

Chapter 223

PEDDLERS, VENDORS AND SOLICITORS

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[HISTORY: Adopted by the City Council of the City of Newburgh 5-27-2008 by Ord. No. 6-2008;¹ amended in its entirety 2-25-2013 by Ord. No. 2-2013. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Sale or lease of City real property — See Ch. 13.
Fees — See Ch. 163.
Noise — See Ch. 212.
Parks and recreation areas — See Ch. 220.

Public market — See Ch. 235.
Street musicians — See Ch. 260.
Wreckers and towers — See Ch. 297.

1. Editor's Note: This ordinance also repealed former Ch. 223, Peddling and Soliciting, which consisted of Art. I, Canvassers and Solicitors, adopted 11-13-1967 (Ch. 6, Art. V, of the Code of Ordinances), as amended; and Art. II, Peddlers, adopted 7-14-1980 by Ord. No. 4, as amended.

§ 223-1. Activities requiring license.

It shall be unlawful for any person or organization who or which has not been issued a license as a peddler under this chapter to engage in business as a street vendor, peddler, canvasser or solicitor, selling wares or services from or by means of a vehicle, trailer, cart, pushcart, wagon, mobile platform, table or other means of carrying, displaying, offering or serving same; or using public streets or sidewalks or other public property or calling at residences without the previous consent of the occupant or owner for the purpose of soliciting orders, sales, subscriptions or business of any kind or seeking donations to or alms for any church, charity or private institution whatsoever or selling or distributing any ticket or chance whatsoever without first having obtained a license of a peddler under this chapter; or calling at commercial, manufacturing or industrial places of business without the previous consent of the owner or occupant for the purpose of seeking donations to or alms for any church, charity or private institution or selling or distributing any ticket or chance whatsoever without first having obtained a license as a peddler this chapter; provided that any home solicitation by charitable or political organizations, or other activity subject to regulation hereunder, as those activities are defined by law and/or described herein, shall be exempt from the provisions of this chapter so long as they shall meet all other lawful requirements and be exempted herefrom by force or authority of superior law, rule or regulation, including but not limited to the Constitution of the United States and the Constitution of the State of New York.

§ 223-2. Permit and license required; licensing officer.

- A. It shall be unlawful for any person to engage in the business of vendor or peddler as defined in §§ 223-1 and 223-3 of this chapter within the corporate limits of the City of Newburgh without first obtaining a valid permit and license therefor as provided herein. No invalid, expired, suspended, revoked, altered or counterfeit licenses shall be possessed, used, represented or displayed by any person, or purported to be valid for any reason, whether in connection with peddling and soliciting or otherwise.
- B. The City Clerk shall be the licensing officer and commissioner of licenses as provided in the General Business Law of the State of New York and shall keep a record of all licenses and the status thereof.

§ 223-3. Definitions; word usage.

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

CANVASS or SOLICIT — To make or seek to make personal contact with another, either on the highways or streets of this City or on public or private property other than his own, for the purpose of raising funds for, supporting goals of or recruiting new members into a religious, charitable, educational, or political organization or participating in a political campaign on behalf of any candidate for public office.

CITY — The City of Newburgh, of the State of New York, unless otherwise specified.

DECIBEL (dB) — A unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of 20 micronewtons per square meter.

FALSE, FRAUDULENT, MISREPRESENTATION, INACCURATE or MISLEADING —

- (1) Representations that goods have manufacture, sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have; the supplier or manufacturer has a sponsorship, approval, status, affiliation or connection that he does not have; goods are original or new if they are deteriorated, altered, reconditioned, reclaimed or secondhand; or goods are of particular standard, quality, grade, style or model if they are of another; and/or
- (2) The use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact if such use deceives or tends to deceive; and/or
- (3) Disparaging the goods, services or business of another by false or misleading representations of material facts; and/or
- (4) Offering goods with intent not to sell them as offered; and/or
- (5) Making false or misleading representations of fact concerning the reasons for, existence of or amount of price reductions, or price in comparison to prices of competitors or one's own prices at a past or future time; and/or
- (6) Falsely stating the reasons for offering or supplying goods at sale or discount prices.

FOOD

Any raw, cooked or processed edible substances, beverages, ingredients, condiments, ice or water used or intended for use or for sale in whole or in part for human consumption.

FOOD SERVICE ESTABLISHMENT

A place where food is prepared and intended for individual portion service and includes the site at which the individual portions are provided, whether consumption occurs on or off the premises. The term excludes food processing establishments, retail food stores, private homes where food is prepared or served for family consumption, and food service operations where a distinct group mutually provides, prepares, serves and consumes the food limited to a congregation, club or fraternal organization.

MOBILE FOOD VEHICLE

A commercially manufactured, self-contained, mobile unit in which ready-to-eat food is cooked, wrapped, packaged, processed, prepared or portioned for service, sale or distribution; or one in which beverages are brewed, blended, chilled, bottled, portioned, poured, or prepared for service, sale or distribution.

