

CHAPTER 115: PEDDLERS, TRANSIENT VENDORS, AND SOLICITORS

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§ 115.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PEDDLING. Transporting goods from place to place and selling or offering for sale such goods, or without traveling from place to place, selling or offering for sale any goods from any vehicle or device; provided that separating the acts of sale and delivery for the purpose of evading the provisions of this chapter shall be deemed **PEDDLING** .

PERSON. Natural persons, corporations, and all business or other entities of any kind.

SOLICITING. Traveling from place to place taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance; and using or occupying any building or premises for the sole purpose of taking or offering to take orders for the sale of goods for future delivery or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance.

TRANSIENT VENDING. Engaging in a temporary business of selling and delivering goods, and for this purpose, using or occupying any building or premises; provided that merely associating a transient business with a permanently established business does not exclude it from this definition.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.02 PERMIT REQUIRED.

No person shall engage in peddling, soliciting or transient vending in the town without first obtaining a permit issued by the Town Police Department unless an exemption applies under § 115.13.

(Ord. 2015-02-04, passed 2-2-15) Penalty, see § 115.99

§ 115.03 PERMIT APPLICATION.

Any person wanting to engage in peddling, soliciting or transient vending in the town shall submit to the Town Police Department (the "Department") a permit application on a form to be furnished by the Department, which shall provide the following information and documentation:

(A) The name, the permanent address or the temporary address in the vicinity of Clayton, of the applicant;

(B) Proof of date of birth, address and identification of the applicant, to be provided through a driver's license or other legally recognized form of photo identification and proof of social security number;

(C) A brief description of the business or activity to be conducted including a description of the goods, wares, merchandise, food, periodicals, items or services to be sold or offered for sale;

(D) The proposed dates, hours and location for the proposed peddling, soliciting or transient vending;

(E) A description of any vehicle to be used in connection with the proposed peddling, soliciting or transient vending, including the year, make, model, body style, color and license number;

(F) The age, height, weight and other identifying information of the person proposing to engage in peddling, soliciting or transient vending;

(G) Written permission to use the proposed location signed by the property owner if the application is for transient vending on property not owned by the applicant;

(H) If employed in connection with the proposed peddling, soliciting or transient vending, the name, address and telephone number of the employer, or if acting as an agent, the name, address and telephone number of the principal on whose behalf the applicant is acting, 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;

(I) A list of any and all crimes of which the applicant has been convicted or has pleaded no contest to in the ten years preceding submittal of the application, describing the nature of the offense or violation, the penalty or punishment imposed, the date and place of the crime, the official file number of the criminal case, excluding minor traffic offenses not punishable by incarceration; the applicant shall provide a certified copy of his or her criminal record for the county of his or her permanent residence and for each county in which he or she has a conviction or plea of no contest in the ten years preceding the application, excluding minor traffic offenses not punishable by incarceration; the applicant shall list all registrations of the applicant as a registered sex offender with the State of North Carolina, any other state or a federal agency;

(J) Proof of possession of any license or 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 regulation, would exempt the applicant for the licensing requirements of this chapter;

(K) Two photographs of the applicant which shall have been taken within 60 days immediately prior to the date of filing of the application and show the head and shoulders of the applicant in a clear and distinguishing manner;

(L) A description of all other licenses or permits, such as a privilege license, obtained by the applicant in connection with the proposed peddling, soliciting or transient vending;

(M) The Department shall make copies of all IDs or other credentials relied upon by the applicant;

(N) If the applicant is an employer or principal, a separate application shall be submitted for each employee or person who will be peddling, soliciting or transient vending and a separate permit will be processed for each; and

(O) The signature of and sworn verification of the application's contents by each applicant and person who will be peddling, soliciting or transient vending.

(Ord. 2015-02-04, passed 2-2-15) Penalty, see § 115.99

§ 115.04 FEES.

(A) For each application, the applicant shall pay a \$50 nonrefundable fee to cover the cost of the town's processing the application and investigating the facts stated therein.

(B) The cost for a renewal application shall be \$25.

(C) All fees shall be payable to the town and shall be paid at the customer service desk of the Town Hall at the time of submittal of the application.

(D) If an application is approved and a permit is issued, the \$50 nonrefundable fee will cover the cost of the issuance of the permit and badge.

(E) The permittee shall pay a fee of \$25 to cover the cost of a lost or stolen permit or badge.

