

**CHAPTER 341
VENDORS AND PEDDLERS**

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341.01 Findings and Purpose

It is found and declared that:

(a) The primary purpose of the public streets, sidewalks, and other public ways is for use by vehicular and pedestrian traffic;

(b) The offering of varied goods and services for sale on such public ways, if properly managed, promotes the public interest by contributing to an active and attractive pedestrian environment;

(c) Reasonable regulation of vending and peddling of goods on public ways is necessary to protect the public health, safety, and welfare;

(d) The realization of clean, sanitary, attractive, and well-managed street vending and peddling services can contribute to a positive impression of the City by visitors and residents experience and serve as an important means of business entrepreneurship to City residents;

(e) While street vending and peddling can serve as an amenity and offer entry-level business opportunities, nevertheless it is important to carefully consider the rights of permanent businesses in the City in administering such activities so as to avoid conflicts to the greatest extent feasible, and

(f) The regulations contained in this Chapter are not intended to prohibit or hamper speech which is protected by the First Amendment, but merely to regulate specific activities which are commercial in nature.

341.02 **Definitions**

(a) "Motor Vehicle" shall mean any vehicle used for the displaying, storing, or transporting of articles for sale by a vendor or peddler which is required to be licensed and registered by the State Department of Motor Vehicles. The term is to include trailers, trucks and automobiles.

(b) "Peddler" shall mean any individual, whether self-employed or an employee/agent of an individual, group of individuals, proprietorship, partnership, or corporation who sells or offers to sell food, beverages, goods, or merchandise on any public way from his or her person or from a vehicle in locations that are not fixed.

(c) "Public way" shall mean all areas legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, and City-owned parks, but not including parks and facilities operated by the New York State Office of Parks, Recreation, and Historic Preservation, public parking lots, parking structures, and interior areas and areas surrounding public buildings.

(d) "Sales on foot" shall mean selling ready-made food, goods, or merchandise solely from his or her person using only conveyances that can be moved by foot such as backpack or hawker's trays/chests.

(e) "Stand" shall mean any stand, table, bench, booth, rack, hand/push, bicycle, or other type of vending cart, or any other fixture or device which is not required to be licensed and registered by the Department of Motor Vehicles, and is used solely for the preparation, display, storage and/or transportation of food, beverage, and other articles offered for sale by a vendor or peddler.

(f) "Vendor" shall mean any individual, whether self-employed or an employee/agent of an individual, group of individuals, proprietorship, partnership, or corporation, who sells or offers to sell food, beverages, goods, or merchandise on any public way from a stand, cart, motor vehicle, or from his or her person, in a fixed location.

341.03 License Required

It shall be unlawful for any vendor or peddler to sell, display or offer for sale any food, beverage, goods or merchandise on a public way within the City of Niagara Falls without first obtaining a license from the City Clerk.

341.04 Application

The application for a vendor's or peddler's license shall contain all information relevant and necessary to determine whether a particular license may be issued, including but not limited to:

- (a) A complete, notarized application for a license to vend or peddle (available at the Office of the City Clerk) including full name, home address, permanent business address (if any), telephone number, driver's license number, and proof of age and identity, as well as the full name, home address, telephone number, driver's license number, and proof of age and identity of any assistant(s) to be utilized by a vendor or peddler. Any such assistant(s) must be 18 years of age or older;
- (b) General liability and product liability insurance coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate naming the City of Niagara Falls as additionally insured;
- (c) New York State sales tax certificate;
- (d) If food will be sold, proof of a permit from the Niagara County Health Department.
- (e) A brief description of the nature, character, and quality of the food, beverages, goods, or merchandise to be sold;
- (f) The specific location, if any, in which the vendor intends to conduct business;
- (g) If a vendor or peddler is employed by or is an agent of another individual, group of individuals, proprietorship, partnership, or corporation, the name, business address, and the name of the principal/hiring person of the entity;
- (h) If a motor vehicle is to be used in the vending or peddling business, a description of the vehicle together with the motor vehicle registration number and the license number;

(i) Two personal references from residents of the City of Niagara Falls (for first time applicants only);

(j) Information from the applicant, if applicable, on any arrests or convictions for misdemeanor or felony offenses for a period of two (2) years prior to the application (to be verified by a police background check);

(k) A complete listing of any other licenses or permits issued to applicant by the City of Niagara Falls within the past five years;

(l) Two current 1¼" x 1½" color photographs of the applicant; and

(m) Photograph or rendering of the motor vehicle, stand, cart or other conveyance as defined in §341.02 proposed for use under the license, noting dimensions, color, signs, and other features of the conveyance.

