

PROPOSED LOCAL LAW NO. 13 FOR THE YEAR 2015
AMENDING CHAPTER 87 OF THE TOWN OF WEST SENECA CODE
IN ITS ENTIRETY TO REGULATE FOOD TRUCKS

CHAPTER 87. PEDDLING, SOLICITING, TRANSIENT BUSINESS, AND MOBILE FOOD VENDING

§ 87-1. Purpose.

The purpose of this chapter is to promote and protect the health, safety and general welfare of the community, and the preservation and protection of property of the Town of West Seneca and its residents.

§ 87-2. Definitions.

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

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.

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.

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. Peddling shall not apply to the selling and offering for sale of bread or bakery products, milk or milk products, ice cream or ice cream products, daily, weekly or other papers within the Town or the selling of real estate by real estate agents licensed in the State of New York or insurance by insurance agents or brokers licensed under the insurance laws of the State of New York.

PERSON

A natural person, corporation, limited liability company, 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

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.

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 West Seneca.

TRANSIENT BUSINESS

A retail or wholesale business, other than a mobile food vehicle vendor (as regulated separately in this Local Law), 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.

§ 87-3. 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.

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, which permit shall at all times be displayed in a conspicuous location that is visible from the outside of the vehicle.

§ 87-4. 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.

B. By any business, service or activity licensed under any other ordinance or law of the Town of West Seneca.

C. For lawn cutting, leaf raking and snow shoveling services for residential property.

D. By political parties and candidates for public office.

E. For peddlers and solicitors not over sixteen (16) years old.

§ 87-5. 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 8:00 p.m. Mobile food vending shall not be conducted before 7:00 a.m. or after 11:00 p.m.

§ 87-6. Application requirements.

A. Any person desiring a license under this chapter shall first register with the Town Clerk of the Town of West Seneca and shall file with said Town Clerk an application, in writing, containing the following information:

(1) The name, home address and local address, if any, of the applicant.

(2) A physical description of the applicant, giving date of birth, height, weight and color of hair and eyes. A photograph may be required.

(3) The name and address of the person, if any, by whom the applicant is employed and for whom or through whom orders are to be solicited, cleared, filled and delivered.

(4) A description of the business or activity in which the applicant intends to engage and of the nature of any property or services involved.

(5) For peddlers or solicitors, a list of crimes for which the applicant has been arrested or convicted, including the dates and places.

(6) A statement as to the period of time during which the applicant intends to engage in the business or activity regulated under this chapter, not to exceed one (1) year.

(7) 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.

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

(9) The location where a transient business or mobile food vending operation is to be conducted, if known.

(10) Further information required by the Town Clerk, the Police Department or the Code Enforcement Office.

B. The application shall be signed by the applicant and sworn to before a notary public or other officer authorized to administer oaths.

C. 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 or shall be prominently displayed on the mobile food vending vehicle or at the transient business site.

§ 87-7. Investigation of Applicant and Issuance of License.

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.

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 or 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 ten (10) business days of the receipt of 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 their 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.

§ 87-8. Fees.

The following fees shall be paid to the Town Clerk with an application for a permit:

Type of Permit	
Peddler's or solicitor's permit	\$50
Transient business permit	\$50
Mobile Food Vehicle Vendor permit	\$50 for the first vehicle \$25 for each additional vehicle \$25 for permit renewals in accordance with § 87-9.

§ 87-9. Permit regulations.

A. After receipt of reports from the Police Department and Code Enforcement Office, 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 ninety (90) days after issuance.

C. Mobile food vendor permits shall automatically expire one (1) year after the date of issuance. A Mobile Food Vendor Permit may be renewed within thirty (30) days of expiration. Renewals shall be subject to investigation as set forth in § 87-7.

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 if the Police Department and Code Enforcement Office in their sole discretion determine the applicant misrepresented their 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.

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 Building Department.

G. For Mobile Food Vendors:

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

(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 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) 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.

§ 87-11. 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.

B. No person regulated by this Local Law 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.

§ 87-12. 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.

§ 87-13. 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.

§ 87-14. Enforcement.

This chapter shall be enforced by the Police Department and the Code Enforcement Office of the Town of West Seneca. Primary enforcement of the Mobile Food Vending regulations contained in this Local Law 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 Building Department shall refer that issue to the Police Department.

§ 87-15. Severability.

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