Measures certifying that all weighing and measuring devices to be used by the applicant have been examined and approved.

(14) If the application involves use of a vehicle, proof of a valid state motor vehicle registration for the vehicle to be used.

(15) If the application involves the use of a vehicle, proof that the applicant holds a valid state driver's license.

(16) Proof that applicant holds a New York State sales tax identification number.

B. In the event that any other license or permit shall be required by any other governmental agency in connection with the applicant's business, the same shall be produced by the applicant and the Town Clerk shall duly note the same.

C. Any change in circumstances with regard to the information provided in the application or on the license shall be reported to the Town Clerk within 30 days.

D. The applicant must submit proof that the vehicle subject to the license and or permit is covered by a current liability insurance policy as required by New York State Law which shall be attached to the application in the form of a current copy of insurance policy or certificate of insurance. Applicants who receive a license and or special permit as described in this chapter shall be subject to the directions and restrictions imposed by the individual in charge of the event, if any, taking place on the public grounds as herein defined. Applicant shall also have and provide proof of commercial auto insurance in the minimum sum of \$20,000.

E. The license and special permit as described herein shall be issued as applications are received and shall be valid for one calendar year. It shall be the licensee and/or permittee's responsibility to renew his or her license or permit once expired. The Town shall not be obligated to send out reminder notices or renewal forms.

F. The applicant shall provide evidence of liability insurance with minimum policy limits of one million dollars (\$1,000,000) per occurrence.

#### **§ 131-7. Application procedure.**

A. The application, accompanied by all required information and a nonrefundable application fee, in the amount as set by the Town Clerk and/or the Town Board. Fees shall be submitted to the Town Clerk.

B. Upon receipt of such application, the Town Clerk shall refer the same to the Town of Ulster Building Department for such investigation of the applicant as to the applicant's compliance with Town of Ulster building and zoning codes and regulations.

C. If such investigation should prove the applicant to be in violation of any Town of Ulster building and zoning codes and regulations, the Building Department shall attach to the application a copy of the applicant's violations and shall return the application to the Town Clerk.

D. The Town Clerk may refuse to issue the license or special permit if the applicant has any open violations of Town of Ulster building and zoning codes and regulations, or the applicant shall be an undesirable person or incapable of properly conducting the trade or business involved.

E. Any applicant who has been denied a license or special permit under Subsection D may apply to the Town Board at its next regular meeting for a review of such denial by the Town Clerk. In the event that the Town Board, after formal review thereof, approves the license or special permit, the application shall be returned to the Town Clerk, who, upon payment of the prescribed license fee by the applicant, shall proceed to issue the peddler's license.

F. Such license shall contain the following:

- (1) The name, address and photograph of the licensee.
- (2) The kind of goods to be peddled or solicited thereunder.

- (3) The amount of fee paid.
- (4) The peddler's license number.
- (5) The date of issuance and the date of expiration of such license.
- (6) The type of license (i.e., on foot or by vehicle).
- (7) The state license plate number of the vehicle if for a vehicular permit.
- (8) The seal of the Town of Ulster.
- (9) The signature of the Town Clerk.

G. The Town Clerk shall keep a record of all licenses issued, and a list of such licensed peddlers shall be filed with the Town Police Department.

H. The applicant for either a license or special permit by virtue for the application for said license or permit does expressly authorize the Town Clerk's Office to do a background check including but not limited to his or her driving record and other background material.

#### **§ 131-8. License fees; expiration.**

A. There shall be a nonrefundable application fee in the amount as set by the Town Clerk and/or Town Board. If the application is approved, the peddler's license fee shall be in the amount as provided by the Town Clerk and/or the Town Board.

B. All licenses issued pursuant to this chapter shall be issued annually and shall expire on the last day of December next succeeding the date of issuance.

C. The annual fees herein provided shall be assessed on a yearly basis, and no annual fee shall be prorated or rebated.

#### **§ 131-9. License production and display.**

A. Each licensee shall carry on his or her person all licenses or special permits issued by the Town Clerk at all times that the licensee is engaged in peddling and shall exhibit the same to any Town official or police officer upon request.

B. If a peddler's license or special permit is lost or stolen, such shall be reported to the Town Clerk within 10 days. Upon such notification, the Town Clerk shall issue a replacement peddler's license at a cost to the licensee.

C. Each vehicle shall display the license and/or permit issued by the Town Clerk on its windshield, rear bumper or front bumper in a location totally and readily visible to any member

of the public, and a failure to do so shall constitute a violation of this section.

**§ 131-10. Nontransferability of license.**

No license or special permit issued under the provisions of this chapter may be used or displayed at any time by any person other than the person whose name and picture appear on the license.

**§ 131-11. Peddling restrictions.**

A. Restricted and prohibited locations:

(1) Pursuant to §§ 1157(c) and 1800 of the New York State Vehicle and Traffic Law, no pedestrian shall occupy any part of a state highway in any manner for the purpose of selling or soliciting, except a veteran holding a peddler's license under §§ 32 and 35 of the General Business Law.

