

TOWN OF EVANS
PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

Section 144: Peddling and Soliciting

1. Replace Section 144: Peddling and Soliciting, to read as follows:

Chapter 144: Peddling, Soliciting, Transient Businesses and Mobile Food Vending

GENERAL REFERENCES

Fees – See Ch. 106

§ 144-1 Purpose.

§ 144-2 Definitions.

§ 144-3 Permit or registration required.

§ 144-4 Exemptions.

§ 144-5 Requirements for charitable organizations.

§ 144-6 Hours.

§ 144-7 Application requirements.

§ 144-8 Investigation of applicant.

§ 144-9 Fees.

§ 144-10 Permit regulations.

§ 144-11 Prohibited acts.

§ 144-12 Trespassing.

§ 144-13 Penalties for offenses.

§ 144-14 Enforcement.

§ 144-15 Severability.

§ 144-1 Purpose.

The purpose of this chapter is to promote and protect the health, safety and general welfare of the community, and to preserve and protect the property of the Town of Evans and its residents.

§ 144-2 Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings set forth unless the context of their use clearly indicates otherwise:

APPLICANT

Any person by or for whom an application is made under this chapter.

CHARITABLE ORGANIZATION

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

- A. Any benevolent, philanthropic, patriotic, military veterans, not-for-profit, educational or religious association, society or other organization or any other association, society or organization qualified as a tax-exempt organization under Section 501 of the Internal Revenue Code.
- B. Any governmental entity or organization, including, without limitation, a school district, fire district and fire company.

HAWKER

A person who engages in peddling and/or soliciting.

MOBILE FOOD VEHICLE

A self-contained mobile food unit in which ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale, or distribution, or any pre-packaged food is sold or distributed for immediate consumption.

MOBILE FOOD VENDOR

The owner or owner's agent of a mobile food vehicle.

PEDDLER

A person who engages in peddling.

PEDDLING

- A. Selling or offering for sale, barter or exchange any property or service, either for immediate or future delivery or performance upon any street, road or highway or from house to house in the Town, and including, without limitation, activities commonly known as "hawking."
- B. Delivery or distribution of advertising matter, literature, pamphlets, samples or handbills house to house or on any of the streets, roads or highways or by going from place to place in the Town, but not including the delivery or distribution of newspapers, magazines or political or religious materials.

PERSON

A natural person, corporation, partnership, association, joint venture, society or other organization or association of any kind, whether acting as principal, agent, employer or employee.

PROPERTY

Any goods, wares, merchandise or other article or thing of every kind or nature except newspapers.

SOLICITING

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

- A. Seeking, taking or offering contracts or orders for any property for future sale or delivery or performance of any service upon any street, road or highway or from house to house in the Town, and including, without limitation, activities commonly known as "hawking."
- B. Seeking or taking subscriptions or contributions of money or property, upon any street, road or highway or from house to house in the Town.

SOLICITOR

A person who engages in soliciting.

TOWN

The Town of Evans.

TRANSIENT BUSINESS

A retail or wholesale business, other than a mobile food vehicle vendor (as regulated separately in this chapter), conducted from a temporary structure or tent, truck, van or trailer, stand, parking lot or vacant parcel of land, in a public right-of-way or in or on any other place in the Town, but not (1) outdoor sales of property or services accessory to a business conducted within a permanent structure on a same premises; or (2) the sale of food products raised or produced on the same premises from a temporary or seasonal stand, provided that the principal structure or activities otherwise comply with the zoning and other ordinances of the Town.

§ 144-3 Permit or registration required.

- A. No person shall engage in peddling, soliciting, mobile food vehicle vending or a transient business without first obtaining a permit or registering or both as required by this chapter. Every solicitor or peddler shall, at all times, while engaged in soliciting and peddling within the town, carry the permit upon his person and shall exhibit the same upon request to all persons solicited or to any police officer within the Town.
- B. No motor vehicle shall be used for peddling, mobile food vehicle vending or conducting a transient business unless a permit shall first have been obtained for use of said vehicle for such activities, which permit shall at all times be displayed in a conspicuous location that is visible from the outside of the vehicle.

§ 144-4 Exemptions.