(F) The fees included herein are subject to annual review by the Town Council.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.05 APPLICATION REVIEW AND PERMIT ISSUANCE.

(A) Upon receipt of an application, the Police Chief or designee (hereinafter "Police Chief") shall review the application and conduct an investigation to determine whether the standards of § 115.06 are met.

(B) If the Police Chief finds the application meets the standards of §115.06, the Police Chief shall endorse his or her approval on the application and shall deliver the permit and badge to the applicant. The Police Chief shall make his or her determination within five days of submission of the application.

(C) The permit shall show the name and address of the permittee, the class of permit issued, the kind of goods and

services to be sold or delivered, the date of issuance, and the length of time that the permit shall be in effect. The permit shall also show the permit number and identifying description of any vehicle to be used in carrying on the business for which the permit is issued. The badge shall show the name, photograph, and the permit number of the permittee.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.06 STANDARDS FOR ISSUANCE OR DENIAL OF PERMIT.

(A) If the application meets all of the following standards, it shall be approved and a permit shall be issued, if not the application shall be denied.

- (1) The application is complete and does not contain false information.
- (2) The persons proposing to engage in the peddling, soliciting or transient vending may lawfully do so.
- (3) The location and time of the proposed peddling, soliciting or transient vending would not endanger the safety and welfare of the peddlers, solicitors or transient vendors or their customers.
- (4) The applicant for a peddler, solicitor, or transient vendor permit shall not have been convicted of a felony, misdemeanor or ordinance violation involving a sex offense, a controlled substance trafficking or sales offense or any violent acts against persons or property, such conviction being entered within the ten years preceding the date of application; nor shall they have been released from incarceration for such offense within one year preceding the date of application.
- (5) The applicant for a peddler, solicitor, or transient vendor permit shall not be a person against whom a judgment based upon, or a criminal conviction for, fraud, forging, theft, uttering, deceit or misrepresentation or other actions or crimes of like nature involving moral turpitude has been entered within the ten years preceding the date of application; nor shall they have been released from incarceration for such offense within one year preceding the date of application.
- (6) The applicant for a peddler, solicitor, or transient vendor permit shall not have been convicted of a felony violation involving murder, rape, manslaughter, or robbery.
- (7) The applicant for a peddler, solicitor, or transient vendor permit shall not be a person registered as a sex offender with the State of North Carolina, any other state or a federal agency.
- (8) There is proof as to the authority of the applicant to serve as an agent to the principal.
- (9) The applicant for a peddler, solicitor, or transient vendor permit shall not have been denied a permit under this chapter within the immediate past year, unless the applicant can and does show to the satisfaction of the Police Chief that the reasons for such earlier denial no longer exist.

(B) In the case of denial, the Police Chief's denial and the reasons for denial shall be noted on the application, and the applicant shall be notified that his or her application is denied 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's last known address.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.07 PERMIT EXPIRATION AND RENEWAL.

Unless renewed, all permits issued under this chapter shall expire 30 days from the date of issuance, unless an earlier expiration date is noted on the permit. A permit may be renewed for an unlimited number of 30-day periods provided an application for renewal is made on a form provided by the department prior to the expiration of a current valid permit. The Police Chief shall review a renewal application for continuing compliance with the provisions of this chapter, and if the applicant is in compliance, the renewal permit shall be issued. Applications for renewal received after expiration of the relevant permit shall be treated as new applications.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.08 BADGE AND PERMIT EXHIBITION.

A badge shall be issued to every person authorized by a permit to engage in peddling, soliciting or transient vending. The badge shall show the name, photograph, and the permit number of the permittee. All persons engaging in peddling, soliciting or transient vending shall display the badge on the front of his or her person in a manner that is easily observable. Additionally, every person engaging in peddling, soliciting or transient vending shall keep on their person the permit and badge obtained under the provisions of this chapter and shall exhibit the permit and badge when requested to do so by any prospective customer, police officer, or town employee.

(Ord. 2015-02-04, passed 2-2-15) Penalty, see § 115.99

§ 115.09 TRANSFER PROHIBITED.

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

(Ord. 2015-02-04, passed 2-2-15) Penalty, see § 115.99

§ 115.10 PERMIT REVOCATION.