MOBILE FOOD VEHICLE VENDOR ("MFVV")

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

PERSONAL CONTACT

The face-to-face canvassing or solicitation of a person by another. Mail and telephone contact does not require registration or wearing an identification badge under this chapter.

POLITICAL ORGANIZATION

An organization, a substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office.

PUBLIC SPACE and PUBLIC STREETS

All publicly owned property between the private property lines on a street as such property lines are shown on City records, including, but not limited to, a park, plaza, roadway, shoulder, tree space, sidewalk or parking space between such property lines. It shall also include, but not be limited to, publicly owned or leased land, buildings, piers, wharfs, stadiums and terminals.

RELIGIOUS OR CHARITABLE OR EDUCATIONAL ORGANIZATION

An organization granted tax exemption by the Internal Revenue Service of the United States Treasury Department.

VENDOR or PEDDLER

Includes any person traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares, merchandise, clothing, products, items for sale, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, cart, pushcart, table, platform, automotive vehicle, trailer, railroad car or other vehicle or conveyance or other stationary location on a public street, sidewalk or other location on City-owned property normally used for public accommodation or travel, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this chapter shall be deemed a vendor or peddler, subject to the provisions of this chapter. The word "peddler" shall include the words "vendor," "street vendor," "hawker" and "huckster" and other such words carrying or conveying the same meaning and understanding and addressing the same activities described thereby.

B. The use of any pronoun shall be deemed to include both the masculine and the feminine, and the singular and plural, as the sense and meaning thereof shall appropriately require.

Underlining denotes additions

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§ 223-4. Application for permit or license; health regulations; fee.

- A. Applicants for permits and licenses under this chapter must file with the City Clerk a sworn application, in writing, in duplicate, on a form to be furnished by the City Clerk, which shall give and provide the following information:
- (1) The name and a description of the applicant and date of birth.
 - (2) The applicant's legal permanent and local business and residence addresses, telephone number(s) for home and business and cellular telephones, and e-mail and other means of electronic communications.
 - (3) A description of the nature of the business and the goods to be sold and, in the case of products of a farm or orchard, whether produced or grown by the applicant and, if not, the name, address and telephone number of the producer or grower.
 - (4) If employed by another, the name and address and telephone number and other information specified in Subsection A(2) hereinabove of the employer, together with credentials establishing the exact relationship.
 - (5) The length of time for which the right to do business is desired.
 - (6) If a wagon, cart, platform, trailer, vehicle or other method or device is to be used, a description of the same, together with the license number or other means of identification thereof.
 - (7) If a source of power or energy is to be used in the conduct of the vending, a description of same; and a document from the City Code Compliance Department and/or Fire Department indicating its review and approval of same, pursuant to § 223-13.

- (8) Two identical photographs of the applicant, taken within 60 days immediately prior to the date of the filing of the application, which pictures shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner. One such photograph shall remain on file with the application in the records of the City Clerk, and one shall be permanently affixed to the permit issued by the City.
 - (9) The fingerprints of the applicant.
 - (10) A statement as to whether or not the applicant has been convicted of or pleaded guilty to any crime, misdemeanor or violation of any federal, state or municipal ordinance, the date(s) of any and all such convictions, the nature of the offense and the punishment or penalty assessed therefor.
 - (11) A statement whether any license similar to or like that provided in this chapter was issued or denied to the applicant within the current or any prior year, whether in the City of Newburgh or elsewhere, and, if issued, whether such license had been revoked or suspended, setting forth the reasons for said revocation or suspension.
 - (12) If the applicant is applying for a renewal of a license issued in the year immediately preceding the year of such application, or if the applicant has ever been licensed by the City within the past five years of such application as a vendor or peddler, the applicant shall submit with such application records showing the following: proof of payment of New York State sales tax for the most-recent prior such year for which the applicant was licensed by the City.
- B. If the applicant is offering food for sale under this chapter, he shall file with his application a statement by a physician licensed by the State of New York, dated not more than 10 days prior to submission of the application, certifying the applicant to be free of infectious, contagious or communicable disease.
- C. At the time of filing the application, a nonrefundable application fee as set forth in Chapter 163, Fees, of this Code shall be paid to the City Clerk to cover the cost of investigation and other City administrative costs relating to same.
- D. If the applicant and the activity regulated hereunder is also subject to the Health and Sanitary Code administered by the Orange County Department of Health, or to any other applicable law, code, rule, regulation or permit condition, he must submit satisfactory proof of compliance with all such, including, but not limited to, the proper issuance of any permits required, copies of which shall be provided to the City as part of the application required hereunder.
- E. Whenever any information provided on the application for a license or for a renewal thereof has changed, the applicant and/or licensee shall notify the City Clerk of all such changes within 10 days thereof. Each licensed vendor shall notify the City Clerk within 10 days if:
- (1) He has committed or been found by a court to have committed one or more violations of any of the provisions of this chapter on separate occasions; or

- (2) He has failed to answer a summons, appear for a hearing or pay a fine imposed by a court for violation of this chapter within 30 days of its due date.
- F. The applicant shall submit proof of a valid, current certificate of authority from the New York State Department of Taxation and Finance to collect sales tax on all sales subject thereto by law.
- G. The applicant shall provide proof of certification and approval by the County Sealer of Weights and Measures of all scales and measuring devices used by the applicant in the conduct of business.

