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Chapter 165

Peddling and Vending

[HISTORY: Adopted by the City Council of the City of Saratoga Springs 3-20-2018. Amendments noted where applicable.]

GENERAL REFERENCES

Handbills and posters — See Ch. **132**.

Newsracks — See Ch. **145**.

Noise — See Ch. **148**.

Pawnbrokers — See Ch. **159**.

Vehicles and traffic — See Ch. **225**.

§ 165-1 **Definitions.**

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

CITY CLERK

The City Clerk of the City of Saratoga Springs.

FARM AND FOOD PRODUCT

Any agricultural, horticultural, forest, or other product of the soil or water, including but not limited to craft brews, farm or micro produced wines or hard ciders, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, fruit juice, wine, ornamental or vegetable plants, nursery products, flowers, firewood and Christmas trees.

FARMER'S MARKET

Any building, structure or place, the property of a municipal corporation or under lease to or in possession of a public or private agency, individual or business used or intended to be used by two or more producers for the direct sale of a diversity of farm and food products (defined above), from producers to consumers and food buyers.

FOOD TRUCK

A registered motor vehicle designed to be mobile, portable and not permanently attached to the ground from which food (either prepackaged or prepared on site) is sold or given away.

ICE CREAM AND OTHER FROZEN CONFECTIONS

Vendors allowed in residential neighborhoods that are given permission to utilize a specific route approved by the City, but that may not stop or idle for more than 15 minutes at any time, that sell ice cream and other frozen confections. All noise ordinances and traffic and parking laws must be followed.

LICENSE

A license issued pursuant to this chapter.

LICENSEE

Any person holding a license.

MINOR

Any person under the age of 18.

PERSON

Includes individuals, corporations, partnerships, associations, and all other legal entities, whether acting as principal or agent.

PRIVATE SITE

Any privately owned or leased property.

PRODUCER

Any person or persons who grow, produce, or cause to be grown or produced any farm or food products in New York State.

PUBLIC OR PRIVATE AGENCY

Any agency of federal, state or local government, regional market authority, public benefit corporation, not-for-profit corporation, cooperative corporation or educational institution.

PUBLIC PLACE

All publicly owned and/or managed land that includes, but shall not be limited to, streets, sidewalks, parking, outdoor passive and active recreation areas (whether paved or unpaved), and bike paths.

REFRESHMENT

Any food, fruit, or other edible commodity or soft drink or carbonated beverage or water that is bottled.

SPECIAL EVENT

Any festival, parade, race, fundraiser, or other event taking place on public property and that is open to the public governed by Chapter **199A**.

VENDOR

Any person engaged in the selling or offering for sale of, or engaged in purchasing or offering to purchase for commercial purposes, refreshments or merchandise, in a public place or private site.

§ 165-2 Exemptions.

Nothing in this chapter shall apply to any of the following:

- A. Sales conducted pursuant to any statute or by order of any court.
- B. Any person selling merchandise at wholesale to dealers in such articles.
- C. Any person selling his or her own personal property at a garage sale held at his or her private residence, provided that no such garage sale may be conducted for more than four days in a month.
- D. Persons who sell newspapers or horse racing information.

§ 165-2.1 Limited exemptions.

- A. Limited racetrack exemption for minors.

- (1) There shall be an exemption for minors who sell bottled water and/or writing instruments during the Saratoga Thoroughbred Racing Meet in the following areas adjacent to the Saratoga Race Track in the

green space between the NYRA fence and the sidewalk:

