

ARTICLE V

Peddlers

[Adopted 3-18-2015 by Ord. No. 56; amended in its entirety 5-6-2015 by Ord. No. 82]



Sec. 2-14-141 **Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ESTABLISHED BUSINESS

A person who carries on a business from a property or a structure either owned or leased by such person for a period greater than six consecutive weeks.

MERCHANDISING

The selling, bartering or trading or offering to sell, barter or trade any goods, wares, commodities or services.

PEDDLER

Unless otherwise provided, any person who engages in merchandising any goods, wares, commodities or services by going from house to house, place of business to place of business or in any public street or public place, whose sales are not made from one established location which is privately owned or rented or by temporarily occupying a room, building or other premises for that purpose.

Sec. 2-14-142 **Purpose.**

This article is enacted for the purpose of regulating itinerant merchandising in order that the peace, health, safety, welfare and good order in the City and of its inhabitants shall not be endangered or unduly disturbed.

Sec. 2-14-143 **Exemptions.**

(a) The provisions of this article shall not apply to the following:

- (1) Any person soliciting at the express invitation of the person solicited or serving an established customer.
- (2) A wholesaler selling articles to dealers or merchants who has an established place of business within the City.
- (3) A truck gardener or farmer who, by the gardener or farmer or through an employee, vends, sells or disposes of products from the gardener's or farmer's own farm or garden.

- (4) A child regularly attending any public, parochial or private school located within the city or a representative of any established church maintaining a place of worship within the city or a member of a veteran's organization, provided that the organization has and maintains a chapter, post, lodge, camp or other group within the city, or a member of a fraternal organization or civic group, provided that the fraternal organization or civic group maintains a chapter or local organization within the City, and the child, representative or member shall only peddle in connection with an authorized activity of the organization of which the child, representative or member is a member or the school which the child, representative or member attends.
 - (5) An auction sale held pursuant to law by a person authorized by law to conduct the sale.
 - (6) Sales of ice cream, soda, juices and food products for immediate consumption in and about the immediate vicinity of public sports events.
 - (7) Home delivery of the designated daily and weekly newspaper.
- (b) This article shall not apply so as to interfere unlawfully with interstate commerce.

Sec. 2-14-144 Prohibited conduct.

- (a) Misstatements of quantity or quality. A licensed peddler shall not willfully misstate the quantity or quality of any article offered for sale.
- (b) Unwholesome or defective goods A licensed peddler shall not willfully offer for sale any article of an unwholesome or defective nature.
- (c) Noise disturbances A licensed peddler shall not call attention to goods by blowing a horn, by ringing a bell other than house doorbell, by shouting or crying or by any loud or unusual noise.
- (d) Creating nuisance:
 - (1) No licensed peddler shall stand or remain in a fixed location for more than 15 minutes. After the expiration of the 15 minutes, said peddler shall be required to move a minimum of 50 feet to a new appropriate location.
 - (2) Alcoholic beverage sales prohibited. No licensed peddler shall be allowed to sell alcoholic beverages at any time.

Sec. 2-14-145 Condition of vehicle and receptacles.

A licensed peddler shall keep the vehicle and receptacles used by the peddler in the furtherance of the licensed business in a sound, clean and sanitary condition.

Sec. 2-14-146 Obstruction of traffic.

Vending carts, wagons, trucks, tables and stands shall be permitted for peddlers, provided that the free flow of pedestrian and vehicular traffic is not obstructed.

Sec. 2-14-147 Operation in parks.

- (a) Peddlers are not allowed in City parks when fund-raising activities by nonprofit organizations duly authorized by the City take place which involve the selling of nonfood, food and refreshment items.
- (b) Hours of operation. A vendor/peddler shall operate between 9:00 a.m. and 9:00 p.m. exceptions are special events.

Sec. 2-14-148 Food.

- (a) Permit required. Peddlers of food or food products must have a current permit from the County Department of Health and must comply with all laws, regulations and rules of the Department.
- (b) Protection of products. The peddler shall keep edible articles offered for sale well protected from dirt, dust and insects.
- (c) Trash receptacles and removal. A peddler of food or food products is required to provide a trash receptacle where customers can dispose of empty cups, papers, etc., and the receptacle must be placed in the general area where the peddler is doing business. The peddler shall inform police of the general area and remove all trash and refuse resulting from the business.
- (d) Prohibited areas. Sales are prohibited within 500 feet of the property lines for Utica public, parochial and private schools between the hours of 7:00 a.m. and 4:00 p.m. on school days.

Sec. 2-14-149 Use of parking meters and utility or sign poles.

Parking meters, utility poles, sign poles or property other than the personal property of the peddler shall not be used by the peddler for any purpose including advertising.

Sec. 2-14-150 Sales from parked vehicles.

