



## Chapter 85: PEDDLING AND SOLICITING

[HISTORY: Adopted by the Town Board of the Town of Wilton 4-6-1995 by L.L. 2-1995. *Editor's Note: This local law supersedes former Ch. 85, Peddling and Soliciting, adopted 9-8-1975, as amended.* Amendments noted where applicable.]

### GENERAL REFERENCES

Noise and nuisances — See Ch. 79.

### § 85-1. Definitions.

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

**CHARITABLE ORGANIZATION** — Any benevolent, philanthropic, patriotic, not-for-profit group, association or organization, e.g., Fire Departments, first aid squads, religious organizations, schools, etc.

**ENFORCEMENT OFFICIAL** — Includes the Town Health Officer, the Town Building Inspector/Code Enforcer, the Town Planning Board, the Town Clerk, any member of the Saratoga County Sheriff's Department, any member of the New York State Police, any member of the Wilton Town Board and any other agent or representative appointed by the Town to act in this capacity.

**ESTABLISHED PLACE OF BUSINESS** — A building or store in which a person transacts business and deals in the goods, wares and merchandise he offers for sale during regular business hours.

**MERCHANDISING** — To buy, sell or trade all goods, wares, food, fruit, vegetables, farm products, magazines, periodicals and all kinds of articles of personal property for domestic use, including the distribution of samples, orders or contracts for a service or product, home improvements or alterations and gathering of information to be used in the preparation of any poll or survey.

**PEDDLER, SOLICITOR** — Any person, whether a resident of Wilton or not, acting as principal or agent, consignee or employee or as an agent or representative of a firm, partnership, corporation, organization, association, society or club who goes from house to house or from place to place, without appointment, and who travels on the streets and roads in the Town engaged in the practice of merchandising or any nature whatsoever. This definition is also intended to include the definition for hawker, huckster and vendor.

**PERMANENT MERCHANT** — Any person, firm or corporation with an established place of business in the Town of Wilton which is open during regular business hours for a period of at least 10 consecutive months in each year. (Note: Any "permanent merchant," as defined in this chapter, or his agent, consignee or employee who sells goods or services away from his established place of business by going from house to house or from place to place, without appointment, and who travels on the streets and roads in the Town shall be considered a peddler/solicitor, as defined in this section, and shall be subject to the same rules and regulations.)

**TEMPORARY MERCHANT** — A merchant or vendor who chooses a specific location within the Town upon which to erect or park a cart, tent, wagon, truck or stand or other structure from which to engage in merchandising, with the intent to return to the same location each day. This category shall include temporary, off-premises roadside stands established for the purpose of selling vegetables, fruit or other farm products, food wagons, Christmas trees and any other nonperishable goods. A temporary merchant must not have a vested interest in the location and must have the written permission from the owner(s) of the location to conduct the sale of the intended products.

**TEMPORARY MERCHANT CERTIFICATE** — That which allows an individual or his agent or employee

to operate the temporary business identified on the temporary merchant certificate in the geographic area indicated for the time period specified.

**TOWN LICENSE** — That which allows an individual or his agents or employees to operate the business specified on the Town license in the geographic areas indicated for the time periods specified.

### **§ 85-2. Exceptions.**

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

- (1) Any person holding a sale required by statute or by order of any court or any person conducting a bona fide auction sale pursuant to law.
- (2) Any person selling personal property at wholesale to dealers in such articles.
- (3) Any honorably discharged United States veteran who has procured a license as provided under § 32 of the General Business Law of the State of New York except that, as provided in § 8 of the General Business Law, such veteran shall be required to complete an abbreviated license application. A Town license will be issued and no fee will be charged.
- (4) Individual residents of the Town of Wilton conducting garage sales on their own property.
- (5) Any person engaged in the delivery of goods, merchandise or services to the premises of persons who had previously ordered the same or were entitled to receive the same by reason of a prior agreement, e.g., periodic route deliveries of newspapers, fuel, frozen foods, etc.
- (6) Farmers and truck gardeners who themselves, or through their employees or agents, sell and/or produce Christmas trees on their own property that they have grown on their own property.
- (7) Berry pickers who sell on their own property the berries they have picked on their own property.
- (8) Any permanent merchant selling the same goods in front of his established place of business, provided that said permanent merchant complies with all other applicable federal, state and local statutes, e.g., sidewalk sales. This exemption is intended to include the sidewalk sales conducted inside and outside local shopping malls in the Town.
- (9) Charitable organizations, as defined in § 85-1, except that such organization's agent or representative shall be required to complete an abbreviated Town license application. A Town license will be issued and no fee will be charged.
- (10) A temporary merchant, as defined in § 85-1, except that such temporary merchants shall be required to apply for a temporary merchant certificate, as defined in § 85-1, from the Town of Wilton Planning Board.