§ 223-5. Investigation; disapproval or approval by Chief of Police and/or Fire Chief.

- A. Upon receipt of such application, the original shall be referred to the Chief of Police and the Fire Chief, who shall cause such investigation of the applicant's business and moral character to be made as they deem necessary for the protection of the public good.
- B. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police and/or the Fire Chief shall endorse on such application his disapproval and his reasons for the same and return the application to the City Clerk, who shall notify the applicant that his application is disapproved and that no permit and license will be issued. The applicant shall be entitled to receive, upon request, a copy of such disapproval.
- C. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Fire Chief may endorse the application and forward same to the Chief of Police, who may endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return said permit, along with the application, to the City Clerk, who shall, upon payment of the prescribed license fee, deliver to the applicant his permit and issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling. The Clerk shall keep a permanent record of all licenses issued.

§ 223-6. Fees; term of license.

- A. Fees shall be computed and assessed as set forth in Chapter 163, Fees, of this Code.
- B. Basis for fees. For the purpose of this chapter, the full yearly or seasonal amount will be due during any period of time during the course of a calendar year. There shall be no prorated fees.
- C. Any and all licenses issued hereunder shall expire on December 31 of the year in which same were issued.

- D. Any person canvassing or soliciting under § 223-7A(3) shall pay a fee for an identification badge as set forth in Chapter 163, Fees, of this Code.

§ 223-7. Exceptions and exemptions.

- A. The following activities are excepted and/or exempt from the provisions of this chapter related to licensing and fees:
- (1) The sale of farm or garden produce by the actual farmer or grower.
 - (2) The door-to-door delivery or sale of newspapers, milk, bakery goods, eggs and cream along a regularly established route.
 - (3) The activities of nonprofit, charitable or other organizations or individuals who are holding fairs or other similar functions on City property with the permission of the City Manager for a definite short period of time and/or as same may be authorized by the City under the terms of a special event or permit and/or as authorized under the provisions of the City Code. For purposes of this regulation, a nonprofit association shall be deemed to be any governmental agency; any charitable, educational, religious or political organization or any association incorporated in accordance with or subject to the provisions of the New York Not-For-Profit Corporation Law; or any other organization or association which does not exist for purposes of pecuniary profit or financial gain and no part of the assets, income or profit of which is distributable to its members, directors or officers.
 - (4) Persons with a bona fide affiliation with a street fair, block party or festival (hereafter "street fair"). For purposes of this regulation, a street fair is any event in a public space for which all permits required by law in order for the event to be held have been obtained from the appropriate City agencies by the association sponsoring same. A "bona fide affiliation" shall be deemed to mean residence on the block on which the fair is taking place, in the case of a fair sponsored by a block association; or membership in the association, where the association does not have as its sole function the sponsorship of street fairs. Any nonprofit association, as defined herein, holding a street fair, and any person who operates as a general vendor at such street fair, is exempted from the provisions of this chapter relating to licensing and fees, as long as:
 - (a) The person has a bona fide affiliation with the sponsor of the street fair, is not acting as a general vendor other than at a street fair and is making a contribution to the sponsoring association through participation in the street fair; or
 - (b) The person who sells or offers to sell goods or services has a location during the fair on the street or sidewalk in front of a store normally maintained by that person. The sponsoring association must submit to the City Clerk, Police, Fire, and Code Enforcement Offices a copy of any permits required by the Orange County Department of Health under the Health and Sanitary Code and a certification, which shall include the name and address of each person qualifying for the exemption, prior to the opening of the street fair.

- (5) Any activity which is exempt to such extent or degree from the provisions of this chapter by the terms, force or effect of superior law, rule, regulation or authority, including, but not limited, to the Constitution of the United States and the Constitution of the State of New York.
- B. No exception provided for hereunder shall be deemed to be an exception or waiver of any other requirement or condition imposed by any other provision of any law, code, rule or regulation of the City or of any other agency with jurisdiction thereover.
- C. Registration and identification badge required. Any person who wishes to canvass or solicit for a religious, charitable, educational or political organization or on behalf of any candidate for public office, either on public or private property within the City, must first register with the City Clerk and must thereafter wear an identification badge when canvassing or soliciting.

