

CHAPTER 75: PEDDLING AND SOLICITING

§ 75-1. Title.

This chapter shall be known and may be cited as the "Peddler and Solicitor Law" and shall apply to the Village of South Blooming Grove.

§ 75-2. Legislative intent.

- A. The attention of the Village Board of the Village of South Blooming Grove has been directed to abuses and unscrupulous and disruptive acts by persons engaging in door-to-door soliciting and selling of goods, merchandise and wares; and the imposition of unwarranted obligations and commitments upon the residents of the Village by such itinerant persons engaging in abuse, violent conduct and threats; and that many of the foregoing have resulted in complaints to the police authorities of the Village of South Blooming Grove because of the unruly conduct or behavior, or exaggerated, unethical and spurious claims and representations with respect to such goods, wares and merchandise; and that such unsalutary conduct has violated the peace, good order and safety and general welfare of the citizens of the Village, and it is, therefore, the intent of the Village Board, by the enactment of this chapter, to minimize and prevent the foregoing abuses and violations of the rights of the citizens of the Village of South Blooming Grove and to protect them and the general welfare as hereafter more fully provided.
- B. In so effectuating this intent, the Village Board is conforming its legislation to that of the Town of Blooming Grove such that the Police Department of the town be better able to enforce said laws due to their uniform nature.

§ 75-3. License required.

- A. No person shall engage in the business of selling or attempting to sell or solicit orders for the sale of any property or any services on any public street or public place.
- B. The hawking, peddling and soliciting orders for the sale of any personal property or any services within the Village of South Blooming Grove without having obtained a license therefor from the Clerk-Treasurer of the Village is prohibited. Additional authorization may be required in areas under private ownership.

§ 75-4. Word usage; definitions.

- A. The following terms, phrases and words and their derivations shall have the meaning given herein, and, as required, the present tense shall include the future, and words in the plural shall include the singular, and vice versa. The word "shall" is always mandatory and not merely directory.
- B. As used in this chapter, the following terms shall have the meanings indicated:
 - CHARITABLE — Includes the words patriotic, philanthropic, social service, welfare, benevolent, educational, civic or fraternal, either actual or purported,
 - CHIEF OF POLICE — The Chief of Police of the Town of Blooming Grove or a representative authorized by the Chief of Police to perform the acts of the Chief of Police in accordance with this chapter.
 - CONTRIBUTIONS — Includes the words alms, food, clothing, money, subscription, property or donation under the guise of a loan of money or property.
 - ESTABLISHED PLACE OF BUSINESS — A building or structure which is operated as a regularly established place of business and from which a person transacts business and

CHAPTER 75: PEDDLING AND SOLICITING

deals in goods, wares or merchandise or performs services or solicits order for the same on a continuing and ongoing basis.

HAWKING or PEDDLING — Engaging in either:

- (1) The business of selling or attempting to sell or soliciting orders for the sale of any property or any services, by going from house to house, place of business, or any combination thereof; or
- (2) Soliciting contributions for any person, organization entity or any other purpose, by going from house to house, place of business or any combination thereof.

PERSON — Any individual, firm, copartner ship, corporation, company, association or joint-stock association, church, religious sect, religious denomination, society, organization or league and includes any trustee, receiver, assignee, agent or other similar representative thereof.

RELIGIOUS and RELIGION — As used herein shall not mean and include the word "charitable" as herein defined, but shall be given their commonly accepted definitions.

SOLICIT and SOLICITATION — The request, directly or indirectly, of money, credit, property, financial assistance or other thing of value on the plea or representation that such money, credit, property, financial assistance or other thing of value will be used for a charitable or religious purpose as those purposes are defined in this chapter.

§ 75-5. Measuring and weighing devices.

Any vendor carrying, keeping or using scales, measures or other appliances for weighing or measuring shall first have the same inspected by the Sealer of Weights and Measures, and if the latter shall find such appliances correct and true, he shall issue his certificate to that effect and such certificate shall be affixed thereto in a conspicuous place. A vendor shall not carry, keep for use or use any such appliances, which shall not be correct and true and do not record and give the weight and quantity claimed by said vendor.

§ 75-6. Exceptions.