- (a) The east side of Frank Sullivan Place for a distance of 550 feet south of its intersection with Lincoln Avenue.
 - (b) The north side of Lincoln Avenue for a distance of 250 feet west of its intersection with Frank Sullivan Place.
 - (c) The east side of Nelson Avenue between Wright Street and Gridley Street, with the exception of 50 feet from the intersection of Nelson Avenue and Wright Street, where no vending will be allowed.
- (2) A minor shall occupy no more than nine square feet of area, and shall not in any event obstruct the orderly passage of pedestrians or vehicles across streets and sidewalks.
 - (3) A minor shall sell only between the hours of 7:00 a.m. and 7:00 p.m. each day.
 - (4) A minor shall remove all merchandise and equipment each day upon leaving.
 - (5) No minor shall be granted exclusive occupancy of any particular location within the permitted area. If minors cannot cooperate in establishing locations each day, the Commissioner of Public Safety, or his or her designee, shall have authority to establish a fair and equitable procedure for the assignment of locations.
 - (6) The parent or guardian of each minor shall register by filing an application with the Department of Accounts, and shall include a signed statement indicating:
 - (a) That the minor has the parent or guardian's permission to engage in vending pursuant to this exemption.
 - (b) The parent or guardian shall provide proof of age.
 - (c) That the parent or guardian intends to relieve the City from liability for all injuries and claims of any kind arising out of the vending activity.
 - (d) That the parent or guardian shall hold the City harmless from all causes of action arising out of the vending activity.
 - (e) That the parent or guardian assumes responsibility for the minor's vending activity and shall, if the minor is under 14 years of age, accompany the minor at all times during the vending activity.
 - (f) That, if the minor is at least 14 years of age, the minor holds appropriate working papers in accordance with state law. A copy of the working papers shall be submitted with the application.
 - (7) All duly registered individuals shall be issued an identification badge generated by the City, which shall be worn at all times during the vending activity.
- B. Limited exemption for charitable organizations.
- (1) There shall be an exemption for persons operating a sale on behalf of any charitable organization or not-for-profit corporation, as that term is defined in the Not-For-Profit Corporation Law, except that such persons shall be required to obtain a vendor license, at no cost, and shall be subject to all the restrictions set forth in City Code Chapter **199A**.
- C. Limited exemption for special events.
- (1) There shall be an exemption for persons whose vending activity is described in a special event license

issued under City Code Chapter **199A**, except that any such person shall:

- (a) Comply with all restrictions set forth in City Code Chapter **199A**.
- (b) Comply with any and all additional restrictions as may be imposed by the City to reasonably provide for public health and safety.
- (c) Provide the required insurance and an executed application as required.
- (d) If selling food, provide proof of certification required by the New York State Department of Health.

§ 165-3 License required; application.

Every vendor herein defined shall obtain a license pursuant to this chapter; however, any person under the employ of a license holder shall not require a separate license.

A. Application.

- (1) Every person who wishes to obtain a license under this chapter shall make application to the Commissioner of Accounts on forms provided by the Commissioner. Each application shall state:
 - (a) The name, address and phone number of the applicant.
 - (b) If the applicant is an agent, the name, address, and phone number of the person, firm, corporation or legal entity that he or she represents, and the names, addresses and phone numbers of all vendors participating in the application.
 - (c) A detailed description of the goods, wares or merchandise that the applicant will sell or trade in, along with a description of any vehicles or devices to be used by the applicant.
 - (d) A detailed map of the area or areas within the City where the applicant proposes to conduct his or her activities.
 - (e) The hours of the day that the applicant proposes to conduct business as described within the application.
 - (f) Any other information as may be required by the City to properly and adequately review the application.
 - (g) A copy of a New York sales tax certificate.
 - (h) A New York State Department of Health Department certificate: Please note that any vendor who will be selling or distributing food must go through the Saratoga County Health Department.
 - (i) A description of the mobile vending unit, including the unit's dimensions (length and width), and a copy of the vehicle registration. A photographic image of the unit is optional.
 - (j) A written waste disposal plan for all trash, water, grease, and other materials. City staff will review the description, and modifications may be required before a license will be issued.
 - (k) Proof of 501(c)(3) designation, if applicable.
- (1) Copy of the Fire Department license for solid, liquid, or gas-fired cooking/heating appliances, if applicable.
- (2) The Department of Accounts shall refer the application to the Department of Public Works, Office of Risk and Safety, the Department of Public Safety and the Design Review Commission for review, evaluation and approvals. Approvals may include any modifications and/or restrictions in the interest of

public health, safety and welfare.