(Section amended 04/05/11)

341.05 Health Permits

No license shall be issued to any vendor or peddler engaged in the sale of food or beverages unless such vendor or peddler shall have been granted a food service permit by the Niagara County Health Department or unless such vendor or peddler shall have applied for a food service permit with the Niagara County Health Department and an inspection of the vendor or peddler has been scheduled by the Niagara County Health Department. If the Niagara County Health Department fails to issue a food service permit to operate to any such vendor or peddler for any reason, then any such license issued by the City Clerk shall be null and void. Any food service permit issued by the Niagara County Health Department must be renewed by annually by the vendor or peddler.

341.06 Issuance of License

Not later than ten (10) business days after the filing of a completed application for a vendor's or peddler's license, the applicant shall be notified in writing by the City Clerk of the decision on the issuance or denial of the license. If the vendor or peddler applicant complies with all application requirements and is found to have no nonconformities rationally related to

sales on public ways in the City of Niagara Falls, the applicant shall be issued a vendor's or peddler's license. Any applicant denied a vending license may seek an appeal pursuant to Section 341.14.

(a) An annual vending license is valid for a period of one year, beginning on May 1 of the year issued and extending to April 30 of the following year. Applications for annual licenses received later than April 1 of the year for which the license would begin shall be on a first come, first served basis and shall not be considered until other pending applications received prior to April 1 are ruled upon.

(b) A ten-day vending or peddling license is valid for ten (10) calendar days from the date of issuance. No more than three (3) ten-day licenses shall be issued to any individual in one calendar year. Applications for a ten-day license may be submitted to the City Clerk no sooner than ten (10) business days prior to the period for which the license would apply.

(c) A day vending or peddling license is valid for one (1) calendar day from the date of issuance, as specified on the license. No more than five (5) day licenses shall be issued to any individual in one calendar year. Applications for a day license may be submitted to the City Clerk no sooner than ten (10) business days prior to the period for which the license would apply.

(d) A weekend vending or peddling license is valid for a Saturday and a Sunday from the date of issuance, as specified on the license. No more than fourteen (14) weekend licenses shall be issued to any individual in one calendar year.

(Section amended 04/05/11)

341.07 Holder of License

A vendor's or peddler's license shall permit only the specific individual and any designated assistant(s) specified in the vendor's or peddler's license application submitted to the City Clerk that will conduct the actual sales permitted under the license. The rights provided under the license shall not be transferable to any other individual, employee or agent for the license holder. (Section amended 04/05/11)

341.08 Exemptions

The following vendors are exempt from the licensing requirements of Section 341.03 and 341.07, but shall otherwise be required to comply with the provisions of this ordinance:

(a) All religious, non-profit, and charitable organizations, including school groups, provided that such groups are selling goods as part of a designated event to benefit such group and that such event has been otherwise approved or permitted by the City to occur in whole or in part in a public way or on other public property;

(b) The sale of fresh produce by the grower of such produce in a designated and/or permitted farmers market;

(c) Vendors, merchants, exhibitors, and salesmen who exhibit, demonstrate, or solicit orders for goods in conjunction with, and as part of, the organized program of conventions, professional meetings, seminars, special events, or concerts, provided such convention, professional meeting, seminar, special event, or concert has been otherwise approved or permitted by the City to occur in whole or in part in a public way or on other public property, including but not limited to the "Old Falls Street Manager" specified in Section 341.16; and

(d) Any individual peddler or carrier selling newspapers or magazines, or distributing free samples from his or her person.

341.09 License Fees for Locations other than Fixed Location Vendor Promenade

The fees for licenses issued under this ordinance shall be as follows:

(a) Vendors

- (1) Two Hundred Fifty Dollars (\$250.00) per year for an annual license for a vendor who uses a motor vehicle or stand as defined in §341.02.
- (2) Seventy-Five (\$75.00) for a ten-day license for a vendor who uses a motor vehicle or stand as defined in §341.02.
- (3) Fifty Dollars (\$50.00) for a day license for a vendor who uses a motor vehicle or stand as defined in §341.02.

- (4) Twenty-five Dollars (\$25.00) for a weekend license for a vendor who uses a motor vehicle or stand as defined in §341.02.

