

ARTICLE V.

PEDDLERS, SOLICITORS, ITINERANT VENDORS*

* **Editors Note:** An ordinance adopted April 6, 1998, deleted §§ 9-151--9-159 and added new §§ 9-151--9-162. Formerly, such sections pertained to similar provisions and derived from Ord. No. 17, §§ I--IX, 11-6-78.

Cross References: Streets, sidewalks and other public places, Ch. 13.

State Law References: Hawkers and peddlers, RSA 31:102a.

Sec. 9-151. License required.

It shall be unlawful for any person, firm, corporation, partnership or other entity to engage in the business of peddler or vendor, as hereinafter defined, within the city without having first obtained a license for that purpose from the city clerk and having paid the required license fee, as hereinafter provided. License application forms shall be available at the office of the city clerk, Berlin, New Hampshire.

(Ord. of 4-6-98)

Sec. 9-152. License exceptions.

The following shall be exempt from the licensing requirements of this article but shall comply with the requirements and restrictions of this article as listed below:

(A) Any non-profit organization, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes when no part of the entities earnings benefit any private shareholder or individual.

(B) Any person selling, at or on his or her own property or residence, the product of his or her own labor, the labor of his or her family or the product of his or her own farm or the one he or she tills.

(C) Any person conducting the sales of personal household goods at or on his or her own property or residence.

(Ord. of 4-6-98)

Sec. 9-153. Definitions.

For the purposes of this article, the following definitions shall apply:

Motor vehicle. Any vehicle used for the displaying, storing, or transporting of articles offered for sale by a vendor which is or would be required to be licensed and registered by the department of motor vehicles.

Peddler. As used herein shall be defined as in RSA 320:1 and shall mean and include any person, as defined by RSA 358-A:1, either principal or agent, who: (I) Travels from town to town or from place to place in the same town selling or bartering, or carrying for sale or barter or

exposing therefor, any goods, wares, or merchandise, either on foot or from any animal, cart, stand, or vehicle; or (II) Travels from town to town, or place to place in the same town, offering to perform personal services for household repairs or improvements, or solicits or induces any person to sign any contracts relating to household repairs and improvements, including contracts for the replacement or installation of siding on any residence or building; or (III) Keeps a regular place of business, open during regular business hours at the same location, but who offers for sale or sells and delivers, personally or through his agents, at a place other than his regular place of business, goods, wares, or merchandise. The word "peddler" shall include "hawker" and "huckster".

Stand. Any table, showcase, bench, rack, pushcart, wagon, or any other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the department of motor vehicles, used for the displaying, storing or transportation of articles offered for sale by a hawker, peddler or vendor.

Itinerant vendor. As used herein shall be defined as in RSA 321:1 and shall include all persons, as defined by RSA 358-A:1, both principals and agents, including those persons whose principal place of business is not in this state, who engage in a temporary or transient business in this state, either in one (1) locality or traveling from place to place, selling goods, wares and merchandise, with a total value greater than five hundred dollars (\$500.00), from stock or by same for future delivery, and who, for the purpose of carrying on such business, hire or occupy a temporary place of business. A "temporary place of business" means any public or quasi-public place including, but not limited to, a hotel, motel, rooming house, storeroom, building, part of a building, tent, vacant lot, railroad car, or trailer temporarily occupied for the purpose of making retail sales of goods to the public.

Charitable organizations. Any non-profit organization, association or corporation including any police, firemen, veteran, civic, fraternal or religious organization organized under the laws of this state and holding or eligible to receive an Internal Revenue Service non-profit organization number.
(Ord. of 4-6-98)

Hosting Entity/Organization. An entity/organization that hosts an event within the City limits. These entity/organizations shall be an established nonprofit/charitable organization under Section 501 (c) of the Internal Revenue Code. Under this section, hosting entity/organizations shall be responsible in ensuring that all applicable vendors that participate in an event adhere to RSA 320: Hawkers and Peddlers. Any vendor that is covered under such license must be located within the official grounds/limits of the event.

Sec. 9-154. Application process.

The license required by this article shall be issued by the city clerk. The application for a peddler/vendor license shall include the following:

- (a) All individual license applications must be accompanied by a valid New Hampshire Hawkers/Peddlers or Itinerant Vendors License and/or board of health license when applicable.
- (b) ~~All persons and their agents, shall be required to apply for and receive a separate license.~~ A receipt for such local license fee, when paid, shall be endorsed by the city clerk, or designee, on the back of such state license, and a

copy shall remain on file with the city clerk, or designee so long as such sale shall continue, or such goods be kept, offered or exposed for sale in such municipality.

- (c) The name, home and business address of the applicant, and the name and address of owner, if other than the applicant, of the vending business, stand or motor vehicle to be used in the operation of the vending business.
- (d) A description of the type of food, beverage or merchandise to be sold, ~~and in the case of products of farm or orchard, whether produced or grown by the applicant.~~
- (e) A description of the proposed location of the vending business, except that vendors from motor vehicles shall describe the general area.
- (f) Written consent of the property owner if the business activity is to be conducted on private property.
- (g) Make, model, and license number of any vehicle to be used by applicant or their agents in the conduct of his business will be included.
- (h) Identification. All applicants shall provide a driver's license or some other proof of identity as may be reasonably required.

(Ord. of 4-6-98)

Sec. 9-155. License fees.

Individual Licenses:

- (A) Annual License - One Hundred Dollars (\$100.00) per cart, stand or motor vehicle. This license will expire one year and one day after the date of issuance. If an additional cart, stand or motor vehicle is used for vending, an additional license is required.
- (B) Single Event License - A one (1) time use license shall be available for a fee of Twenty-Five Dollars (\$25.00). This license will be valid for the date requested only. If an additional cart, stand or motor vehicle is used for vending, an additional license is required.

