

**ORDINANCE 2018-06**

**ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 177 OF THE BOROUGH CODE ENTITLED "PEDDLING AND SOLICITING"**

**BE IT ORDAINED**, by the Council of the Borough of Bay Head, County of Ocean, State of New Jersey, as follows:

**SECTION 1.** Chapter 177 of the Code of the Borough of Bay Head, entitled, "Peddling and Soliciting", is hereby amended and supplemented so that Article I, entitled "Peddlers," shall read in its entirety as follows:

**Article I: Peddlers**

**§ 177-1. Definitions.**

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

**BUSINESS OF PEDDLING OR SELLING ANY PRODUCT FROM A MOBILE FOOD UNIT**

Shall mean and include the acts of soliciting or making sale and delivery of any product from a vehicle, directly or indirectly.

**MOBILE FOOD UNIT**

Any vending unit, motorized or not, including hand-carried portable containers, in or on which food or beverage is stored, cooked, cooled, frozen, or prepared and transported for retail sale, or given away at temporary or fixed locations.

**PEDDLER**

Includes any person, whether a resident of the borough or not, traveling on foot or by 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, meats, fish, vegetables, fruits, food, ice cream, fruit ices, soda water, garden farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers. The word "peddler" shall include the words "hawker," "huckster" and "vendor."

**§ 177-2. General Provisions.**

- A. No person, firm, or corporation shall engage in business as a peddler within the corporate limits of the Borough of Bay Head with the exception of operators of a mobile food unit.
- B. It shall be unlawful to engage in the business of peddling or selling any products from a mobile food unit in the Borough of Bay Head without first obtaining a license and paying the proper fee or fees there for, pursuant to the provisions of this article.
- C. It shall be unlawful for anyone engaged in the business of peddling or selling products from a mobile food unit to misrepresent the character of the quality of the merchandise offered for sale, or to importune or otherwise annoy any person or persons for the purposes of effecting sale.
- D. All food and drink products which shall be sold or offered for sale from such mobile food unit shall comply with all laws and local ordinances relating to food and food products.

- E. The following regulations shall apply to the business of peddling or selling products from mobile food unit parked within the Borough of Bay Head:
1. All sales are to be conducted from areas where automobiles are permitted to park with the exception of the following:
    - (a) No peddler shall have the right to use any street or sidewalk or part thereof east of East Avenue, nor shall any peddler have the right to use any street or sidewalk or part thereof where the street has a speed limit in excess of 25 miles per hour, specifically including, but not limited to, Route 35 (Main Avenue) and Bay Avenue.
    - (b) No peddler shall have the right to use any part of a street or sidewalk for a period in excess of 30 minutes, except for the hot food licensee who shall have the right to remain in one location for periods not in excess of 60 minutes. Upon the expiration of such thirty-minute or sixty-minute period, a peddler shall be required to relocate to another area at least one block away from that part of the street or sidewalk previously used for the conduct of the peddler's activities.
    - (c) No peddler shall have an exclusive right to any location, nor shall be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this section, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.
    - (d) The Peddler, who obtains the hot food license, may, based upon the discretion of Chief of Police, have the right to utilize the Municipal Parking Lot at a location within the lot and time as designated by the Chief of Police.
    - (e) No peddler shall have the right to use any street or sidewalk or part thereof directly in front and / or directly on the side, in the case of a corner lot, of a building engaged in the business of a restaurant or an eating and drinking establishment.
  2. All sales are to be conducted from the curb side of the vehicle and only to pedestrians.
  3. Sales to any individuals remaining in another motor vehicle is prohibited.
  4. No sales of glass containers shall be permitted from mobile units.
  5. All mobile food units shall be required to provide trash and recycling containers.
- F. No person shall sell, offer for sale, hawk or peddle any of the items listed in § 177-1 before 9:00 a.m. or after 8:00 p.m.

**§ 177-3. License required.**

- A. No person, firm or corporation shall engage in business as a peddler operating out of a mobile food unit within the corporate limits of the Borough without first obtaining a license. The peddler and the mobile unit must both be licensed. Application for all peddler and mobile food unit licenses shall be made to the Municipal Clerk for processing on forms provided by the Municipal Clerk.

- B. Applications must be submitted between January 1 and January 15 and must be accompanied by a vehicle inspection certificate issued by the Ocean County Board of Health, a certificate of authority issued by the New Jersey Division of Taxation, and two proofs of identification. Applications shall set forth:
- (1) Name and address of applicant.
  - (2) Name and address of the owner of the vehicle as registered with the Motor Vehicle Department.
  - (3) Description of said vehicle to be licensed, giving the name of the manufacturer, serial number, motor number and name of the owner or operator, with any other insignia appearing thereon.
  - (4) Three business references.
  - (5) All permanent home addresses of the applicant within the last three years.
  - (6) Name(s) and address(s) of all salesperson(s) or operator(s) upon said vehicle along with photo copy of valid driver's license or acceptable proof of identification.
  - (7) Whether or not the applicant or salesperson(s) has been convicted of a crime or the nature of the offense, if any, for which convicted, and the date and place.
- C. If, after a hearing upon said application, the Borough Council determines that the applicant is not a bona fide owner of the vehicle sought to be licensed, such application may be denied.
- D. The number of licenses issued under this article shall be limited as follows:
- (1) Every person holding a validly issued and effective license under the provisions of N.J.S.A. 45:24-9 shall not be subject to the licensing provisions of this chapter.
  - (2) A maximum of three licenses for mobile food units shall be issued for activities conducted pursuant to the provisions of this chapter. Of those three licenses, only one shall be issued for a mobile food unit for the preparation and/or sale of hot food. Any license issued is subject to suspension or revocation for failure to comply with the provisions of this chapter or any applicable state law. Such suspension or revocation shall only occur after an opportunity for a hearing before the governing body on no less than 10 days' notice.
  - (3) In the event that the Borough of Bay Head receives qualified applications for the licenses in excess of the number of each license-type available under this article, then the Municipal Clerk and/or his/her designee shall conduct an auction on the first Monday of February at 10:00 am and shall award, subject to the approval by the Borough Council, each of the three licenses to the highest bidder for that license. All applicants must appear at the auction personally or through an authorized agent or employee, and no license shall be awarded to an applicant not appearing personally or through an authorized agent. Each license shall be offered at auction separately and the licenses shall not be auctioned in any group or mass