(2) In the interest of public safety and due to traffic hazards caused by stopping of motor vehicles and traffic congestion on certain highways in the Town of Ulster during the hours set forth herein, no person shall park any vehicle, cart, wagon or trailer between the hours of 7:00 a.m. and 7:00 p.m. along and upon the state and county roads listed below in the Town of Ulster or within 200 feet from the point where any listed road intersects any other road or highway for the purpose of peddling: [reserved]

(3) It shall be unlawful for any peddler or solicitor to peddle, vend or sell his or her goods or wares within 250 feet of any church or place of worship during services or any place occupied as a public or private school or college or for school or college purposes while in session, nor shall he or she permit his or her cart, wagon or vehicle to stand on any public highway within said distance of any such school or college property while in session.

(4) It shall be unlawful for any peddler or solicitor in plying his or her trade to enter upon any premises or property, or to ring the doorbell or knock upon or enter any building whereon there is painted or otherwise affixed or displayed to public view any sign containing any or all of the following words, "No peddlers, no solicitors, no agents," or other wording the purpose of which purports to prohibit peddling or soliciting on the premises.

(5) It shall be unlawful for any peddler or solicitor in plying his or her trade to enter property on which there exists an apartment complex, a mobile home park or a shopping complex to solicit on foot without the permission of the owner of such property to do so.

B. Use of signs and displays:

(1) It shall be lawful for peddlers to use signs which are painted on or affixed to a peddler's vehicle, provided the same do not exceed the dimensions of the vehicle on which they are placed and such vehicle can be driven with the sign affixed. Such permitted signs shall be exempt from the provisions of this chapter. The use of other movable, portable and/or freestanding signs by

peddlers is prohibited.

(2) Only one awning or umbrella which is mounted on a vehicle licensed pursuant to this chapter is permitted per vehicle.

C. Other peddling restrictions. It shall be unlawful for any peddler licensed pursuant to this chapter to stand or allow or permit the vehicle used by him or her to stand in any one public place for more than four hours. After four hours in any one public place, said peddler must move his or her vehicle a distance of not less than 500 feet from said place. This restriction shall not apply to peddlers or vendors who are participating in a one-day or two-day special event sanctioned by the Town Board.

D. Occupying public ways or grounds. No person shall store commercial vehicles on public streets or public grounds if such vehicles are, at the time of storage, being held out for sale, lease, rent or loan to the general public.

E. Locating near established places of business. It shall be unlawful for any peddler licensed pursuant to this chapter to peddle, vend or sell his or her goods or wares within 500 feet of any established place of business selling like or similar items for similar uses or consumption. A like or similar item or use shall be judged by the consumer market for which it is offered for sale. This restriction shall not apply to flea markets, carnivals, circuses, community days or other similar activities.

F. No person shall park a commercial vehicle on public grounds for the purpose of selling merchandise, foods, drinks or any other type of commodity without a license under § 131-5, and without special permit from the Town Clerk for the utilization of public grounds.

#### **§ 131-12. Enforcement.**

It shall be the duty of any police officer of the Town of Ulster to require any person seen peddling or soliciting on public streets, rights-of-way or public grounds to produce a copy of the license required under the provisions of this Code and the special permit necessary for sale of goods on public grounds and to enforce the provisions of this chapter against any person violating the same.

#### **§ 131-13. Revocation of license.**

A. Special permits or licenses issued under the provisions of this chapter may be revoked by the Town Board of the Town of Ulster, after notice and hearing, for any of the following causes:

(1) Fraud, misrepresentation or false statement contained in the application for license.

(2) Fraud, misrepresentation or false statement made in the course of carrying on business as a peddler.

(3) Any violation of this chapter.

(4) Conviction for any crime or misdemeanor involving moral turpitude.

(5) Conviction for a felony or misdemeanor, which misdemeanor or felony, in the judgment of the Town Board, renders the applicant unfit or undesirable.

(6) Conducting the business of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(7) Upon the recommendation of the Ulster County Department of Health that the sale of food or food products or other edibles is being conducted under unsanitary conditions or that there is a violation of law, regulation, code or ordinance cited by the Ulster County Department of Health.

B. Notice of the hearing for revocation of a license shall be given by the Town Clerk, in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his or her last known address at least 10 days prior to the date set for hearing.

C. The Town Clerk, upon receiving information giving him or her reasonable cause to believe that the holder of any license or special permit hereunder has violated any provisions of this chapter or has been convicted of any violation referred to in this section or convicted of any crime or misdemeanor herein, may temporarily suspend such license, after notice and hearing.

#### **§ 131-14. Penalties for offenses.**

A. Any person violating any provision of this chapter shall be guilty of a violation and shall be punishable by a fine of not more than \$1,000 or by imprisonment not exceeding 15 days, or by both such fine and imprisonment.

B. In addition to any other remedies set forth herein authorizing the Town to enforce the provisions of this chapter, establishing penalties, and setting forth additional remedies, the person charged with the responsibility to enforce the provisions of this chapter may impose a civil fine or agree to a civil fine not to exceed \$1,000 per day for each day of the violation. If said civil fine is imposed, then the alleged violator may appeal to the Town Board.