No permit under this chapter shall be required:

- A. By any charitable organization or its agents or employees or veterans licensed pursuant to General Business Law § 32, and further provided that any person within the provisions of this exemption shall hawk, peddle or solicit only as part of an authorized activity of the organization of which he is a member or of the school or church which he attends, and

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

further provided that no person exempted by this subsection receives any compensation for any such activity here exempted.

- B. The holder of a license granted pursuant to the General Business Law of the State of New York.
- C. By any business, service or activity licensed under any other ordinance or law of the Town of Evans.
- D. A wholesaler selling articles to dealers or merchants who have an established place of business within the town.
- E. Any person selling goods, wares, commodities or services regularly to those who are his established customers, patrons or purchasers.
- F. Any person selling personal property at a garage sale held at his residence.
- G. For participation at events sponsored by the Town (i.e. Summerfest, movie nights, etc.), provided proper application is made, any applicable fees paid, and registration issued for the specified Town sponsored event.
- H. By political parties and candidates for public office.

§ 144-5 Requirements for charitable organizations.

No charitable organization shall engage in soliciting before it files with the Town Clerk a list of the names, addresses and dates of birth of the persons who will conduct the activity on its behalf and a statement of the time period during which the solicitations shall occur. The Clerk shall provide a copy of the list to the Police Department. No person shall engage in soliciting on behalf of a charitable organization until this information has been provided to the Town Clerk, except persons under nineteen (19) years of age, who shall not be required to register and obtain a permit as heretofore provided for, in the event that they are soliciting for any purposes directly connected with a charitable organization native to the Town.

§ 144-6 Hours.

No peddling, soliciting or transient business activities, whether or not exempt from the permit requirements of this chapter, shall be conducted before 9:00 a.m. or after the earlier of 8:00 p.m. or dusk. Mobile food vending shall not be conducted before 9:00 a.m. or after 8:00 p.m. on a residential property except for the following:

- A. When the mobile food truck and vending activities are not located within the required front yard as defined by the Zoning Ordinance of the Town of Evans (Chapter 200 of the Code of the Town of Evans), the allowable hours of operation shall be from 9:00 a.m. to 11:00 p.m.

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

Mobile food vending shall not be conducted before 7:00 a.m. or after 11:00 p.m. on a non-residential property or in a right-of-way adjacent to a non-residential property.

§ 144-7 Application requirements.

- A. Any person desiring a license under this chapter shall first register with the Town Clerk of the Town of Evans and shall file with said Town Clerk an application, in writing, containing the following information:
- (1) The name and date of birth of the applicant;
 - (2) The permanent home residence and the address of this current place of sojourn if different from his home address;
 - (3) A physical description of the applicant, giving date of birth, height, weight and color of hair and eyes, along with a photograph of the applicant (head and shoulders), in triplicate, measuring two inches by two inches, taken within 30 days of the date of the application for such license. One copy of the photograph shall be attached to the license application, one copy of the photograph to the license, and the third shall be delivered to the Chief of Police of the Town.
 - (4) The name and address of the person or entity, if any, by whom the applicant is employed and for whom or through whom orders are to be solicited, cleared, filled or delivered.
 - (5) A description of the business or activity in which the applicant intends to engage and of the nature of any property or services involved.
 - (6) A list of all municipalities (name and state) in which the applicant has carried on the business of peddling, selling or soliciting orders, or where he conducted a transient business during the six (6) months immediately preceding the application;
 - (7) For peddlers or solicitors, a list of crimes for which the applicant has been arrested or convicted, including the dates and places.
 - (8) A statement as to the period of time during which the applicant intends to engage in the business or activity regulated under this chapter.
 - (9) Proof that the applicant, or his or her employer or principal, is registered for sales tax purposes, if the business or activity to be conducted is subject to sales or use tax.
 - (10) A description of any motor vehicle that will be used for pickup or delivery of property or for the purpose of bringing any such property into the Town for peddling, soliciting or transient business purposes, or from which a transient business will be conducted, to include the name of manufacturer, year, type of vehicle, vehicle identification number,

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

registration plate number, title holder and name of the person other than the title holder to whom the vehicle is registered, if any.