§ 223-8. Nontransferability; assistants.

- A. No license issued under the provisions of this chapter shall be used at any time by any person other than the one to whom it was issued and whose picture appears thereon, nor shall any vendor or peddler allow any other person to carry on or conduct the business of vending from, of or with the goods, vehicle, pushcart or stand used by or belonging to such licensee.
- B. Each vendor licensed hereunder shall be allowed to employ up to two assistants to assist such vendor in his operations. The license issued to such vendor shall allow such assistants to assist in such vendor's operations; such assistants shall not be required to be separately and individually licensed. Such licensed vendor shall be fully and completely responsible for all acts of such assistants, and the acts of such assistants shall be considered the acts of the licensee for the purposes of enforcement of this chapter. While acting as assistant to the licensed vendor, such person shall remain no farther than 15 feet from the location of such vendor.

§ 223-9. Food Vendors

A. General Provisions

- (1) It shall be unlawful for any person to operate a mobile food vehicle within the public space or public streets within the City of Newburgh without first having obtained a valid mobile food vending license as prescribed in this article. Operation of a mobile food vehicle on private property shall continue to be regulated and prohibited in accordance with all applicable provisions of the City Code.
- (2) It shall be unlawful for a MFVV to park, stand, or operate in a location which is:
 - (a) Within twenty-five (25) feet of a sidewalk corner;
 - (b) Within twenty-five (25) feet of a street intersection;
 - (c) Within twenty-five (25) feet of an area operating pursuant to a valid sidewalk café permit;
 - (d) Within 1,000 feet of the boundary line of any fair, carnival, circus, festival, special event or civic event that is licensed or sanctioned by the City, except when the vendor has obtained a permit to so operate from the City in accordance with Chapter 110 of the City of Newburgh Code of Ordinances;
 - (e) Within 10 feet from other parked vehicles in the front and rear of the MFVV;
 - (f) In the Low Density, Medium Density, or High Density Residential zones, as defined in Chapter 300 of the City of Newburgh Code of Ordinances;
 - (g) Contrary to the provisions of §223-11 of the City of Newburgh Code of Ordinances. In the event that the provisions of §223-11 and this subsection conflict, the provisions of this subsection shall prevail.
- (3) Each and every MFVV must at all times carry on the vehicle a "measuring wheel" with a measuring capacity of no less than 500 feet as a condition of its licensure. The failure of any MFVV to carry such a "measuring wheel" or abide by the proximity distance restrictions included in this article shall constitute a violation of this article.
- (4) All MFVV's must abide by all parking and vehicle and traffic laws, ordinances, rules and regulations at all times, except that a mobile food vehicle that is of such a length that it occupies all or a portion of two vehicle parking spaces may park in said spaces so long as it abides by all other City parking requirements.

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- (5) No MFVV's shall attach or have attached any flashing or revolving light or lights on a vehicle used in aid of the mobile food vendor's business.
- (6) MFVV's are prohibited from using tangible City property meant for public use to enhance their business. Such City property includes, but is not limited to, picnic tables and garbage cans.
- (7) MFVV's are prohibited from disposing of garbage generated in the course of business operations into any garbage receptacles owned by the City, located on a City sidewalk, or in a City right-of-way, and shall comply with the provisions of §223-14.

B. Mobile Food Vehicle Requirements.

All mobile food vehicles must comply with the following:

- (1) Make available for inspection each vehicle to the Fire Department to determine that the vehicle meets the current standards of the New York State Uniform Fire Prevention and Building Code.
- (2) Affix side-by-side, in a conspicuous location on the mobile food vehicle where it may be readily observed by all patrons, its license for food service issued by the Orange County Department of Health and its license for operation in the City of Newburgh, as prescribed in §223-9(C).
- (3) Any signage must be permanently affixed to the mobile food vehicle. No accessory signage shall be placed outside or around the mobile food vehicle.
- (4) Be equipped with trash receptacles of a sufficient capacity that shall be changed as necessary to prevent overflow or the creation of litter or debris.
- (5) Not exceed ten (10) feet in width or forty (40) feet in length.
- (6) Have a serving window that shall be adjacent to the sidewalk when parked.
- (7) If equipped with an engine or generator, said engine or generator must operate in accordance with §223-13.
- (8) Receive inspection and approval from the Fire Department for all fuel storage and diesel or propane generators, including those fueled directly from a vehicle fuel tank.
- (9) No more than two (2) 100-pound propane tanks are allowed (200 pounds aggregate).