(A) Any permit issued under this chapter may be revoked or suspended by the Police Chief for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the permit application;
- (2) Fraud, misrepresentation or false statement made by the permittee in the course of peddling, soliciting or transient vending;
- (3) Peddling, soliciting or transient vending contrary to the provisions contained in the permit;
- (4) Conviction for any crime that would have prevented issuance of the permit in the first place;
- (5) Conducting peddling, soliciting or transient vending 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; or
- (6) The existence of any circumstance that would have been grounds for denial of the application in the first place.

(B) A permit that has been revoked and any badges associated therewith shall be immediately surrendered to the Department.

(Ord. 2015-02-04, passed 2-2-15) Penalty, see § 115.99

§ 115.11 APPEALS.

An applicant may appeal the denial or revocation of a permit by submitting a written notice of appeal to the Town Manager, specifying with particularity the grounds upon which the appeal is based. An appeal shall be submitted no later than ten days from the date of the denial or revocation of the permit in question. The Town Manager or designee shall fix a reasonable time for the hearing of the appeal, shall give due notice to all parties, and shall render a decision within a reasonable time. The Town Manager's decision shall be the town's final decision.

(Ord. 2015-02-04, passed 2-2-15) Penalty, see § 115.99

§ 115.12 PROHIBITED ACTS.

- (A) No person shall engage in peddling or soliciting at residences between the hours of 8:00 p.m. and 9:00 a.m.
- (B) No person while peddling or soliciting shall enter upon any premises in the town where the owner or occupant or person legally in charge of the premises has posted a sign bearing the words "No Peddlers," "No Solicitors," "No Trespassing," or words of similar import or indicated similar instructions orally.
- (C) No person shall engage in transient vending on property owned by another without the written permission of the property owner, which written permission shall be displayed upon demand of a police officer.
- (D) It shall be unlawful for any person holding a permit to be aggressive, threatening or intimidating to any person.
- (E) It shall be unlawful for any person holding a permit to fail to display the badge issued on the front of his or her person in a manner that is easily observable while engaged in peddling, soliciting, or transient vending in the town.
- (F) It shall be unlawful for any person holding a permit to fail to present the permit, the badge issued and the photo identification submitted as part of the application process upon demand of a police officer, while engaged in peddling, soliciting or transient vending in the town.

(Ord. 2015-02-04, passed 2-2-15) Penalty, see § 115.99

§ 115.13 EXCEPTIONS TO PROVISIONS.

The provisions of this chapter shall not apply:

- (A) To the sale or solicitation of farm or dairy products by the producer;
- (B) To organizations or representatives of organizations organized and operated exclusively for educational, benevolent, religious, fraternal, charitable or civic purposes and not operating for profit, and where such solicitation or sales are made without remuneration to the solicitor; or
- (C) To actions undertaken at the prior request or invitation of the resident or occupant of the premises visited.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.14 VIOLATIONS.

- (A) It shall be unlawful for any person to violate any provision of this chapter or to violate any term or condition of a permit issued pursuant to this chapter.
- (B) In addition to any criminal enforcement, the town or any individual may pursue any available civil remedies deemed appropriate and necessary.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.15 SEVERABILITY.

The provisions of this chapter are declared to be severable. If any section, sentence, clause or phrase 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 or phrases of this article, and they shall remain in effect, it being the legislative intent that this article shall remain in effect notwithstanding the validity of any part.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.16 CRIMINAL HISTORIES.

The Police Department is authorized to obtain criminal histories from the North Carolina State Bureau of Investigation and the Division of Criminal Information Network ("SBI/DCI") for the purpose of determining whether to grant or deny an application submitted pursuant to Chapter 115 of the Town of Clayton Ordinances. The Police Department will utilize the information obtained from the DCI network to, and only to, process background checks to determine whether to grant or deny a permit. Prior to denial or termination of a permit based upon criminal history records information received, the Police Department shall verify the existence of a record by either obtaining a certified public record or by submitting a fingerprint card of the applicant to the CIIS (Criminal Information and Identification Section/SBI) for verification that the criminal history record belongs to the applicant. The cost of submitting the fingerprint card to the CIIS shall be paid by the applicant.

(Ord. 2015-02-04, passed 2-2-15)

§ 115.99 PENALTY.

(A) Violators shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$50, or imprisoned not more than 30 days. Each instance that a person engages in peddling, transient vending, or soliciting in violation of this chapter constitutes a separate offense.

(B) The town may seek an injunction against any person engaging in peddling, transient vending, or soliciting in violation of this chapter.

(Ord. 2015-02-04, passed 2-2-15)