

Chapter 396. Peddling and Soliciting

[HISTORY: Adopted by the Town Board of the Town of Southport 7-8-1975 by L.L. No. 1-1975 (Ch. 17 of the 1975 Municipal Code). Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 459.

§ 396-1. 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 the person transacts business and deals in the goods, wares and merchandise he hawks, peddles or solicits for during regular business hours on a daily basis.

HAWKER and PEDDLER

Includes, except as hereinafter expressly provided, any person, either principal or agent, who from 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 or from any vehicle, sells or barter, offers for sale or barter, or carries or exposes for sale or barter any goods, wares or merchandise, books, magazines, periodicals or any other item or items of value, except milk, newspapers and food distributed on regular customer routes.

SOLICITOR

Includes any person who goes from place to place or house to house or by telephone or stands in any street or public place taking or offering to take orders for goods, wares or merchandise, books, magazines, periodicals or any other item or items of value (except newspapers or milk), or for services to be performed in the future, or for making, manufacturing, or repairing any article or thing whatsoever for future delivery. The term "solicitor" shall, however, also mean and include any person taking or offering to take orders for goods, wares or merchandise, books, magazines, periodicals or any other item or items of value (except newspapers or milk), or for services to be performed in the future or for making, manufacturing, or repairing any article or thing whatsoever for future delivery at the home or residence of any person who has been solicited prior thereto by telephone, or has responded to any type of advertising media requiring an appointment or consultation or sales presentation in the home or place of residence of such person.

§ 396-2. Exemptions.

A. Nothing in this chapter shall be held to apply to any sales:

- (1) Conducted pursuant to statute or by order of any court.
- (2) To any person selling personal property at wholesale to dealers in such articles.
- (3) To persons under the age of 18 years.
- (4) To peddling of meats, fish, fruit and farm produce by farmers and persons who produce such commodities.
- (5) To any honorably discharged member of the armed forces or any other person who has procured a license issued by the County Clerk as provided by § 32 of the General Business Law of the State of New York.

B. Nonprofit organizations and persons working for such organizations shall also be exempt. However, such organization shall register annually with the Town Clerk in the event they plan to engage in vending, hawking, peddling or soliciting, and shall indicate the type of activities to be undertaken and the time when they will be performed.

C. Interstate commerce. This chapter also shall not apply so as unlawfully to interfere with interstate commerce, and to that end all persons claiming to be engaged in interstate commerce or claiming any of the exemptions hereinabove set forth, shall apply to the Town Clerk for a certificate of exemption, using the form supplied by the Town Clerk's office, the applicant shall also submit to the Town Clerk satisfactory evidence that he or she is engaged in interstate commerce.

[Added 10-13-1992 (Res. No. 214-92)]

D. Certificate of exemption. When the applicant shall have established to the satisfaction of the Town Clerk that he or she is engaged in interstate commerce, or is entitled to one or more of the above exemptions, the Town Clerk shall issue to him or her, without charge, a certificate of exemption, stating among other things, that such person has complied with the requirements of this section and has satisfactorily established that he or she is engaged in interstate commerce or entitled to an exemption under Subsections A and B. Such certificate shall be carried with the person exercising it and shall be exhibited upon demand. Each such certificate shall be invalid after one year from its date of issue. The securing of any such certificate by fraud or misrepresentation by any person not in fact engaged in interstate commerce or entitled to one or more exemptions shall constitute a violation of this chapter.

[Added 10-13-1992 (Res. No. 214-92)]

§ 396-3. License required.

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

§ 396-4. Application for license.

A. Any person desiring to procure a license as herein provided shall file with the Town Clerk a written application upon a form furnished by the Town Clerk and shall file at the same time satisfactory proof of good character. Such application shall give:

- (1) The number and kind of vehicle to be used by the applicant in carrying on the business for which the license is desired.
- (2) The kind of goods, wares and merchandise he desires to sell or the kind of service he desires to perform.
- (3) The method of distribution.
- (4) The name, address and age of the applicant.
- (5) Whether or not the applicant has been convicted of a misdemeanor or felony, and if so, give date of conviction, nature of offense, penalty imposed and name and address of court.
- (6) The name and address of the person, firm or corporation he represents.
- (7) The length of time the applicant desires the license.
- (8) Such other information as may be required by the Town Board.

B. If applicable, such application shall be accompanied by a certificate from the Sealer of Weights and Measures certifying that all weighing and measuring devices to be used by the applicant have been examined and approved.

§ 396-5. Bonds.

An application for a license as a solicitor who demands, accepts or receives payment or deposit of money in advance of final delivery, shall also be accompanied by a cash deposit of \$5,000 or a five-thousand-dollar surety company bond or other bond secured by sufficient collateral, said bond to be approved by the Town Attorney as to form and surety conditioned for making a final delivery of the goods, wares, or merchandise ordered, or services to be performed in accordance with the terms of such order or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any licensed solicitor shall have the right by action on the bond for the recovery of money or damages, or both. Such bond shall remain in full force and effect, and in case of a cash deposit, such deposit shall be retained by the Town for a period of 90 days after the expiration of any such license, unless sooner released by the Town Board.

§ 396-6. Issuance of license.