(b) Peddlers

- (1) Two Hundred Fifty Dollars (\$250.00) per year for an annual license for a peddler who uses a motor vehicle or stand as defined in §341.02.
 - (2) Seventy-five (\$75.00) for an annual license for a peddler who performs sales on foot as defined in §341.02.
 - (3) Seventy-five (\$75.00) for a ten-day license for a peddler who uses a motor vehicle or stand as defined in §341.02.
 - (4) Fifty Dollars (\$50.00) for a ten-day license for a peddler who performs sales on foot as defined in §341.02.
 - (5) Fifty Dollars (\$50.00) for a day license for a peddler who uses a motor vehicle or stand as defined in §341.02.
 - (6) Twenty-five Dollars (\$25.00) for a day license for a peddler who performs sales on foot as defined in §341.02.
 - (7) Twenty-five Dollars (\$25.00) for a weekend license for a peddler who uses a motor vehicle or stand as defined in §341.02.
 - (8) Twenty-five Dollars (\$25.00) for a weekend license for a peddler who performs sales on foot as defined in §341.02.
- (c) Replacement. A Twenty-Five Dollar (\$25.00) fee shall be paid for a duplicate license to replace a license that has been lost or destroyed.

- (d) Veterans. Any person, to whom a license has been issued as an honorably discharged veteran under Section 32 of the General Business Law, shall be exempt from the payment of the fees imposed under this section, provided that such person provides proof acceptable to the City Clerk that he or she has been honorably discharged from military service.
- (e) Graduates from City Entrepreneurship Program. Any person, to whom a certificate of completion has been issued from the City's Official Entrepreneurship Program, shall be exempt from the payment of the fees imposed under this section for an annual vending or peddling license for one (1) year of his or her operation.
- (f) Twenty-five Dollars (\$25.00) annually, for any designated assistant specified in the vendor's or peddler's license application submitted to the City Clerk.

(Section amended 04/05/11)

341.10 Official Map of Designated Vending Locations

(a) On or before May 1 of Year 2010, and on or before March 1 of subsequent years, the City Clerk shall prepare, or cause to be prepared in conjunction with other City agencies, a map of designated vending locations in the City. Prior to issuance, the official map shall be reviewed and approved by the City Council.

(b) No later than January 31 of each year, the City Clerk, shall review the Official Map of Designated Vending Locations and report to the City Council on issues that have arisen in the administration of vending in these locations and if necessary recommendations on refinements to the Official map or standard governing vending and/or peddling in the City.

341.11 Licenses and Identification Badges

(a) The license issued to a vendor or peddler shall be carried with the vendor or peddler at all times when the vendor or peddler is engaged in the business of vending or peddling and shall be prominently displayed. If the vendor or peddler sells food or beverages, the food service permit must also be displayed.

(b) In addition to the license, the City shall issue a photo identification badge to every vendor or peddler. Vendors or peddlers shall display their badges in such a way that the badges may be easily read while doing business. If a badge becomes damaged or obscured, the vendor or peddler shall return it to the City and receive another badge.

(c) Licenses, permits, and identification badges shall be used only by the person to whom they were issued and may not be transferred to any other person.

(Section amended 04/05/11)

341.12 Restrictions Applicable to all Vendors and Peddlers

(a) All vendors and/or peddlers:

- (1) Shall be at least eighteen (18) years of age; and
- (2) Shall generally be of good moral character and specifically shall not have been found guilty of any misdemeanor or felony offenses for a period of at least two (2) years prior to the issuance of a vending or peddling license.

(b) Stands. Vendor stands and carts:

- (1) Except for any vending stands/carts owned and operated by the "Old Falls Street Manager" that specifically designed and fabricated for use in the designated "Old Falls Street Special Vending District" as specified in Section 341.16, shall not exceed seventy-eight (78) inches in length, fifty-two (52) inches in width, or ninety (90) inches in height, however may include an umbrella or awning that provide a minimum clearance of seven (7) feet and are no greater than eight (8) feet in height;
- (2) Shall not impede access to the entrance or driveway of any adjacent building;
- (3) Shall not occupy more than half of the available sidewalk width or six (6) feet of the width of such sidewalk; whichever is less.
- (4) Shall not include tents or trailers.
- (5) Shall be maneuverable by a single individual.

(c) Peddlers shall not:

- (1) Conduct business at any one location for longer than twenty (20) minutes at a time. After that twenty (20) minute period of time has elapsed, the peddler must relocate to a new location which must be at least 100 yards away.
- (2) Stop, stand, or park their vehicle or cart within one hundred (100) feet of any intersection within any other prohibited area, or during prohibited hours.
- (3) Impair the flow of normal vehicular or pedestrian traffic by conducting the business of peddling.