B. This chapter shall also not apply so as to unlawfully interfere with interstate commerce.

### **§ 85-3. Town license/temporary merchant certificate required.**

It shall be unlawful for any peddler or solicitor or temporary merchant, as defined in § 85-1 of this chapter, to engage in such activity within the Town of Wilton without first obtaining either a Town license from the Town Clerk or a temporary merchant certificate from the Town of Wilton Director of Planning and Engineering or the Town of Wilton Planning Board (see Chapter 129, Zoning, § 129-169).

### **§ 85-4. Application for license.** *Editor's Note: The Peddling and Soliciting Application is included at the end of this chapter.*

At least 45 days prior to the date of the period for which an applicant seeks a license hereunder, such applicant shall file with the Town Clerk a sworn, written application, in duplicate, on a form to be furnished by said Town Clerk, which shall give the following information:

- A. The name and description of the applicant, including date of birth, driver's license number and social security number.
- B. The permanent home address and full local address, if any, of the applicant.
- C. The name and address of the employer or firm being represented, together with credentials establishing the exact relationship.
- D. A brief statement of the nature of the business and a description of the merchandise or service to be sold.
- E. The length of time for which the license is desired.
- F. The geographic area to be solicited.
- G. If a vehicle is to be used, a description of such vehicle and its license number.
- H. The place where the goods or property to be sold or offered for sale are manufactured or produced, where the property or goods are located at the time of the application and the proposed method of delivery.
- I. A photograph of the applicant taken within 60 days immediately prior to the date of the application, which photograph shall clearly show the head and shoulders of the applicant and shall measure approximately two by two inches.
- J. Two business references located in the County of Saratoga or State of New York or Town of Wilton or, in lieu thereof, such other available evidence of the character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and responsibility.
- K. A statement as to whether the applicant has been convicted of any crime, misdemeanor, felony or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.
- L. For the purposes of this chapter, it is intended that the above information will be provided for each person who will be engaged in the same activity under the same Town license.
- M. If the business involves weighing the product, the application shall be accompanied by a certificate from the New York State Sealer of Weights and Measures certifying that all weighing and measuring devices to be used by the applicant have been examined and approved.
- N. Any other applicable federal, state or local license or approval, including a food handler's license from the New York State Health Department if food items are to be sold.
- O. Such other information as may be required by the Town Clerk.

#### **§ 85-5. Investigation.**

- A. Before any Town license is issued under this chapter, the application and relative information shall be referred to the Saratoga County Sheriffs Department for the making of an investigation of the applicant and his agents or employees as it deems necessary for the protection of the public good. A report of such investigation shall be made to the Town Clerk.
- B. The Town Clerk also reserves the right to seek a recommendation from the Town Attorney and/or the

Wilton Town Board before any license is issued. In the event that a Town Board recommendation is sought, the applicant shall be required to appear before that body at a time and place convenient to the members.

- C. No license shall be refused except for a specific reason and for the protection of the public safety, health, morals or general welfare. A license may be refused if the applicant's character or business responsibility is found to be unsatisfactory.
- D. If one or more of the applicant's agent's or employee's character or business responsibility is found to be unsatisfactory, the applicant may delete such person or persons from his application and submit an amended application. Any added agents or employees will be subject to the same investigative referral to the Saratoga County Sheriff's Department.

#### **§ 85-6. Fees.**

The license fee shall be as follows: \$25

#### **§ 85-7. Performance regulations; license restrictions.**

- A. A licensed peddler or solicitor shall:
  - (1) Not falsely or fraudulently misrepresent the quantity, character or quality of any article offered for sale or offer for sale any unwholesome, tainted or diseased food products, provisions or merchandise of whatever nature.
  - (2) Keep the vehicle and receptacles used by him in a clean and sanitary condition and the foodstuffs and edibles offered for sale well covered and protected from dirt, dust and insects.
  - (3) Not blow a horn, ring a bell or use any other noisy device or shout or cry out to attract public attention.
  - (4) Not stand or permit the vehicle used by him to stand in one place in any public place, street or roadway for more than 10 minutes, unless with the express permission of both the Saratoga County Sheriff's Department and the Town of Wilton Highway Superintendent or some other Town official, or in front of any personal property for any time if the owner of or lessee thereof objects.
  - (5) Not permit any vehicle used by him to stop or remain on any crosswalk or in any Town right-of-way.
  - (6) Not create or maintain any booth or stand or place any barrels, boxes, crates or other obstructions upon any street or in any public place for the purpose of selling or exposing for sale any goods, wares or merchandise.
- B. A license shall not be assignable. Any holder of such 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 violation of this chapter.
- C. Such license shall automatically expire on the last day of the calendar year, but such license may specifically state and provide for an earlier expiration date. No license shall be valid for more than one year.
- D. No license shall be granted to a person under 18 years of age.
- E. No applicant to whom a license has been refused or who has had a license revoked shall make further application until a period of at least six months shall have elapsed since the last previous

rejection or revocation, unless he can show that the reason for such rejection no longer exists.