Other than food merchandise, no peddler shall offer any goods or merchandise for sale from a vehicle parked upon a public highway or upon any public right-of-way or municipally owned property.

Sec. 2-14-151 Magazine sales.

- (a) No person peddling or soliciting the sale of magazines or other periodicals shall visit a private residence for the purpose of peddling or soliciting unless the person has been personally invited to the private residence by the owner or occupant of the residence.
- (b) The license issued to a person peddling or soliciting the sale of magazines or other periodicals shall, in addition to the other requirements hereby imposed, have the photographs of the licensee affixed thereto and to the application. Such photographs shall have been taken within 30 days next preceding the application for such license.
- (c) Before a license issued to a person for the purpose of peddling or soliciting the sale of magazines or other periodicals shall be valid, it shall be countersigned by the Chief of Police.
- (d) The Chief of Police may refuse to countersign any license issued pursuant to the provisions of this section if, in the Chief's opinion, the applicant's character does not justify the issuance of the license or that the issuance of a license to the applicant would not be in the interest of the peace, health, safety, welfare and good order of the City and its inhabitants.

Sec. 2-14-152 through Sec. 2-14-165. (Reserved)

Sec. 2-14-166 License required.

Peddling any goods, wares, commodities or services within the City without first having obtained a license from the City Clerk is prohibited unless the peddling is at the personal request of the person solicited.

Sec. 2-14-167 License application.

Every applicant for a license required under the provisions of this article shall submit to the City Clerk a written application supplying, under oath, the following information:

- (1) Name of applicant.
 - a. Telephone number.
 - b. Cell phone number.
 - c. Social Security number.
 - d. Date of birth.
- (2) Permanent home residence.

- (3) Name and address of firm represented, if any.
- (4) The length of time for which the license is required.
 - a. Intended hours of operation.
- (5) A description of the goods, wares or commodities to be offered for sale, together with a true invoice of their amount, quality and value and the name and address of the person or firm from which the goods were purchased. When dealing in food or food products, a current permit issued pursuant to Subsection (a) of Section 2-14-148 shall be submitted. It shall be copied by the City Clerk and filed with the application.
- (6) The number of arrests or convictions for crimes and the nature of the arrests or convictions.
- (7) To the application must be appended a letter of authorization from the firm which the applicant purports to represent.
- (8) A certificate identifying the applicant's sales tax number or proof of tax exemption status.

Sec. 2-14-168 Investigation; issuance; transferability; possession.

- (a) No person shall engage in peddling within the City until the application to procure a license is submitted by the applicant and filed by the City Clerk.
- (b) The Clerk shall send a copy of the application to the Bureau of Police Records Division in City Hall for investigation. The Bureau of Police shall report its findings, if any, to the City Clerk within the three-day period.
- (c) Within three days after the receipt of the application and of the license fee and the report of the Bureau of Police, the Clerk, if reasonably satisfied with the applicant's qualifications, shall issue a license to the applicant, specifying the particular business authorized and the location where it may be conducted.
- (d) This license shall be nontransferable and shall be in the continuous possession of the licensee while engaged in the business listed. The license shall be produced upon the demand of any City official or prospective buyer.

Sec. 2-14-169 Records; expiration.

- (a) The City Clerk shall keep a record of the applications, of the determinations on the licenses and of all licenses issued in accordance with this article. The record shall contain the name and residence of the person licensed, the location of the business, the amount of the license fee paid and the date of revocation of all licenses revoked.

- (b) All licenses issued under the provisions of this article shall expire one year from the date of issuance, except that a license issued for a shorter period than one year shall expire at the expiration of the period for which it was issued.

Sec. 2-14-170 Schedule of license fees.

The license fees for all licenses issued under the provisions of this article shall be as follows:

- (1) One hundred fifty dollars per year; \$100 per half year (six months); or \$15 per day or fraction of a day for peddlers engaged in the casual sale of food.
- (2) Five hundred fifty dollars per year; \$300 per half year (six months); or \$25 per day or fraction of a day for all other peddlers (nonfood).
- (3) At the time of application the number of days should be identified and reflect dates on the permit.
- (4) Disabled american veterans based on federal guidelines will be exempt from all fees.

Sec. 2-14-171 Conditions; review.

The City of Utica Police Department has the authority to approach any peddler for the purpose of public safety and further has the authority to have them move if it is in the interest of public safety.

Sec. 2-14-172 Revocation; review.