(d) Hours of Operation. Vendors and peddlers shall be allowed to engage in the business of vending and peddling only between 8:00 am and Midnight. All stands, signs, and any other equipment used for vending and peddling must be removed from public property during non-operating hours.

(e) Handicapped areas. No vendor or peddler shall conduct business within 50 feet of any handicapped parking space or access ramp.

(f) Removal of trash. All trash or debris accumulating within a 20 foot radius of any vending stand shall be collected by the vendor or peddler and deposited in a trash container. All vendors selling food or beverages must provide trash receptacles adjacent to or as a part of their stands/carts.

(g) Prohibited areas. A license issued pursuant to this chapter is valid only in locations specified on the license that are included on the Official Map of Designated Vendor Locations, as specified under Section 341.10.. The City shall prohibit vendors or peddlers from selling on specified public ways if it determines such prohibitions are necessary for the protection of public health and safety or to advance any specific public policies specified in this ordinance. Vendor stands and motor vehicles are also prohibited within 50 feet of a fire hydrant, fire escape, bus stop, loading zone, or driveway of a fire station, police station, or hospital.

(h) Noise. No vendor or peddler may sound any device which produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplified, or similar device to attract public attention.

- (i) Motor vehicles. No vendor or peddler selling from a motor vehicle shall:
- (1) Stop, stand or park the vehicle within 100 feet of any intersection, within any other prohibited area, or during prohibited hours.
 - (2) Conduct business in such a way as would increase traffic congestion or delay, constitute a hazard to life or property, interfere with an abutting property owner or obstruct access to emergency vehicles.
 - (3) Conduct business at one location for longer than twenty (20) minutes, unless they have been licensed to operate at a site-specific vending location.
 - (4) Conduct any business on any public way in Zoning Districts within Downtown Niagara Falls, specifically the D-1A, D-1B, D-1C, D-1D, D-2, and R-4 Heritage Districts as defined in the Niagara Falls Zoning Ordinance.
- (j) Vendors or peddlers shall not display any advertising for any other businesses, services, or locations.

(Section amended 04/05/11)

341.13 Suspension or Revocation of License

- (a) Any license issued under this ordinance may be suspended by the City Clerk or revoked for any of the following reasons:
- (1) Fraud or misrepresentation in the application for the license;
 - (2) Fraud or misrepresentation in the course of conducting the business of vending or peddling;
 - (3) Conducting the business of vending or peddling contrary to the conditions of the license;
 - (4) Conducting the business of vending or peddling in such a manner as to create a public nuisance or constitute a danger to the public health, safety or welfare;
 - (5) Conviction of any crime involving moral turpitude committed during the course of engaging in the business of vending or peddling in the City of Niagara Falls;

- (6) Cancellation of food service permit by the Niagara County Health Department for violations of the New York State Sanitary Code.

(b) Upon suspension or revocation, the City Clerk shall deliver written notice to the license holder stating the action taken and the reasons supporting such action. The written notice shall be delivered to the license holder's place of business or mailed to the license holder's last known address.

341.14 Appeals

Persons who are denied licenses or whose licenses have been suspended or revoked may appeal by filing a written notice of appeal with the City Administrator within 20 days from the date of denial, suspension or revocation.

341.15 Renewals

Licenses may be renewed, provided an application for renewal and license fees are received by the City Clerk no later than the expiration date of the current license. Applications received after that date shall be processed as new applications. The City Clerk shall review each application for renewal to determine that the applicant is in full compliance with the provisions of this ordinance. If the City Clerk finds that the application meets the above requirements, the City Clerk shall issue a new license.

341.16 Old Falls Street Special Vending District

(a) Intent. It is found and declared that:

- (1) Old Falls Street between Third Street and Prospect Street has undergone a extensive program of reconstruction and improvements through partnership between the City of Niagara Falls and the State of New York;
- (2) Given the public investment in Old Falls Street, the City has entered into an agreement with the State of New York to provide for a centralized operator ("Old Falls Street Manager") to oversee maintenance of the street and to undertake and facilitate events and vending along the street;