- A. This chapter shall not apply to:
- (1) Any sale conducted pursuant to statute or by order of the court.
 - (2) An honorably discharged member of the armed forces of the United States who has procured a license from the Orange County Clerk, as provided by the General Business Law of the State of New York
 - (3) A wholesaler of articles to dealers or merchants engaged in selling such articles.
 - (4) Merchants having an established place of business within the Village (within the Town?) and the employees of such merchants, and any person vending at the express invitation of the customer or serving the latter on a regular and established basis.
 - (5) A truck gardener or farmer who himself or through his employees, sells products of his own farm or garden.
 - (6) Dealers in milk, baked goods and heating oil, provided that they have otherwise complied with any licensing and health and safety requirements of any other competent governmental body or agency.
 - (7) Persons peddling, soliciting or vending or collecting for the benefit of any bona fide fraternal, educational, religious or charitable organization shall have otherwise been

CHAPTER 75: PEDDLING AND SOLICITING

certified or otherwise been duly qualified as required by law or by any competent governmental body or agency.

- (8) Any person selling goods, wares, commodities or services regularly to those who are his established customers, patrons or purchasers.
 - (9) This chapter shall not apply to sale of daily newspapers, nor be interpreted as intending to, nor shall it be construed to unlawfully interfere with the conduct or interstate commerce or the impairment of the rights of free speech, press or publication; and shall be construed as implementing and not as limiting the purposes and provisions of the New York State Home Solicitation Sales Act.
- B. All persons and organizations soliciting funds solely for the charitable or other purposes who are exempted from the license requirements under this chapter shall maintain and keep records identifying all persons soliciting funds within the Village, and such records shall contain at least the name and the address of the person soliciting, the areas solicited and the date or dates of solicitation. Said records shall be made available for inspection by the Chief of Police upon request.
- C. Minors 17 years of age or under engaged in providing such services as snow shoveling, grass cutting, leaf raking, lawn clearing and other similar home services, as an independent contractor.

§ 75-7. Application for license.

Every applicant for a license hereunder shall submit a verified written application to the Village Clerk-Treasurer supplying the following information:

- A. Name, permanent home address and local address, if any, of applicant.
- B. A physical description of the applicant setting forth:
 - (1) Date of birth.
 - (2) Height.
 - (3) Weight.
 - (4) Color of hair and eyes.
- C. A detailed statement of the particular business, trade or occupation for which the license is requested and a description of the goods, wares, merchandise or commodities offered for sale.
- D. The name and address of the person, firm or corporation, if any, he represents; the names and addresses of all partners, if a partnership; the names and addresses of the principal officers, if a corporation; and the name and address of a person upon whom a legal process and notice may be served.
- E. Prior arrests and the disposition thereof, including the date and nature of such arrest, and location of the court where such record or disposition is on file.
- F. The number and kind of motor vehicles to be used in carrying on the business; and the registration, license and insurance data for each such vehicle and operators thereof.
- G. Three photographs, two inches by two inches in size, taken within 60 days immediately prior

CHAPTER 75: PEDDLING AND SOLICITING

- to the date of filing of the application, showing clearly the face and shoulders of the applicant.
- H. References as to the applicant's good character, such as at least two residents of Orange County, or municipalities in Orange or adjoining counties in which the applicant has conducted his business or operations.
 - I. If peddling or soliciting is to be conducted as a team, group or other organized party under single leadership or direction, control or sponsorship, the above required personal information shall also be supplied as to such leader or person in charge and with respect to each other person, employee or agent so involved.
 - J. If such applicant represents or is the agent for a principal, there shall be appended to the application a letter or other evidence of authorization or agency from the principal describing the nature and scope of such applicant's authority, and any restrictions, limitations and conditions imposed on such applicant by the principal agency or organization he represents. In addition, copies of each order form, contract or other form or document to be utilized by the applicant in such sale or solicitation shall be attached to the application.
 - K. Where the applicant is offering for sale goods, merchandise or commodities required to be sold by weight, measure or count, as provided under Article 16 of the Agricultural and Markets Law of the State of New York, such application shall be accompanied by a certificate from the Sealer of Weights and Measures, having jurisdiction thereof, certifying that all weighing and measuring devices to be used by the applicant have been examined and approved.
 - L. Any additional information required by any competent Village office or agency in the interest of health, safety and welfare of the citizens of the Village, including denials of licenses or their revocation by municipalities within six months of the present application.
 - M. The applicant at the time of executing such application shall also submit identification satisfactory to the Village Clerk-Treasurer which shall contain a specimen of the applicant's signature and a duplicate photograph, size 2 1/2 inches by 2 1/2 inches, in color, portraying the applicant from the shoulder to the top of the head, one which shall remain with the Village Clerk-Treasurer and the other to be retained by the applicant.