- (a) A license required pursuant to the provisions of this article may be summarily revoked by the City Clerk for a violation of the terms of the license, the violation of any ordinance, local law or state or federal statute or for falsification in applying for a license. Written notice of the revocation, stating the terms of the revocation, shall be personally served upon the licensee or mailed to the address given in the application. Upon the filing of notice of revocation in the City Clerk's office, with affidavit of service by mailing, the license shall be revoked.
- (b) If a license is revoked pursuant to the provisions of this section or if a license is denied to any applicant by the Clerk or the Chief of Police refuses to countersign a license, the licensee or applicant may request a hearing within a period of 30 days after the revocation, refusal and denial. The request shall be in writing and shall be made to the Common Council and filed with the City Clerk within the thirty-day period. The Common Council shall hear the licensee's or applicant's request for a review of the determination of the City Clerk or the Chief of Police at the next regularly scheduled meeting of the Common Council following the filing of the application for review with the City Clerk. The Common Council may grant a license to the applicant if the Council should determine that the refusal on the part of the Clerk or the Chief of Police was arbitrary or otherwise in error. If the Common Council, after the hearing, determines that the decision of the City Clerk or Chief of Police was not arbitrary and was

justified under the circumstances, the Common Council shall refuse the license. The decision on any hearing shall be rendered by the Common Council in writing within 45 days after the hearing and shall be entered in the minutes of the Common Council.

Sec. 2-14-173 **Special event permits.**

Sec. 2-14-174 **Flea markets and indoor/outdoor large-capacity garage sales.**

Sec. 2-14-175 through Sec. 2-14-190. (Reserved)

ARTICLE IX Stationary Vending

[Adopted 3-18-2015 by Ord. No. 56; amended in its entirety 5-6-2015 by Ord. No. 82]



DIVISION 1 Generally

Sec. 2-14-246 **Definitions.**

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

STATIONARY VENDING

Engaging in or carrying on any business, business activity or otherwise at an established location, wholly or partly located or situated upon a sidewalk, pathway, street, alley or other similar surface regularly and generally traversed and used by the public, regardless of whether or not the area or surface is owned publicly or privately, and shall remain at this established location for not less than 30 minutes on any day.

Sec. 2-14-247 through Sec. 2-14-260. (Reserved)

DIVISION 2 License

Sec. 2-14-261 **Required; exceptions.**

- (a) No person shall engage in stationary vending or carry on any business, business activity or otherwise, wholly or partly located or situated upon a sidewalk, pathway, street, alley or other similar surface regularly and generally traversed and used by the public, regardless of whether or not the area or surface is owned publicly or privately, without first obtaining a license to do so from the office of the City Clerk, nor shall any such business, business activity or otherwise be continued after the license has expired or has been suspended or revoked.
- (b) This article shall not apply to any lawful business, business activity or otherwise which incidentally and occasionally may be located or situated upon a sidewalk, pathway, street, alley or other similar surface that is directly adjacent to the permanent quarters of the business, business activity or otherwise and the incidental and occasional location is intended only for the display and promotion of goods, articles, services or things generally contained within the adjacent quarters for commercial purposes and where

the commercial activity is in all respects in compliance with all other laws, statutes, codes and ordinances.

Sec. 2-14-262 Application procedure.

The Clerk shall send a copy of the application to the Bureau of Police Records Division in City Hall for investigation. The Bureau of Police shall report its findings, if any, to the City Clerk within the three-day period.

- (1) Submission; contents. Prior to conducting any stationary vending use, an application for a license required under the provisions of this division shall be submitted to the office of City Clerk, and in addition to any other requirements, include the following:
 - a. Name of applicant.
 1. Telephone number.
 2. Cell phone number.
 3. Social Security number.
 4. Date of birth.
 5. If the applicant represents a firm or corporation, the name of said entity must be provided, along with the principal office address, applicant's affiliation with said organization and a letter of authorization on company stationery from the firm or corporation whom the applicant purports to represent.
 - b. A statement of the activity, the goods to be sold or dealt with, the proposed structure to be used, the hours of operation, the intended clientele and a statement of the business advantage of the activity and location. If food or food products are to be sold, then the applicant must provide a current permit from the County Department of Health and must comply with all laws, regulations and rules of the Department.
 - c. The length of time for which the license is required.
 - d. Ask on the application whether the applicant has been convicted of any crimes (as the term "crime," is defined by the New York Penal Law) and the nature of those convictions. (The applicant shall be denied if he or she provides false information.)
 - e. A certificate of insurance indicating that the applicant has secured or will secure general liability insurance of \$1,000,000. In lieu of the certificate of insurance, the applicant may submit a signed and verified statement to the effect that the liability insurance is or will be held by the owner of the adjacent real estate and that the coverage expressly includes incidents occurring on and around the area proposed to be used for stationary vending. Any insurance policy must name the City as an additional insured.

- f. A certificate identifying the applicant's sales tax number or proof of tax exemption status.
- (2) Review; approval. Upon verifying that the application is complete and meets the requirements of Section 2-14-265, the office of the City Clerk shall submit the application to the City of Utica Police Department Record Division, and if necessary, the Chief of Police, the Commissioner of Public Safety, the City Engineer and the Planning Director for their review. If there is no substantial objection or required modification, or if the applicant can and does comply with the required modification, then the application may be approved. Barring any complications or holidays, the applicant can expect this process to take approximately three business days from the time of submission.