- (3) Applications for licenses under this chapter may be made at any time and shall be valid until December 31 of that year, unless a shorter period of validity shall be specified on the license by the Commissioner of Accounts.
- (4) The Commissioner of Accounts shall have authority to refer any application to the Saratoga Springs Police Department for the making of such investigation of the applicant as the Department deems necessary for the protection of the public good. The Saratoga Springs Police Department shall inform the Accounts Department of any information that would legally prohibit the Commissioner of Accounts from approving such application.
- (5) Each application shall be accompanied by two recent photographs of the applicant, or, if the applicant is not an individual, two photographs of the person who will be conducting the vending activities. In any case where more than one person will be conducting the vending activities, two photographs of each person must be submitted. All photographs must be of passport size and requirements.
- (6) Insurance:
 - (a) The applicant shall maintain at all times a commercial general liability insurance policy in the amount of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, including personal injury; commercial automobile insurance with a combined single limit of \$1,000,000 and New York State statutory workers' compensation and employer's liability and disability insurance or waiver of same from the New York State Workers' Compensation Bureau is required per New York State law. Failure to secure compensation for the benefit of, and keep insured during the life of this agreement, employees required in compliance with the provisions of Workers' Compensation Law shall make this agreement void and of no effect.
 - (b) The insurance company issuing the policy shall be licensed and admitted to do business in New York State.
 - (c) The policy shall designate, by manufacturer, year, make, model and vehicle or serial identification number, all commercial vehicles for which coverage is granted.
 - (d) The policy shall insure the person named in the policy and any other person using any equipment and/or vehicle with the express or implied permission of the named insured against any liability arising out of the ownership, maintenance or use of the applicant's activities in New York.
 - (e) The policies shall name the City as an additional insured on a primary and noncontributory basis.

§ 165-4 Issuance of license; rules and regulations.

- A. Upon the completion of the foregoing requirements to the satisfaction of the Department of Public Works, Office of Risk and Safety, the Department of Public Safety and the Design Review Commission, the Commissioner of Accounts shall issue the applicant a license. Except as hereinafter provided, no license shall be refused except for a stated reason as to why the application is not satisfactory.
- B. The Commissioner of Accounts, in accordance with the laws of the City, may impose conditions upon the use of any license, including but not limited to the times of day, days of the week, and geographical limits within which the licensee may perform the activities permitted by the license.
- C. A license shall not be assignable. Any holder of a license who permits it to be used by any other person and any person who uses a license granted to any other person shall each be guilty of a violation of this chapter.

- D. Whenever a license shall be lost or destroyed on the part of the licensee or his or her agent or employee, a duplicate license, subject to all the terms and conditions of the original, may be issued by the Commissioner of Accounts upon the filing by the licensee of an affidavit setting forth the circumstances of the loss.
- E. Each license shall be assigned a number and shall indicate the licensee's name and address, the date of issue, the expiration date, the goods, wares or merchandise to be sold or traded in, the amount of the fee paid, and the vehicles or other devices used by the licensee.
- F. No license shall be issued to a person under 18 years of age, except that a license holder shall be permitted to employ persons under 18 years of age.
- G. No licensee who has had his or her license revoked shall make another application until a period of at least 12 months shall have elapsed since the revocation, unless he or she can demonstrate to the satisfaction of the Commissioner of Accounts good cause for the earlier submittal of an application.

§ 165-5 License fees.

- A. License fees shall be established [on an annual basis by resolution of the City Council] from time to time by the City Council for the licensure of auctions. A schedule of all such fees will be available for review in the Office of the City Clerk and on the City's webpage., with the exception of veterans licensed by the County of Saratoga and/or New York State under Article 4 of the General Business Law.
- B. A person 65 years of age or older may make application to waive the fee for any license required by this chapter, and the Commissioner of Accounts shall grant such waiver upon the applicant's submitting satisfactory proof of age. Such waiver shall be rescinded if at any time the applicant shall cease to be the sole person engaged in the licensed activity.

C. Payment of the applicable fee under this section shall be due upon filing or renewal of the application.

§ 165-6 Restrictions.