Hosting Entity/Organization Licenses:

Hosting entity/organization licenses will be obtained through the City Clerk's office. Licenses that are issued shall be issued to the respective hosting entity/organization. All applications shall include all anticipated event dates and locations. If, during the term of the license, the hosting entity/organization intends to add an event to the existing license which triggers an additional fee per the fee structure below, a revised application shall be submitted and the additional fee shall be due to the City Clerk. Licensing fees for multiple events under one hosting entity will be as follows:

- (A) For a one (1) time event per year per host, the fee will be One Hundred Dollars (\$100.00).

- (B) For one (1) to three (3) events per year per host, the fee will be Two Hundred Fifty Dollars (\$250.00).
- (C) For four (4) to six (6) events per year per host, the fee will be Five Hundred Dollars (\$500.00).
- (D) For seven (7) to ten (10) events per year per host, the fee will be Seven Hundred Fifty (\$750.00).

~~Under this section the license fee shall be one hundred dollars (\$100.00) per cart, stand or motor vehicle from which goods are sold. This license shall expire one year and one day after the date of issuance. Licenses are not transferrable and shall be issued only for a specific cart, stand or vehicle to be located at a specific location. An additional license shall be required for each additional cart, stand or vehicle or for any change in the location of the vending business. (Ord. of 4-6-98)~~

Sec. 9-156. License conditions.

No vendor or peddler shall:

- (A) Vend within five hundred (500) feet of the grounds of any school between one (1) hour prior to the start of the school day and one (1) hour after dismissal at the end of the school day;
- (B) Store, park, or leave any stand overnight on any street or sidewalk, park any motor vehicle other than in a lawful parking place, in conformance with the city and state parking regulations;
- (C) Sell food or beverages for immediate consumption unless there is a litter receptacle available for the patrons' use;
- (D) Leave any location without first picking up, removing and disposing of all trash or refuse remaining from the sales made by the vendor.
- (E) Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the stand or motor vehicle or outside of the approved vending area.
- (F) Set up, maintain or permit the use of any table, crate, carton, rack, sign or any other device to increase the selling or display capacity of his or her stand or motor vehicle, where such items have not been described in his or her application or may be in violation of any other city ordinance or regulations.
- (G) Solicit or conduct business with persons in motor vehicles within the travelled way.
- (H) Sell anything other than that which he or she is licensed to vend.

- (l) Sound or permit the sounding of any device which produces a loud and/or raucous noise, or use or operate any loud speaker, public address system, radio sound amplifier or similar device to attract the attention of the public.

(Ord. of 4-6-98)

Sec. 9-157. Notice regulating soliciting.

No vendor/peddler selling from a stand on the sidewalk shall:

- (a) Vend at any location where the unobstructed sidewalk area after deducting the area occupied by the stand is less than three (3) feet in width.
- (b) Vend within twenty (20) feet on an entrance way to any building.
- (c) Vend within thirty (30) feet of any driveway entrance to a police or fire station, or within ten (10) feet of any other driveway entrance.
- (d) Vend within twenty (20) feet of the crosswalk at any intersection.
- (e) Allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure.

No vendor/peddler selling from a motor vehicle shall:

- (a) Conduct business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.
- (b) Stop, stand or park his/her vehicle upon any street for the purpose of selling, or sell on any street under any circumstances during the hours when parking, or stopping or standing has been prohibited by signs or curb markings or is prohibited by statute or ordinance.
- (c) Stop, stand or park his or her vehicle within thirty (30) feet of the edge of the travel led way of any intersection. Vehicles vending products likely to attract children as customers shall park curbside when stopping to make a sale.

The police department will have on file a list of all licenses issued under this section.
(Ord. of 4-6-98)

Sec. 9-158. Property owner signed approval.

All applications for "itinerant vendors" and "hawkers/peddlers" licenses which propose to be situated on private property shall be accompanied by a written statement from the owner of the property proposed to be used, which shall indicate consent by the owner for the proposed use, and the period of time for which consent is given.

(Ord. of 4-6-98)

Sec. 9-159. Duty of solicitors.

Liability insurance: To hold a valid license, a direct seller selling or offering for sale goods from a pushcart, stand, table, container or other stationary apparatus located on the public way must have in force at all times general liability insurance. As evidence of the applicant's ability to comply with this condition of the license, the applicant shall furnish to the city a certificate of insurance evidencing the existence of general liability insurance with the city named as an additional insured. Insurance coverage required under this paragraph shall be at a minimum a combined single limit of one hundred thousand dollars (\$100,000.00) per occurrence.

Proof of License: All valid licenses shall be posted or displayed in a conspicuous location for ease of inspection.

(Ord. of 4-6-98)

Sec. 9-160. Exemptions.

Left blank on purpose for future use.

~~The articles of this article shall apply to all vendors, hawkers, peddlers and transients doing business or conducting sales within the city except the following:~~

- ~~—— (A) Any person selling, at or on his or her own property or residence, the product of his or her own labor, the labor of his or her family or the product of his or her own farm or the one he or she tills.~~
- ~~—— (B) Any person conducting the sales of personal household goods at or on his or her own property or residence.~~

(Ord. of 4-6-98)

Sec. 9-161. Violations.

Any person, firm or corporation, violating any provisions of this article shall be fined up to but not exceeding one hundred dollars (\$100.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
(Ord. of 4-6-98)

Sec. 9-162. Non-endorsement clause.

The city in granting such licenses in no way endorses any product, company or corporation through the licensing process and assumes no responsibility of any such factor.
(Ord. of 4-6-98)

Secs. 9-163--9-175. Reserved.