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- (10) No storage or use of LPG cylinders or tanks shall be allowed within the vehicle at any time. Any generator or LPG storage compartments located on the exterior of the vehicle must be enclosed, with venting to the exterior and must not allow any venting to the interior of the vehicle.
- (11) Have a bumper that extends beyond the compartment to provide added impact protection if an LPG storage compartment is located on the rear of the truck.
- (12) Be properly placarded to indicate the storage of any combustible or flammable gases.
- (13) Comply with New York State Department of Transportation ("NYSDOT") standards if a belly tanks is installed and/or located within the truck body frame for additional structural protection.
- (14) Be equipped with "Class 1 Commercial" kitchen hoods and suppression systems for any vehicle with a grill, stove, or fryolator.
- (15) Be equipped with an 8", non-combustible splash shield when a grill, stove, or fryolator are adjacent to each other.
- (16) Affix a sticker in a conspicuous location that indicates a cleaning and service of the hood and exhaust systems within the past 365 days measured from the date of inspection.
- (17) Have all piping, interior gas appliances and commercial kitchen hood suppression systems be professionally installed by licensed plumber and permitted through the City of Newburgh Plumbing Inspector. "Flex pipe" shall be allowed from the LPG tank to a regulator, but the regulator to the appliance must be "hard piped" by a licensed, City of Newburgh plumber.
- (18) Be equipped with a Class K extinguisher of sufficient size and a 20 BC extinguisher installed inside the vehicle.
- (19) Be equipped with NSF/ANSI or equivalent certified hand washing sinks, with capacity for tempered hot/cold water under pressure, and soap and towels with splash guards.
- (20) Be equipped with NSF/ANSI or equivalent certified three-compartment sinks with integral drain boards, and with capacity for tempered hot/cold water under pressure.
- (21) Have interior lighting with a minimum of 35-foot candles of light on the preparation, hand washing sink, and three-compartment sink surfaces.

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- (22) Have a 15-gallon fresh water supply, a water heater that provides no less than 10 gallons per hour of 120°F (±2°) of hot water, and a waste water tank that is at least 15 percent larger than the combined capacity of fresh and hot water tanks.
- (23) Comply with NFPA 96 standards for ventilation control and fire protection of commercial cooking operations.

C. License Required; Additional Application Requirements.

- (1) In addition to the requirements set forth in §223-4, any person desiring to operate a mobile food vehicle shall provide the following information:
 - (a) Name, address, phone number, e-mail address, and signature of the owner (if a natural person) of the mobile food vehicle, or the same information for any business entity and any officer or member of the business entity that owns the mobile food vehicle.
 - (b) If the applicant is a business entity, the name and address of its registered agent.
 - (c) Names, addresses, e-mail addresses, and phone numbers of all individuals who will operate the mobile food vehicle, either to drive the mobile food vehicle to a particular location, or to prepare or sell food to the public.
 - (d) A valid copy of all licenses, permits or certificates required by the County of Orange, the State of New York or any subsidiary enforcement agencies or departments thereof.
 - (e) A valid copy of New York State Department of Motor Vehicles registration and certificate of inspection and valid driver's licenses of all vehicle operators.
 - (f) Address used for the base of operations for all cleaning, disposal of wastewater, and mobile food vehicle servicing operations.
 - (g) A signed statement that the vendor shall hold harmless the City and its officers and employees, and shall indemnify and hold harmless the City and its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the license.
- (2) The vendor shall furnish and maintain such public liability, food products liability, and property insurance, as will protect the vendor and the City from all claims for damage to property or bodily injury, including death, which may arise from the operations under the license or in connection therewith. Such insurance shall provide coverage of not less

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than \$500,000 per occurrence. The policy shall further provide that it may not be canceled except upon 30 days' written notice served upon the City Clerk.

(3) All license applicants shall submit to a Newburgh Police Department background check for criminal convictions that the City Council has deemed related to the proposed activity. A license application shall be denied if the Chief of Police, upon review of a criminal background check, determines that any mobile food vehicle operators, as defined in Section 223-9(C)(1)(c) have been convicted of:

(a) Any felony in the ten (10) years preceding the date of the application for a crime involving: theft, fraud, the sale of marijuana, the sale of controlled substances, or an alcohol-related offense; or

(b) Any misdemeanor in the five (5) years preceding the date of the application for a crime involving: theft, fraud, the sale of marijuana, the sale of controlled substances, or an alcohol-related offense;

C. Form and condition of license.

(1) Every mobile food vehicle vending license shall be subject to the following conditions:

(a) The license shall not be transferable.

(b) The license shall be valid for one vehicle only.

(c) The license shall be permanently and prominently affixed to the vehicle, and shall be posted in a conspicuous location on the mobile food vehicle where it may be readily observed by all patrons.

SECTION 2. Severability.

The provisions of this Ordinance are separable and if any provision, clause, sentence, section, subsection, word or part thereof is held to be illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted is such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Ordinance or part here of is held inapplicable had been specifically exempt therefrom.

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SECTION 3. Codification.