- (3) Where it will be the responsibility of the Old Falls Street Manager to ensure that vending will be of a sufficient quality and variety to best complement the setting; to supplement vending operations with its own establishments to ensure such quality and mix, and to actively solicit participation by various entrepreneurial and/or first-time groups including students of local culinary and hospitality programs to help meet such goals;
 - (4) Old Falls Street is specifically designed to host periodic festivals, events, and vending, all of which must be coordinated to ensure fairness and a well-operating street for motor and pedestrian traffic;
 - (5) Therefore, to ensure that the administration of vending on Old Falls Street serves to further these goals, the following regulations and guidelines shall apply to vendors wishing to vend in this special district.
- (b) Boundaries. The Old Falls Street Special Vending District shall be defined as follows:
- (1) Beginning at a point formed by the intersection of the centerline of Third Street with northern right-of-way line of Old Falls Street;
 - (2) Thence westerly along the northern right-of-way line of Old Falls Street for a distance of approximately 1,400 feet to a point formed by the northern right-of-way line of Old Falls Street and the eastern right-of-way line of Prospect Street;
 - (3) Thence northerly along the eastern right-of-way line of Prospect Street for a distance of approximately 140 feet to a point;
 - (4) Thence westerly for a distance of approximately 25 feet to a point along the centerline of Prospect Street;
 - (5) Thence southwesterly and southerly along the centerline of Prospect Street for a distance of approximately 250 feet to a point formed by the intersection of centerline of Prospect Street and the southern right-of-way line of Old Falls Street;

- (6) Thence easterly along the southern right-of-way line of Old Falls Street for a distance of approximately 500 feet to a point formed by the intersection of the southern right-of-way line of Old Falls Street and the eastern right-of-way line of Rainbow Boulevard;
 - (7) Thence southerly along the eastern right-of-way line of Rainbow Boulevard for a distance of approximately 56.75 feet to point formed by the intersection of the eastern right-of-way line of Rainbow Boulevard and the northern property line of a private property designated at time of the writing of this Chapter as Section, Block and Lot Number 158.12-1-16;
 - (8) Thence easterly along the property line of Section, Block and Lot Number 158.12-1-16 for a distance of approximately 184 feet to a point at the eastern limit of said property line;
 - (9) Thence northerly along said property line of Section, Block and Lot Number 158.12-1-16 for a distance of approximately 56 feet to a point formed by the intersection of said property line with the southern right-of-way line of Old Falls Street;
 - (10) Thence easterly along the southern right-of-way line of Old Falls Street for a distance of approximately 790 feet to a point formed by the intersection of the southern right-of-way line of Old Falls Street and the centerline of Third Street;
 - (11) Thence northerly along the centerline of Third Street for a distance of approximately 99 feet to the point of beginning.
 - (12) There shall also be included a fixed location vendor promenade, being designated within a portion of the former covered pedestrian walkway, located within the public right-of-way of Old Falls Street along its northerly side between Third Street and First Street.
- (c) No peddlers. Peddlers will not be permitted to operate in the Old Fall Street Special Vending District.

- (d) Hand carts only. Vending operations in the Old Fall Street Special Vending District shall be limited to professionally-fabricated hand/push carts style equipment.
- (e) Approval of vendors by Old Falls Manager. For applications to vend in the Old Falls Street Special Vending District including within the fixed location vendor promenade:
- (1) Once a license application is received by the Office of the City Clerk, the application will be forwarded to the Old Falls Street Manager for review.
 - (2) The Old Falls Street Manager shall base his/her review on quality of products proposed, proposed methods of the sales program, and coordination with other vendor and permanent retail offerings in the Old Falls Street Special Vending District and the surrounding area. The Old Falls Street Manager shall issue annual guidelines to describe the intent, objectives, and standards for the Special Vending District.
 - (3) Upon approval by the Old Falls Street Manager, the application shall be forwarded back to the City Clerk for all other required background checks, certifications/approvals, collection of fees, and issuance of the license.
 - (4) Approved vendors in the Old Falls Street Special Vending District shall be required to sign a certification of their understanding that:
 - i. They will be required to operate a pre-determined minimum number of hours/periods to ensure continuity of operations in the Old Falls Street Special Vending District; and
 - ii. Periodically, with advanced notice, that their right to conduct vending may be suspended in conjunction with sanctioned special events that scheduled in the Old Falls Street Special Vending District.

- (5) In the event that an application is not approved for location within the Old Falls Street Special Vending District, the applicant shall still be eligible for other established vending locations in the City.
- (f) Fixed location vendor promenade. The requirements of this Chapter 341 shall apply to all applicants wishing to vend in the fixed location vendor promenade, being the former covered pedestrian walkway, located along the northerly side of Old Falls Street between Third Street and First Street. The cost of a license to vend in this location shall be established by resolution of the City Council.

(Section amended 04/05/11)

341.90 Penalties

Any person who violates any provision of this ordinance shall be punished by a fine not less than \$250 nor more than \$500 or by imprisonment not to exceed 15 days or by both fine and imprisonment.

341.99 Severance Clause

The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the validity of any part.