A licensed vendor shall:

- A. Not falsely or fraudulently misrepresent any article or articles offered for sale or offer for sale any unwholesome, tainted or contaminated merchandise.
- B. Permit the City Code Enforcement Administrator to inspect any equipment used or foods offered for sale at any time.
- C. Horns and bells.
 - (1) Not blow a horn, ring a bell or use any other noisemaking device to attract public attention, except when required to do so by the New York State Vehicle and Traffic Law, or by other applicable law.
 - (2) For purposes of this subsection, noise made by such a licensee shall not be continuous and uninterrupted, nor shall it be of a type that a reasonable person, under the circumstances, would not tolerate.
- D. Not position himself or herself nor place any object in such a manner so as to obstruct any street, sidewalk or public place and shall keep the area within 10 feet of his or her vending operation clean and free from debris.
- E. Comply with any requirements or regulations promulgated by the City. It shall be the responsibility of the licensee to obtain information about any such standards from City's website or obtain a paper copy upon request from the City Clerk's office.

- F. Display his or her photo license prominently at all times while engaging in the licensed activity.
- G. Not sell anywhere in the T-6 Downtown Business District, except as may be allowed under the terms of this chapter and/or a special event permit.
- H. Not supply any outdoor seating associated with the vending activity.

§ 165-7 Records.

It shall be the duty of the Commissioner of Accounts to keep a record of all applications and all licenses granted under the provisions of this chapter, giving the number and date of each license, the name and address of the licensee, the amount of the license fee paid and also the date of revocation of all licenses revoked.

§ 165-8 Application of Zoning Ordinance.

Nothing in this chapter shall be construed as granting the Commissioner of Accounts any power to confer rights upon license holders to do or perform any activity in contravention of any duly adopted zoning regulations or ordinances in effect in the City of Saratoga Springs.

§ 165-9 Outdoor food vending.

The purpose of this policy is to establish a uniform City policy for the purpose of vending fresh, prepared and prepackaged food products to the general public. Retail or service-based vending will not be covered under this policy. The regulations in this section shall be in addition to and not in limitation of other regulations in this chapter.

A. Types of outdoor food vending permitted.

(1) Licenses may be issued for outdoor food vending only in the following circumstances:

- (a) Outdoor food vending as part of a farmers market as specified in § **165-9B**.
- (b) Outdoor food vending in connection with a special event permit issued under Chapter **199A** of the City Code.
- (c) Outdoor food vending in a privately owned parking lot or other private property pursuant to § **165-9C**.
- (d) Outdoor food vending of ice cream and other frozen confectionary products pursuant to § **165-9D**.
- (e) Outdoor food vending at specified locations established by resolution of the City Council and specified on a list of approved vending locations.

B. Farmers markets. Farmers markets are defined and governed by the New York State Department of Agriculture and Markets (NYSDAM) and shall be permitted to sell farm and farm-produced foods as defined within this chapter. The participants of farmers markets operating within the corporate boundaries of the City shall abide by and prominently display as required by law the following New York State Agency requirements in addition to the licensing requirements previously stipulated herein. The aforementioned regulatory list is subject to regulatory changes and is not meant to be all-inclusive:

- (1) Fresh produce: No permits, licenses or certificates are required per New York State regulation if the produce is raw, cut and unprocessed.
- (2) New York State Tax Department: A valid New York State sales tax certificate is required to be prominently displayed at each farmers market booth.
- (3) New York State Department of Health:

- (a) Food service permits are required if the majority of the products sold are a food service item that is made for immediate consumption.
- (b) All processed foods sold must be from an approved source that is produced under a New York State Department of Agriculture and Markets 20-C license or New York State DOH permit.
- (c) Individual vending licenses shall be required if the New York State DOH requires a food service permit. Food demonstrations that include hot prepared foods shall require a permit from the New York State Department of Health per their regulations. The permit shall be prominently posted for view.
- (d) Proof of this licensure must be submitted for each participant as part of the vendor's licensure.
- (e) A vending license shall be required of any vendor required to obtain a New York State DOH food preparation certificate.
- (4) New York State Liquor Authority (farm breweries, craft breweries, farm wineries, farm cideries and farm distilleries):
 - (a) All New York State alcohol vendors must enforce age restrictions regarding sales and sampling at farmers markets.
 - (b) Vendors must obtain a one-time or annual tasting permit from the New York State Liquor Authority (SLA) and submit their brand label for approval prior to any taste testing.
 - (c) The SLA requires a farm distillery license and a marketing permit if the vendor sells distilled products by the bottle. These permits must be prominently displayed at all times.
- (5) New York State Agriculture and Markets Law Article 20-C governs the manufacture and bottling of nonalcoholic cider and fruit juice. Apple cider and related products sold must meet the criteria of New York State Agriculture and Markets Law § 214-n.
- (6) The New York State Department of Agriculture and Markets, Division of Milk Control and Dairy Services, Part II permits govern milk, milk products, cheese and other dairy products. Permits issued by NYSDAM should be prominently displayed as required by regulation.
- (7) USDA (meats): All meats sold are governed under the USDA and must be marked with the USDA legend or as "Processed at an NYSDAM Facility."
- (8) New York State Department of Environmental Conservation (freshwater fish):
 - (a) No permit, license or certificate is required if a freshwater fisherman is selling whole or nonprotected species.
 - (b) An Article 20C license from the NYSDAM is required if fish is pan-ready.
 - (c) A New York State Department of Environmental Conservation food fish and crustacean dealers and shippers license is required to resell marine fish purchased from a licensed fisherman if reselling the fish at the farmers market.
- (9) All pet foods and treats sold must be registered with the New York State Department of Agriculture and Markets. Proof of registration must be posted at the farmers market. All products sold must be the New York State criteria for minimum labeling requirements.
- (10) Animals shall be restricted within a farmers market per the NYSDAM regulations. All live animals for display should be kept segregated and located downwind from foods being sold in the market.

C. Outdoor vending on private property:

- (1) Licenses may be issued to individuals who seek a license to vend on private property.
- (2) The license shall include written authorization from the property owner to conduct the vending activity.
- (3) Licenses shall be issued only in areas permitted by the City's Zoning Ordinance.
- (4) This subsection shall not apply to outdoor food vending for residential properties in connection with catering activities at private events not open to the public.

D. Ice cream vendors:

- (1) May be allowed in residential neighborhoods, as approved by the Commissioner of Accounts or designee.
- (2) Must submit a map with the application showing the route(s) that will be followed.
- (3) Shall submit to a mandatory background check by the Saratoga Springs Police Department.
- (4) May not stop for more than 15 minutes at a time. New York State Vehicle and Traffic laws must be adhered to at all times.
- (5) Must abide by existing City Noise Ordinance regulations and New York State Vehicle and Traffic laws.

§ 165-10 Penalties for offenses.

Any person who, by himself or herself or by an agent or employee, shall act as a vendor as herein defined, without a license or other approval granted herein, or who shall violate any of the provisions of this chapter, or who, having had a license revoked or suspended, shall continue to act as a vendor, shall, upon conviction, be subject to the penalties set forth in Chapter 1, General Provisions, Article III, of the Code.

§ 165-11 Revocation of license.

The Commissioner of Accounts may, upon due notice, revoke or suspend any license or other approval granted or issued herein for a violation of any of the provisions of this chapter or for any other act or omission that demonstrates the licensee's inability to safely and properly conduct the licensed activity. When a license shall be revoked or suspended, no refund of any portion of the license fee shall be made. Notice of such revocation or suspension and the reason or reasons therefor, in writing, shall be served by the Commissioner of Accounts upon the licensee or mailed to the licensee's address as stated on the application. If the license is revoked or terminated for cause, the license period shall end immediately, and no refund will be issued. Notice of proposed suspension or revocation of a license for street vending shall be given in writing, setting forth specifically the grounds of the complaint. Any applicant whose license is revoked under this regulation may not reapply for another license until the expiration of one year from the date of revocation.

§ 165-12 Appeal process for revocation of license.

- A. The Commissioner of Accounts shall have the right to suspend, terminate or reinstate a vending license. Such decisions shall become effective immediately.
- B. The vendor shall have a right to an appeal hearing on the proposed revocation or suspension before the Department of Accounts or its designee no later than 10 days after requesting such a hearing in writing.