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Ordinance shall be included in the Code of Ordinances of the City of Newburgh; that the sections and subsections of this Ordinance may be re-numbered and/or re-lettered by the codifier to accomplish such intention; that the term "Ordinance" shall be changed to "Chapter", "Section", or other appropriate word as required for codification; and that any such rearranging of the numbering and/or lettering and editing shall not affect the validity of this Ordinance or the provisions of the Code of Ordinances affected thereby.

SECTION 4. Validity

The invalidity of any provision of this Ordinance shall not affect the validity of any other provision of this Ordinance that can be given effect without such invalid provision.

SECTION 5. This ordinance shall take effect immediately.

§ 223-10. Noise.

All peddlers and vendors must adhere to and comply with Chapter 212, Noise, of the Newburgh City Code.

§ 223-11. Use of public space, streets and certain property restricted.

- A. No vendor or peddler shall have any exclusive right to any location in the public streets, nor shall one be permitted a specified stationary location, nor shall be be permitted to operate in any congested area where his operations reasonably would or might impede or inconvenience the public or cause congestion or public disorder or block or impede the free flow of pedestrian or vehicular traffic. For the purpose of this chapter, the judgment of a police officer or other City officer or official charged with the duty or possessing the authority to enforce the City Code and any applicable laws, rules or regulations, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public is impeded or inconvenienced or the use made by the vendor or peddler is contrary to the provisions hereof. Such officer or official shall have the authority to compel any vendor(s) or peddler(s) to move to a different location in order to relieve congestion or otherwise resolve any disputes and restore calm and order at any public location.
- B. No vendor or peddler shall engage in any vending business on any sidewalk unless such sidewalk has at least an eight-foot-wide clear pedestrian path, to be measured from the

boundary of any private property to any obstructions in or on the sidewalk or, if there are no obstructions, to the curb. In no event shall any pushcart or stand be placed on any part of a sidewalk other than that which abuts the curb.

- C. No vendor or peddler shall occupy more than 25 linear feet of public space parallel to the curb in the operation of a vending business; and, in addition, no vendor or peddler operating any vending business on any sidewalk shall occupy more than four linear feet, to be measured from the curb toward the property line.
- D. No vending vehicle, trailer, pushcart, stand, goods or any other item related to the operation of a vending business shall touch, lean against or be affixed permanently or temporarily to any building or structure, including, but not limited to, lampposts, parking meters, mailboxes, traffic signal stanchions, fire hydrants, tree boxes, benches, bus shelters, refuse baskets or traffic barriers.
- E. A vendor or peddler shall not place a vehicle, trailer, pushcart or stand, or conduct a general vending business, at a location in the roadway where stopping, standing or parking is prohibited or during a time period when stopping, standing or parking is restricted.
- F. A vendor or peddler shall not place a vehicle, trailer, pushcart or stand, or conduct a general vending business, in the roadway in a metered parking space unless such vendor has complied with the coin requirements of such meter. A vendor or peddler shall not remain in a metered parking space for a period of time in excess of the maximum time permitted at such space. A vendor or peddler shall not allow any vehicle, stand, platform or other device used to display or carry wares, food, merchandise or other products for sale to extend beyond the delineated limits of such parking space.
- G. A vendor or peddler shall not place a vehicle, trailer, pushcart or stand or conduct a general vending business in the roadway within 15 feet of a fire hydrant or within a safety zone.
- H. No vending pushcart, trailer, stand or goods shall be located against display windows of a fixed-location businesses, nor shall they be within 20 feet from an entranceway to any building, store, theater, movie house, sports arena or other place of public assembly.
- I. No vendor or peddler shall vend within any bus stop or taxi stand, or on the sidewalk immediately adjacent thereto, or within 10 feet of a crosswalk at any intersection or within 10 feet of any driveway.
- J. Each vendor or peddler vending from a pushcart, trailer or stand in a street or roadway shall obey all traffic and parking laws, rules and regulations as now exist or as may be promulgated, but in no case shall a vendor or peddler vend so as to restrict the continued maintenance of a clear passageway for vehicles.
- K. Where exigent circumstances exist and a police officer, or other officer or employee of any City agency authorized to enforce this chapter, gives notice to a vendor or peddler to temporarily move from any location, such vendor or peddler shall not vend from such location.

- (1) For the purposes of this subsection, "exigent circumstances" shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space, an accident, fire or other emergency situation, a parade, demonstration or other such event or occurrence at or near such location.
 - (2) When a vendor or peddler has received notice to temporarily move from any location where exigent circumstances exist, such vendor or peddler shall immediately stop all vending business and, within one minute, begin to and as quickly as possible move his goods, vehicle, pushcart or stand from the entire area in which the exigent circumstances exist, as determined and stated by a police officer or other authorized person giving such notice to move. A vendor or peddler shall not return to the area of the exigent circumstances while such condition continues to exist. In the absence of a statement to the contrary by an authorized person, it shall be presumed that the exigent circumstances will continue to exist in such area for a period of two hours from the time notice to move was given to the vendor or peddler.
- L. No vendor or peddler licensed under this chapter shall leave any items, wares, goods, merchandise, vehicles, trailer(s), pushcart(s), stand(s), platform(s), boxes, bales, containers, trash or other equipment or material on any City or other public property or on private property without the permission of the owner thereof overnight, but he or she must remove same to a private, secured location at the close of business.
- M. No vendor or peddler shall trespass upon private property where the owner or proprietor thereof shall have prohibited such activity thereon.