§ 75-8. Fees.

A fee as provided in the Schedule of Fees of the Village of South Blooming Grove shall be paid by each individual to be licensed hereunder, and said fee, payable to the Village Clerk-Treasurer, shall be applied to the cost of processing the license applications and, otherwise, enforcing and effectuating the objectives of this chapter without, however, imposing an undue burden on the interstate business activities of any applicant; and provided further that any applicant may apply to the Village Clerk-Treasurer for an adjustment of such fee where the same appears discriminatory, unreasonable or unduly burdensome in the circumstances, as shown by affidavit and appropriate supporting evidence. Thereupon the Village Clerk-Treasurer shall determine whether the fee fixed hereunder is discriminatory, unreasonable or unduly burdensome to the applicant's interstate business activities and shall fix as the license fee an amount that is fair and reasonable in the circumstances and file his report thereon in the Clerk-Treasurer's records. Any applicant aggrieved by a determination of such Village official shall be advised of his right to appeal such decision to the Mayor, or her/or his designated agent, whose determination shall be final.

§ 75-9. Investigation of applicant; issuance or denial of license.

- A. Investigation:
 - (1) When the application is properly filled out and signed by the applicant, the original and duplicate thereof shall be filed with the Clerk-Treasurer, and the Clerk-Treasurer shall refer the original to the Chief of Police who shall make or cause to be made within 10

CHAPTER 75: PEDDLING AND SOLICITING

working days such investigation of the applicant's business responsibility and character as he deems necessary for the protection of the public good.

- (2) If, as a result of such an investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons therefor and shall return said application to the Clerk-Treasurer. Any determination by the Chief of Police that an application is unsatisfactory shall be based on one or more of the following findings with respect to the applicant:
 - (a) Conviction of a crime.
 - (b) Prior violation of a peddling or soliciting law.
 - (c) Previous fraudulent acts or conduct.
 - (d) Record of breaches of solicited contracts.
 - (e) Evidence of bad character.
- (3) In the absence of any such finding, the Chief of Police shall find the application satisfactory, shall endorse his approval on the application and shall return the application to the Clerk-Treasurer.

B. Denial or issuance of license:

- (1) If an application is found unsatisfactory by the Chief of Police and he has endorsed his disapproval upon the application, the Clerk-Treasurer shall notify the applicant, by certified mail, that the application is disapproved and shall deny the applicant a license.
- (2) Upon receipt of the fee, application, report of the Police Chief's investigation and upon compliance with all the requirements of this chapter, the Village Clerk-Treasurer shall issue a license to the applicant specifying the particular business authorized. This license shall be nontransferable. It shall be in continuous possession of the licensee while engaged in the business licensed. The license shall be produced upon the demand of any police or law enforcement officer or Village officer and shall be exhibited to each prospective buyer or person solicited before making any offer or solicitation. All licenses shall expire 60 days following the date of issuance.
- (3) Where an organization has several agents peddling, soliciting or distributing merchandise or printed material, each agent shall be registered separately, and each shall pay the appropriate fee. Upon the expiration of a license, a new license will be issued upon compliance with all the provisions of this chapter and the payment of fees and the posting of the bond, except that the investigation and waiting period therefor may be waived if approved by the Clerk-Treasurer and Chief of Police.

§ 75-10. Bonding requirements.