Sec. 2-14-263 Fee.

- (a) Upon approval of the application for the license required under the provisions of this division, the applicant shall remit to the Office of the City Clerk the fee for a license in the sum of \$150 for the vendors of food or food products for one year; \$100 for half year (six months); or \$15 per day or fraction of a day for any stationary vending activity, or \$550 for all other stationary vendors; \$300 for half year (six months); or \$25 per day or fraction of a day for any stationary vending (nonfood) activity and, thereupon, the license shall be issued for a term of one year from the date of issuance.
- (b) Disabled american veterans based on federal guidelines will be exempt from all fees.

Sec. 2-14-264 Renewal application.

Within 30 days prior to the expiration of the term of the license required under the provisions of this division, an application shall be made for renewal which need not contain the full disclosures as required for a new location but shall require a statement, signed under oath, to the effect that all conditions of the license have been observed and complied with and that there are no material changes from the facts stated in the original application.

Sec. 2-14-265 Location standards.

No license for stationary vending may be issued for a location not meeting the following general and specific standards:

- (1) The stationary area shall not be less than 10 feet in width between the established curbline and any abutting building or structure.
- (2) The stationary area shall not be within 20 feet of any fire hydrant, street intersection, vehicle driveway, parking meter, utility access, building accessway, fire escape, traffic control equipment or other things requiring access.
- (3) The stationary area to be occupied by a stationary vending use shall not exceed 50% of the established width between the curbline and adjacent building or that area regularly available for the use by the

general public, to the end that the use and enjoyment of the area by the general public shall not be curtailed to less than five feet in any case and shall not result in any hazard to the public.

- (4) Stationary vending shall not take up more than two legal parking spaces. Additionally, vending should be conducted on the sidewalk at all times.

Sec. 2-14-266 Conditions.

Any license issued for stationary vending shall be conditioned upon the following:

- (1) The stationary vending activity shall continuously comply with all of the standards of location specified in Section 2-14-265 subsequent to issuance.
- (2) The activity shall be restricted to only that which was specified in the application and no other.
- (3) Any structure, appliance, equipment or other paraphernalia related to the stationary vending activity shall be strictly maintained in good condition, free from defects and in a visually attractive and acceptable appearance.
- (4) The activity will not be allowed to interfere with any other public or private activity or become a nuisance and shall continue to fulfill a general need and convenience.
- (5) The City of Utica Police Department has the authority to approach any stationary vendor for the purpose of public safety and further has the authority to have him or her move, if it is in the interest of public safety.
- (6) Prohibited areas. Stationary venders are prohibited within 500 feet of the property lines for Utica public, parochial and private schools between the hours of 7:00 a.m. and 4:00 p.m. on school days.

Sec. 2-14-267 Suspension or revocation.

- (a) A license required pursuant to the provisions of this division may be summarily revoked by the City Clerk for a violation of the terms of the license, the violation of any ordinance, local law or state or federal statute or for falsification in applying for a license. Written notice of the revocation, stating the terms of the revocation, shall be personally served upon the licensee or mailed to the address given in application. Upon the filing of notice of revocation in the City Clerk's office, with affidavit of service by mailing, the license shall be revoked.
- (b) If a license is revoked pursuant to the provisions of this section or if a license is denied to any applicant by the Clerk or the Chief of Police refuses to countersign a license, the licensee or applicant may request a hearing within a period of 30 days after the revocation, refusal and denial. The request shall be in writing and shall be made to the Common Council and filed with the City Clerk within the thirty-day period. The Common Council shall hear the licensee's or applicant's request for a review of the determination of the City Clerk or the Chief of Police at the next regularly scheduled meeting of the

Common Council following the filing of the application for review with the City Clerk. The Common Council may grant a license to the applicant if the Council should determine that the refusal on the part of the Clerk or the Chief of Police was arbitrary or otherwise in error. If the Common Council, after the hearing, determines that the decision of the City Clerk or Chief of Police was not arbitrary and was justified under the circumstances, the Common Council shall refuse the license. The decision on any hearing shall be rendered by the Common Council in writing within 45 days after the hearing and shall be entered in the minutes of the Common Council.

Sec. 2-14-268 Requirements for vendors of flowers or balloons.
[Added 2-12-2018 by Ord. No. 7]

(a) See Sections 2-14-246 through 2-14-267 except Section 2-14-263, Fees.

(b) Fees:

(1) Flowers.

a. Six months: \$100; or

b. \$200 per year.

(2) Balloons: \$20 per year.

Sec. 2-14-269 through Sec. 2-14-285. (Reserved)

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