§ 223-12. Restrictions on use of parks.

No person, whether holding a license or not, shall sell, offer or expose for sale any foodstuffs, items or merchandise within Delano-Hitch Recreation Park or within Downing Park or upon or along any street or public place which forms a boundary of said parks or within one block of either park in any direction. This section shall not apply to operators of food stands at Delano-Hitch Recreation Park who have been granted franchises pursuant to Chapter 13, Sale or Lease of City Real Property, of this Code, or to any separate contract or agreement or special events or other permits authorized or issued by the City providing therefor.

§ 223-13. Restrictions on use of generators.

No vendor or peddler shall employ a generator or other independent source of power while vending in the City limits, unless such generator is preapproved by the Fire Chief and/or Code Enforcement and conforms to the City Noise Ordinance, Chapter 212 of the Newburgh City Code, and does not exceed a maximum noise output of 80db, and is subject to inspection of same.

§ 223-14. Garbage and waste materials.

Garbage and waste materials generated in the course of business, whether generated by the vendor or peddler or the customers thereof, shall not be permitted to accumulate or to become

a nuisance but shall be placed in separate, secure and sanitary containers provided for such purpose by the vendor or peddler. The garbage receptacles and their contents shall be properly removed by the vendor or peddler whenever necessary to prevent spillage and accumulation of trash and at the close of each business day. Vendors and peddlers shall not use public trash receptacles or storm or sewer lines, mains or systems for disposal of such containers and trash, or other organic or inorganic waste, but shall take such containers and trash away with them and dispose of same privately and lawfully at their own expense. Vendors and peddlers shall remain responsible for keeping the area immediately surrounding their location of operation, within a fifteen-foot radius, clean and free of all trash and debris at all times.

§ 223-15. Restrictions on vending near schools.

Vendors shall not sell any foodstuffs, confectionery, drink or ice cream on the grounds of any school or on the public streets bordering any school or within one block of any school in any direction between the hours of 8:00 a.m. and 4:00 p.m. on days when school is in session.

§ 223-16. Weighing and measuring appliances.

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 or other municipal official with authority over same; and, if the latter shall find such appliances correct and true, his certificate to that effect shall be affixed to said scales, measures or other appliances in a conspicuous place. No vendor shall carry or use any such appliance which is not correct and true and does not record and give the weight and quantity accurately and as claimed by said vendor.

§ 223-17. Display and exhibition of license.

Vendors and peddlers are required to display all of their permits and/or their licenses visibly and prominently on their person, or at the location where they are operating, and produce same at the request of any citizen or City official or officer.

§ 223-18. Display of prices; receipts.

- A. No vendor shall make, portray or communicate any misrepresentations or false, fraudulently inaccurate or misleading information concerning any merchandise. All items sold or offered for sale by general vendors shall have conspicuously displayed, at the point of offering for sale, the total selling price, exclusive of tax, by means of:
- (1) A stamp, tag or label attached to the item; or
 - (2) A sign at the point of display which indicates the item to which the price refers, provided that this information is plainly visible at the point of display for sale of the items so indicated.
- B. Each general vendor shall offer a consumer a serially numbered receipt for any purchase. The receipt must include:

- (1) The name and home address of the general vendor;
 - (2) The date of the purchase;
 - (3) The total amount of money and tax paid for the purchase;
 - (4) A description of the item purchased; and
 - (5) The license number of the vendor.
- C. Each general vendor shall retain a duplicate copy of each receipt, which shall be produced for inspection upon request by police or other code enforcement personnel. The receipts shall be presented for review to any City enforcement officer by the general vendor upon request.

§ 223-19. Enforcement; confiscation and return of property.

- A. It shall be the duty of any police officer or other authorized law or code enforcement officer of the City of Newburgh to require any person seen peddling and who is not known by such officer to be duly licensed to produce his peddler's license and to enforce the provisions of this chapter against any person found to be violating the same.
- B. Any City police or code enforcement officer who determines that a vendor has committed or is committing one or more violations of this chapter relating to vending without a valid license, failure to pay fees or fines, improper use of streets, improper management of waste, inaccurate weighing and measuring, or false and misleading misrepresentations to consumers may confiscate by taking physical custody and possession the goods, merchandise and wares of such vendor and any platform or vehicle used for such vending.
- C. A vendor who has had any goods, or any vehicle, platform, pushcart or stand, removed under the provisions of this section may serve notice of a request for the return of such property. The City may return said goods and/or vehicle before or after a judicial determination of the charges. Unless the judicial proceeding has terminated in favor of the vendor, the owner or other person lawfully entitled to the possession of such vehicle, pushcart, stand or goods which have been removed under the provisions of this section, such person(s) may be charged with the reasonable costs as set forth in Chapter 297, Wreckers and Towers, of the Code of Ordinances for the removal and storage of such goods, platform, pushcart, trailer, stand and/or vehicle, payable prior to the release of such goods, platform, vehicle, pushcart or stand.