- A. Prior to the issuance of any license, the applicant shall file with the Village Clerk-Treasurer cash bond running to the Village in the amount of \$1,500, in such form as shall be approved by the Village Attorney or his or her designated representative. Said bond shall remain in force for the term of the license and shall be conditioned to indemnify and pay the Village for any penalties or costs incurred in the enforcement of any of the provisions of this chapter and to indemnify or reimburse any purchaser of personal property from the holder of the license in a sum equal to at least the amount of any payment such purchaser may have been induced to

CHAPTER 75: PEDDLING AND SOLICITING

make through the misrepresentation as to the kind, quality or value of the personal property, whether the misrepresentations were made by the licensee or said licensee's agents, servants or employees either at the time of making the sale or through any advertisements printed or circulated with reference to such personal or parts thereof.

- B. The aforesaid bond shall be declared forfeited upon proof of:
 - (1) Falsification in the application for a license.
 - (2) Violation of any of the provisions of this chapter by the applicant or his agents, servants or employees.
- C. The Village Board may, by resolution, exempt persons from the bond and fee requirements, provided that the applicant satisfied the Board that the nature of his activity does not jeopardize the position of the Village or the protection given herein to the residents.

§ 75-11. Restrictions.

A licensed peddler or solicitor shall:

- A. Not resort to deceptive acts or practices, physical abuse, threats, intimidation or harassment in the course of conducting his business, or offer for sale any provision, food or merchandise that is unwholesome, unfit, deleterious or harmful to the user or consumer thereof.
- B. Not peddle at or solicit a private residence which has displayed a sign bearing the words "no peddling or soliciting" or words of like intent; nor shall any licensee remain on the premises after the owner or occupant thereof shall have requested his departure therefrom.
- C. Not keep the vehicles and receptacles used by him in an unclean and unsanitary condition, nor the foodstuffs and edibles offered for sale uncovered and unprotected from dirt, dust, insects, contamination or spoilage, or as otherwise required by any competent municipal health authority.
- D. Not vend his goods, wares and merchandise in any location within 250 feet of any other peddler, solicitor and/or private business vending goods, wares and merchandise of a similar nature.
- E. Not sell any confectionery or ice cream within 250 feet of any school between the hours of 8:00 a.m. and 4:00 p.m. on school days.
- F. Not permit any vehicle used by him to stop or remain on any crosswalk.
- G. Not use any noisy device to attract public attention to his wares or shout or cry out his wares, except that peddlers of ice cream and ice cream products for immediate consumption are exempted from the foregoing prohibition of the use of a bell.
- H. Not assign or transfer his license to any other person, and any transfer to or use of such license by any other person shall be a violation and shall automatically thereupon terminate such license.
- I. Not fail to carry his license upon his person or to exhibit the same upon demand to any police, Village officer or citizen being solicited or involved in a transaction with him.
- J. Not frequent any street, sidewalk or public place so as to cause a private or public nuisance.
- K. Not sell or solicit except between the hours of 9:00 a.m. and 8:00 p.m.
- L. Leave all premises promptly upon request of any occupant of such premises.

CHAPTER 75: PEDDLING AND SOLICITING

§ 75-12. Taking of 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, 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 of money is paid to the solicitor, and which shall contain the notice or right of cancellation as below set forth.

§ 75-13. Cancellation of orders.

As more fully provided and set forth in the New York State Home Solicitation Sales Act, which is incorporated herein by reference as to rights, remedies and procedures in any sale, order for purchase or agreement to buy which was induced by or the result of harassment, intimidation, abusive conduct, misrepresentation or material facts or high pressure tactics by the solicitor, any person or consumer shall have the right of cancellation as therein set forth upon giving written notice to the solicitor, by mail properly addressed and postage prepaid; and notice, the language or tenor of which makes clear the purchaser's intention to return such goods, wares or merchandise, will be sufficient. In such event, the seller's failure to tender to the buyer all payment made by the buyer, with an acknowledgment of his cancellation of the order, shall be deemed a violation of this chapter and shall subject the licensee to any penalties hereunder, in addition to any penalties provided under the New York State Home Solicitation Sales Act.

§ 75-14. Revocation or suspension of license.