- (11) The location where a transient business or mobile food vending operation is to be conducted, if known.
- (12) Further information required by the Town Clerk or the Police Department.
- B. To the application must be appended a letter or authorization from each entity supplying any property or services to be sold or for which orders are to be solicited by the applicant.
- C. The application shall be signed by the applicant and sworn to before a notary public or other officer authorized to administer oaths.
- D. If mobile food vending or a transient business is to be conducted on private property, the written consent of the property owner, if other than the applicant, shall be filed with the application, and shall be prominently displayed on the mobile food vending vehicle or at the transient business site.

§ 144-8 Investigation of applicant.

- A. For peddling or soliciting permit applications, the Town Clerk shall forward a copy of the application to the Police Department. The Police Department shall, to the extent possible, determine whether or not the applicant has accurately reported convictions and is otherwise a person of good moral character and reputation.
 - (1) The police officer designated by the Police Chief to order and review criminal records ("Criminal Records Officer") may cause the fingerprints of any applicant for a peddling or soliciting permit and any applicable fee to be forwarded to the Division of Criminal Justice Services (DCJS) in the form and manner as prescribed by DCJS for a complete criminal background check upon receipt of the appropriate fee from the applicant.
 - (2) The Criminal Records Officer shall review the criminal history record information (CHRI) disseminated by DCJS in connection with the applicant's criminal background check. If a prospective applicant has been convicted of a crime, any decision regarding such prospective applicant's fitness for a license must be made upon consideration of New York State Correction Law §§ 701 through 703-b and §§ 751 through 753.
- B. A copy of any application for a transient business or mobile food vendor shall be forwarded to the Code Enforcement Office. The Code Enforcement Office shall, to the extent possible, determine whether not the equipment or vehicle presents a danger to the health, safety and general welfare of the community, including preservation and protection of the property of the Town and its residents.
- C. The Police Department and Code Enforcement Office shall report the results of their investigations of applications to the Town Clerk within 10 business days of the receipt of

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

the copy. The Police Department and Code Enforcement Office, in their sole discretion, may recommend denial of a permit should their investigation yield results which indicate the applicant misrepresented his or her conviction record or the equipment or vehicle presents a danger. A denial shall be provided the applicant in writing, specifically setting forth the grounds for denial.

- D. After receiving a determination from the Police Department and the Code Enforcement Office, the Town Clerk shall thereupon signify approval or rejection on the reverse side of the application. If approved, the Town Clerk shall issue the license to such applicant. To such license shall be affixed one photograph of the applicant, identified by the applicant's signature, which shall, in part, cover said photograph.

§ 144-9 Fees.

Fees shall be set by resolution of the Town Board and as set forth in Chapter 106, Fees. (see Town for current fee rates). No application shall be accepted until all applicable fees have been paid in full to the Town Clerk, and all fees are non-refundable.

§ 144-10 Permit regulations.

- A. After receipt of reports from the Police Department and Code Enforcement Department, when required, the Town Clerk shall issue the permit requested unless denied.
- B. Solicitors', peddlers' or transient business permits issued pursuant to this chapter automatically expire on December 31st.
- C. Mobile food vendor permits shall automatically expire on December 31st.
- D. Permits issued under this chapter shall not be transferable.
- E. A permit issued pursuant to this chapter may be revoked if, following its issuance, the Police Department and/or Code Enforcement Office, in their sole discretion, determine the applicant misrepresented his or her conviction record or the equipment or vehicle presents a danger. A revocation shall be provided the applicant in writing, specifically setting forth the grounds for denial/revocation. A permit may also be revoked for any violation of this chapter committed after its issuance.
- F. A transient business permit shall be limited to a single location. If the location is in a public right-of-way, it must be approved by the state, county or town authority having jurisdiction. If the location is not in a public right-of-way, it must be approved by the Code Enforcement Department.

- G. For Mobile Food Vendors:

- (1) It shall be unlawful to conduct business from a mobile food vehicle within a public right-

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

of-way or on private property within the Town without having first obtained a valid mobile food vendor permit for each mobile food vehicle.