A. Upon the filing of the application, bond and certificate as provided in the preceding section, the Town Clerk shall, upon approval of such application, issue to the applicant a license as provided in § 396-3. A license may be refused if the applicant shall have been convicted of a misdemeanor or felony, which in the judgment of the Town Clerk renders the applicant unfit or undesirable to carry on the trade or occupation for which the license is sought. The Town Clerk may also refuse a license to any person who in his judgment shall be an undesirable person or incapable of properly conducting the trade or business for which a license is sought.

B. Any applicant who has been refused a license by the Town Clerk may apply to the Town Board, therefor, and the same may be granted or refused by the Town Board, except as prohibited by Town Law § 137.

§ 396-7. Use of license by another person prohibited.

Any holder of any license who permits it to be used by any other person, and any person who uses such license granted to any other person shall each be guilty of a misdemeanor.

§ 396-8. Loss of license.

Whenever a license shall be lost or destroyed on the part of the holder or his agent or employee, a duplicate in lieu thereof, under the original application and bond may be issued by the Town Clerk upon the filing with him by the licensee of an affidavit setting forth the circumstances of the loss, and what, if any, search has been made for its recovery.

§ 396-9. Contents and form of license.

All licenses shall be issued from a properly bound book with proper reference stubs kept for that purpose, numbered in that order in which they are issued and shall state clearly the kind of vehicle to be used, the kind of goods, wares and merchandise to be sold or service to be rendered, the number of his license, the date of issuance and expiration of the license, fee paid and the name and address of the licensee.

§ 396-10. Term of license.

Such license shall be for such term as requested by the applicant but shall expire not later than the first day of January next succeeding.

§ 396-11. Exhibition of license.

Every licensee, while exercising his license, shall carry the license with him and shall exhibit the same upon demand.

§ 396-12. License fee.

A. The license fee for each person licensed as a hawker, peddler or solicitor shall be as set from time to time by resolution of the Town Board, as follows: for a period of six months or less; and for a period in excess of six months but for not more than one year.^[1]

^[1]Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

B. The license fee for each person licensed to assist a hawker, peddler or solicitor shall be as set from time to time by resolution of the Town Board, as follows: for a period of six months or less; and for a period in excess of six months but for not more than one year.^[2]

^[2]Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

C. For the purpose of this chapter, a person who assists a hawker, peddler or solicitor shall be deemed to be any person who participates in delivering merchandise or any other items sold, performs any services in or about the customer's premises or otherwise generally renders aid or assistance, except participation in selling or soliciting orders.

§ 396-13. Revocation of license.

A license issued pursuant to this chapter may be revoked after a public hearing as provided in Article 9 of the Town Law.

§ 396-14. Prohibited acts.

A. It shall be unlawful for any person to enter upon private property for the purpose of peddling or so soliciting before the hour of 9:00 a.m. of any day or after the hour of 7:00 p.m. of any day except upon the invitation of the householder or occupant.

B. It shall be unlawful for any peddler or solicitor in plying his trade to ring the bell 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.

C. No peddler or solicitor shall peddle, vend, or sell his goods or wares within 200 feet of any place occupied exclusively as a public or private school or for school purposes, nor shall he permit his cart, wagon or vehicle to stand on any public highway within said distance of such school property.

D. No peddler or solicitor shall falsely or fraudulently misrepresent the quantity, character or quality of any article offered for sale. No person shall by any trick or device or by any false representation obtain or attempt to obtain admission to the house or garage of any person or corporation in the Town.

E. No peddler or solicitor shall 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.

F. It shall be unlawful to create or maintain any booth or stand or place any barrels, boxes, crates or other obstructions upon any street or public place for the purpose of selling or exposing for sale any goods, ware or merchandise.

G. No peddler or solicitor shall represent or state or otherwise indicate that he is not intending to sell or otherwise enter into a contract with any person in the household.

H. No peddler or solicitor shall, in order to effectuate or assist in any sale or solicitation, represent that he is engaged in any contest or in any way attempt to induce a sale or solicitation by appealing to the sympathies of the person so solicited.

I. Any contract or sale made in violation of Subsection D, G or H shall be null and void and of no effect as to the person solicited, and the merchandise delivered shall be forfeited and any sums paid by the person so solicited shall become immediately due and payable jointly and severally by the peddler or solicitor and his principal.

J. Entering upon private property without prior permission. Notwithstanding any other provision in this chapter, no person shall enter upon any private residential property in the Town of Southport, for the purpose of vending, peddling or soliciting an order for any merchandise, device, work, services, book, periodical or printed matter whatsoever; nor for the purpose of soliciting alms or a subscription or a contribution to any church, charitable or public institution; nor for the purpose of distributing any handbill, pamphlet, tract, notice, or advertising matter; nor for the purpose of selling or distributing any ticket or chance whatsoever without the consent of the occupant of said premises previously given; provided, however, this shall not apply to volunteer firemen or any organization, the principal beneficiaries of which are minors or for members of a church, or similar organization from soliciting its own membership.

[Added 10-13-1992 (Res. No. 214-92)]

§ 396-15. 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 made 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 is paid to the solicitor.

§ 396-16. Records.

It shall be the duty of the Town Clerk to keep a record of all applications and of all licenses granted under the provisions of this chapter giving the number and date of each license, the fee paid and the date of revocation of all licenses revoked.

§ 396-17. Penalties for offenses.

[Amended 5-11-1993 by ordinance (Res. No. 124-93)]

Any violation of this chapter shall be punishable as provided in Chapter 1, General Provisions, Article III, General Penalty, of the Code of the Town of Southport.