- A. Licenses issued under the provisions of this chapter may be suspended by the Village Board in accord with the provisions of § 75-17 (C), and may be revoked by the Village Clerk-Treasurer and/or the Village Board after written notice and a hearing as set forth in section § 75-17(c) or for any violation of this chapter.
- B. Notice of hearing for revocation of license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of hearing. Such notice shall be mailed to the licensee at least 10 days prior to the date set for the hearing, except as below set forth.
 - (1) Licenses can be revoked for any of the following causes:
 - (a) Fraud, misrepresentation or a materially incorrect statement contained in the application for a license.
 - (b) Fraud, misrepresentation or a materially incorrect statement made in the course of carrying on the business of solicitor, peddler, distributor or transient merchant.
 - (c) Any violation of this chapter.
 - (d) Conviction of any crime, misdemeanor or violation.
 - (e) Conducting the business of peddler, solicitor, distributor or transient merchant in an unlawful manner or in such manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- C. In addition to the foregoing, the Village Clerk-Treasurer may forthwith temporarily suspend any license issued pursuant to this chapter upon receiving information giving reasonable cause to believe that any licensee hereunder has either violated this chapter by an act involving moral turpitude, physical abuse threats, intimidation or harassment or has been convicted of any violation of this chapter or of any crime or offense endangering the peace, safety, health or general welfare of the inhabitants of this Village. Within 10 days after such suspension, the Village Clerk-Treasurer shall conduct a hearing and issue his or her determination as to whether the license shall be revoked or reinstated. If such hearing or determination is not made within said ten-day period, the license shall be restored

CHAPTER 75: PEDDLING AND SOLICITING

automatically.

§ 75-15. Appeals.

Any licensee aggrieved by any action or determination of the Village Clerk-Treasurer hereunder may appeal to the Mayor of the Village of South Blooming Grove, or any agent or agency he or she may designate, within 14 days after notice of the action or determination complained of has been mailed to his or her last known address, by filing a written statement setting forth fully the grounds for appeal. The Mayor or his or her agent shall set a time and place for a hearing on such appeal and notice of such hearing shall be mailed to the applicant's last known address at least five days prior to the date set for the hearing. The decision and order of the Mayor or his or her agent on such appeal shall be final and conclusive.

§ 75-16. Maintenance of records.

The Village Clerk-Treasurer shall keep a record of all applications and of all licenses granted hereunder, giving the number and date of each license, the name and residence of the person licensed, the license fee paid and also the date of revocation of licenses revoked, if any.

§ 75-17. Penalties for offenses.

- A. Any person convicted of violating any provision of this chapter or any license condition or restriction shall, upon conviction thereof, be guilty of a violation which is punishable as follows:
 - (1) For a first conviction, by a fine not less than \$100 nor more than \$250 and/or imprisonment for not to exceed 15 days.
 - (2) For a second conviction within a period of one year, by a fine of not less than \$100 nor more than \$500 and/or imprisonment for not to exceed 15 days.
 - (3) For a third and each successive conviction within a period of one year, by a fine of not less than \$100 nor more than \$1,000 and/or imprisonment for not to exceed 15 days.
- B. Each day that a violation of any provision of this chapter or of any license condition or restriction occurs shall constitute a separate and distinct violation.
- C. In addition to the above, any license issued pursuant to this chapter may be suspended and/or revoked by the Village Board of Trustees for violation of any provision of this chapter or of any license condition or restriction or for conduct detrimental to the public health, safety or welfare. No license may be revoked until the registrant has been afforded notice and a due process hearing before the Village Board of Trustees unless there is a determination by a responsible official that there is an imminent danger to the public health, safety and welfare. However, said license may be suspended pending the hearing. In either such event, a hearing shall be held within 10 business days of said determination or suspension.

§ 75-18. Enforcement.

The Police Department of the Town of Blooming Grove and/or the enforcement official as may be designated, shall have the power, right and authority to issue an appearance ticket, as the same is defined in Article 150 of the Criminal Procedure Law of the State of New York, for the violation of any section of this chapter.

CHAPTER 75: PEDDLING AND SOLICITING

§ 75-19. Supersession of other laws; authority.

This article supersedes, and is in derogation of, Chapter 173 of the Code of the Town of Blooming Grove, County of Orange, and State of New York. This article is enacted by authority of § 20, Subdivision 5, of the Municipal Home Rule Law and any other law referenced herein as authority herefor.

§ 75-20. Repeal.

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

§ 75-21. Effective Date.

This local law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.