auction. In all cases, the minimum starting bid for each license shall be the annual licensing fee as otherwise set by this article.

**§ 177-4. Fees.**

The annual license fee for a peddler shall be \$300 for a license to vend cold food and \$600 for a license to vend hot food. No portion of the fee shall be prorated for any part of the year. Said licensing fees shall be paid immediately following the close of the auction as prescribed in § 177-3.D(3). The license shall expire on the 31st day of December in the year of issuance.

**§ 177-5. Police investigation; non-transferability; evidence exhibited.**

A. Upon receipt of an application for a license, the Municipal Clerk shall forthwith transmit the same to the Chief of Police. The Chief, or his or her designee, will verify the two proofs of identifications and a criminal history check utilizing the Computerized Criminal History (CCH) will be completed on all applicants and employees of the mobile food unit. The Chief of Police shall disqualify an applicant from obtaining a license under this chapter if a criminal history background check required reveals a record of conviction of any of the following crimes:

- (1) In New Jersey or elsewhere any crime as follows: aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4, or N.J.S.2C:39-9, or other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2.
- (2) In any other state, territory, commonwealth, or other jurisdiction of the United States, or any country in the world, as a result of a conviction in a court of competent jurisdiction, a crime which in that other jurisdiction or country is comparable to one of the crimes enumerated in paragraph (1) of this subsection.
- (3) If a person who has been convicted of one of the crimes enumerated in paragraphs (1) and (2) of this subsection can produce a certificate of rehabilitation issued pursuant to N.J.S.2A:168A-8 or, if the criminal offense occurred outside New Jersey, an equivalent certificate from the jurisdiction where the criminal offense occurred, the criminal offense shall not disqualify the applicant from a license under this chapter

B. Upon completion of his or her investigation, the Chief of Police shall return the application to the Municipal Clerk with or without approval thereon.

C. A license for a vehicle shall entitle the person named therein to engage in the business mentioned in § 177-1 hereof. Such license shall not be transferable. Licenses issued pursuant to the provisions of this article shall be good only for the calendar year in which issued.

**§ 177-6. Enforcement.**

It shall be the duty of any police officer of the borough 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.

**§ 177-7. Exceptions.**

A. This chapter shall not apply to:

- (1) The delivery of eggs, bread, newspapers or such other necessary and perishable articles of food or merchandise of the type commonly delivered on a house-to-house basis at intervals of less than one week.
- (2) Every person who has been honorably discharged from active military service of the United States, who is a resident of this state.
- (3) Every exempt member of a volunteer fire department, volunteer fire engine, hook and ladder, hose, supply company or salvage corps of any municipality of fire district in this State, who holds an exemption certificate issued to him as an exempt member of any such department, company or corps, and who is a resident of this State.

B. The persons set forth in Subsections A(2) and A(3) above must have procured a license in accordance with the provisions of N.J.S.A. 45:24-9, et seq., and such persons shall otherwise be required to comply with all other applicable provisions of this chapter.

**§ 177-8. Inspection of equipment.**

The equipment used or employed by peddlers of ice cream, foods, beverages, confections and other related commodities shall be maintained in a clean and sanitary manner and subject to inspection by the Board of Health or its authorized agents. Any violation found which is not immediately corrected shall be grounds for revocation of the license.

**§ 177-9. Effective date**

All provisions of this chapter shall be effective upon adoption and publication as required by law. The requirements as to licensing procedures established by §§177-3 through 177-5 shall apply to all licenses issued after April 15, 2018.

**§ 177-10. Violations and penalties.**

For a violation of any provision of this chapter, the maximum penalty, upon conviction thereof, shall be a fine not exceeding \$1,000 or imprisonment for up to 90 days or a period of community service not exceeding 90 days, or any combination thereof. Except as otherwise provided, each and every day in which a violation of any provision of this chapter exists shall constitute a separate violation.

**SECTION 8.** This ordinance shall take effect after second reading and publication as required by law.

**ATTEST:**

**APPROVED:**

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Patricia M. Applegate, Municipal Clerk

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William W. Curtis, Mayor

Introduced on First Reading:  
Introduced on Second Reading:  
Approved on Second Reading:

March 5, 2018  
April 2, 2018  
April 2, 2018

**ATTEST:**

**APPROVED:**

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Patricia M. Applegate, Municipal Clerk

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William W. Curtis, Mayor