§ 223-20. Recordkeeping.

- A. The Chief of Police and/or Director of Code Compliance and the Corporation Counsel shall report to the City Clerk all convictions for any and all violations of this chapter, and the City Clerk shall maintain a record for each license issued and record the reports of violations therein.
- B. Each licensee shall keep and maintain accurate and complete records as follows:

- (1) Each vendor shall keep written records of daily gross sales, purchases and expenses, including receipts for expenditures, and any other business-related records as the Chief of Police or Director of Code Compliance may require, and shall make such records available for inspection by any authorized official or employee of the City at all reasonable times upon demand, including daily gross sales receipts from vending in a format that includes the month and year, the date, the daily sales, sales tax collected and the total sales for the date. Such records shall be kept in the following format:

Date: _____
 Item Sold: _____
 Sales Tax Collected: _____
 Total Price: _____

- (2) This shall be in addition to the requirement to keep and maintain duplicate receipts and such other records which are required under this chapter and under other laws, rules and requirements. All records shall be made available to police and code enforcement personnel, upon request, at the Department's offices.

§ 223-21. Suspension or revocation of license.

- A. Any license or permit issued under the provisions of this chapter may be suspended or revoked by the Police Chief and/or the City Manager of the City of Newburgh after notice and hearing for any of the following causes:
 - (1) Fraud, misrepresentation or false statement contained in the application for license.
 - (2) Fraud, misrepresentation or false statement made in the course of carrying on his business as a peddler.
 - (3) Any violation of this chapter.
 - (4) Conviction of any crime or misdemeanor involving moral turpitude or misconduct arising out of commercial dealing or the conduct of business or any conviction of violation of this section.
 - (5) Conducting the business of vending or peddling in violation of any provision of this chapter or in any unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
 - (6) Nonpayment or being in arrears in paying any debt, judgment, taxes, charges, fees, fines or other moneys due and owing to the City or other municipal or government agency.
- B. Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall

be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing.

- C. Any permit issued under this chapter shall be promptly surrendered to the City Clerk upon its suspension or revocation.

§ 223-22. Appeals.

Any person aggrieved by the action of the Chief of Police or the Fire Chief or the City Clerk or the City Manager in the denial or revocation or suspension of an application for permit or license as provided in this chapter or in the decision with reference to the revocation of a license as provided in this chapter shall have the right of appeal to the Council of the City of Newburgh. Such appeal shall be taken by filing with the Council, within 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant, in writing, addressed to the address provided by the applicant for notice of hearing on denial, suspension or revocation. The decision and order of the Council on such appeal shall be final and conclusive.

§ 223-23. Penalties for offenses.

In addition to all other penalties provided under this chapter or of any provision of the City Code or of any other law, rule or regulation of the state or other municipality or agency with jurisdiction over the subject, the following schedule of penalties shall apply for each separate violation of this chapter:

Offense	Penalty Amount
(within the same calendar year)	
First conviction	\$250
Second conviction	\$500 and revocation of the license as provided under § 223-21

§ 223-24. Loss of license; duplicate license fee.

The holder of any license issued hereunder shall promptly report the loss, mutilation or destruction thereof, in writing, to the City Clerk, who, if satisfied as to the facts establishing or concerning same, may issue a duplicate license only to the individual to whom the original was issued. Such duplicate license shall have plainly marked upon the face thereof the word "DUPLICATE." The fee to be charged for the issuance of each duplicate license shall be as set forth in Chapter 163, Fees, of this Code.

§ 223-25. License in addition to county, state and other licenses.

Notwithstanding the issuance of a license pursuant to the provisions of § 32 of the General Business Law or other laws, codes, rules or regulations of any municipal agency or of the State of New York, no person obtaining such a license shall be permitted to carry on the

business of a vendor or peddler upon the streets and highways of the City of Newburgh without first obtaining a license pursuant to this chapter.

§ 223-26. Provisions cumulative with other laws.

The provisions of this chapter shall be in addition to and not instead of the provisions of any other laws, codes, rules or regulations of the federal, state, county or City government applicable to the subject.

§ 223-27. Severability.

If any of the provisions of this chapter shall be held invalid, the remainder shall remain valid and enforceable as provided by law.