- F. Every licensee or his agents or employees while exercising his license shall carry the license with him and shall exhibit the same upon demand.
- G. Whenever a license shall be lost or destroyed by the holder or his agent or employee, a duplicate license may be issued under the original application and bond, if applicable, by the Town Clerk upon the filing with her of an affidavit setting forth the circumstances of the loss and what, if any, search has been made for its recovery. Such duplicate license shall be marked "DUPLICATE LICENSE TO REPLACE LOST ORIGINAL."
- H. No peddler or solicitor shall begin operation before the hour of 9:00 a.m., or continue operation after the hour of 7:00 p.m., nor shall such peddler or solicitor operate at any time that will cause public annoyance or disturbance of residents within their homes. These times are interpreted as Eastern standard time (E.S.T.) and/or daylight saving time (D.S.T.).
- I. No peddler or solicitor shall peddle or solicit on any school property or playground at any time.

**§ 85-8. Orders taken by solicitors; bond requirements.**

- A. Any application for a license as a peddler or solicitor who demands, accepts or receives payment or deposit of money in advance of final delivery will be required by the Town Clerk to be accompanied by a bond to the Town of Wilton approved as to form and surety by the Town Attorney in the penal sum not to exceed \$2,000 with a sufficient surety or sureties, or sufficient collateral security, conditioned for making a final delivery of 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 shall be refunded.
- B. Any person aggrieved by the action of any licensed solicitor shall have 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 of Wilton for a period of 90 days after the expiration of any such license, unless sooner released by the Town Clerk.
- C. In addition to the bond requirement, any peddler or solicitor who demands, accepts or receives payment or deposit of money in advance of final delivery will be required to provide a written order, in duplicate, stating the terms of the order and the amount paid in advance, and one copy shall be given to the purchaser at the time the deposit is paid to the peddler or solicitor. Such order or agreement shall, when applicable, comply with the New York State and federal truth in lending statutes.

**§ 85-9. Warning; revocations; penalties for offenses.**

- A. Upon receipt of a complaint by any Town official or by any local police agency, the licensee shall be issued a warning. If such offensive action continues after the warning is issued, the license shall be immediately revoked by the Town Clerk.
- B. When a license shall be revoked, no refund of any unearned portion of the license fee shall be made. Written notice of such revocation and the reason(s) therefor shall be served by the Town Clerk upon the person named in the application or by mailing the same, certified mail, return receipt requested, to the applicant at the address given in the application.
- C. Any person or his agent or employee who shall act as a peddler or solicitor, as defined herein, without a license or who shall violate any of the provisions of this chapter or who shall continue to peddle or solicit after his license has been revoked shall, upon conviction, be punished by a fine of not less than

\$25 nor more than \$250 or a term of imprisonment for up to 15 days, or both, and each day on which such violation continues shall constitute a separate offense.

#### **§ 85-10. Appeals.**

Any person aggrieved by the action of the Town Clerk in the denial of an application for a license or in reference to the revocation of a license shall have the right of appeal to the Wilton Town Board. Such appeal shall be filed with the Town Clerk within 14 days after the applicant receives the notice of action complained of. Such appeal shall be in writing and shall fully state the grounds for the appeal. The Wilton Town Board shall set a time and place for a hearing on the appeal and the applicant shall be so notified. The decision and order of the Wilton Town Board on such appeal shall be final and conclusive.

#### **§ 85-11. Records; numbering of licenses.**

It shall be the duty of the Town Clerk to keep a record of all applications and licenses granted with supporting documentation and information including the license number assigned, the license fee collected and the period for which the license is issued. All licenses shall be issued from a properly bound book with permanent reference stubs. All licenses shall be numbered in the order in which they are issued.

#### **§ 85-12. Severability.**

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by 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 or part thereof directly involved in the controversy in which such judgment shall have been rendered.

#### **§ 85-13. Effective date.**

This chapter shall take effect immediately upon filing in the office of the Secretary of State.