- (2) It shall be unlawful for a mobile food vendor to conduct business in a location within one hundred (100) feet of the primary entrance of an establishment that is open to the public and where ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale, or distribution. This requirement shall be waived if permission for the mobile food vending operation is obtained from the owner of the property that contains the establishment where ready-to-eat food is prepared, cooked, wrapped, packaged, processed or portioned for service, sale or distribution.
- (3) Within non-residential zoning districts, it shall be unlawful for a mobile food vendor to conduct business at a single location within a public right-of-way for a duration exceeding three (3) hours. Within residential zoning districts, it shall be unlawful for a mobile food vendor to conduct business within a public right-of-way except for mobile food vehicles that operate for less than twenty (20) minutes at a single location or that operate within an area where a block party is being conducted.
- (4) At all times, mobile food vendors must abide by the New York State Transportation Law and all applicable Parking, Vehicle and Traffic Laws, Ordinances, Rules and Regulations, and comply with all requirements of the Erie County Health Department.
- (5) All signage associated with a mobile food vendor must be permanently affixed to the mobile food vehicle. No accessory signage shall be placed outside or around the mobile food vehicle.
- (6) All mobile food vendors must provide trash receptacles of sufficient capacity to contain all trash and waste generated in association with the business of the mobile food vendor. All waste and trash shall be placed in the trash receptacles. All trash, waste, litter and debris shall be removed from the site of the vending operation at the end of each daily operation.
- (7) It shall be unlawful to discharge liquid waste, fats, oils or grease on the land. Such discharges shall be held in appropriate containers and then disposed in a legally permissible manner.
- (8) Mobile food vendors shall not conduct operation from a site that contains a gasoline service.
- (9) Each mobile food vehicle shall be inspected annually by the Code Enforcement Office for fire-safety code compliance.
- (10) All required permits shall be posted conspicuously on the mobile food vehicle.
- (11) Each mobile food vehicle shall be registered as a commercial vehicle with the New York

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

State Department of Motor Vehicles.

- (12) When parked on a public or private right-of-way, products shall not be dispensed from the street side of the mobile food vehicle.
- (13) A mobile food vehicle shall not be operated in reverse in order to attempt or make a sale.
- (14) When parked on a public or private right-of-way, a mobile food vehicle shall not be parked within sixty (60) feet of an intersection with another public or private right-of-way boundary.

§ 144-11 Prohibited acts.

- A. No person shall use private real property for any activity requiring a permit under this chapter without the written consent of the owner, and in compliance with § 144-7(D).
- B. No person regulated by this chapter shall hawk or cry property, offers, contracts or services upon any location in the Town, or use any loudspeaker, horn or other sound-making device.
- C. No person holding a permit under this chapter shall engage in any activity regulated hereunder unless he or she has the permit on his or her person or as it pertains to a mobile food vendor, on the mobile food vehicle.

§ 144-12 Trespassing.

- A. The owner or occupant of a residential building may post a notice prohibiting peddlers and solicitors. The notice shall be placed in a conspicuous place adjacent to the entrance door of the building. The letters of the notice shall be at least 1/2 inch in height and shall contain a statement saying in substance that "peddlers or solicitors are prohibited." No person shall engage in any activity regulated by this chapter by attempting to enter a building or ringing a doorbell or knocking on an entrance door to any residence building at which entrance such a notice has been posted.
- B. Any person engaged in an activity regulated under this chapter, whether that person is exempt or not, who has entered upon private property, whether invited or not, shall immediately and peacefully depart therefrom when requested to do so by any occupant.

§ 144-13 Penalties for offenses.

Any person who violates any provision of this chapter shall be guilty of a violation. Each violation shall be punishable by a fine not to exceed \$250 or by imprisonment for a period not to exceed fifteen (15) days, or both.

§ 144-14 Enforcement.

TOWN OF EVANS

PROPOSED LOCAL LAW NO. 4 OF CALENDAR YEAR 2018

This chapter shall be enforced by the Police Department and the Code Enforcement Office of the Town of Evans. Primary enforcement of the mobile food vending regulations contained in this chapter shall be the responsibility of the Code Enforcement Office. Matters concerning the Vehicle and Traffic Law, the New York State Transportation Law, illegal parking and trespassing shall be the responsibility of the Police Department. If the Code Enforcement Office determines an issue to be a police matter, the Code Enforcement Office shall refer that issue to the Police Department.

§ 144-15 Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision of this chapter.