

Local Law Filing

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Village of Minoa

Local Law No. Four (4) of the year 2008.

A local law amending Chapter 110 the Village of Minoa Municipal Code relative to the Regulation of Peddlers and Solicitors, and the establishment of a new Chapter 104 relative to the Regulation of Outdoor Service of Prepared Foods.

Be it enacted by the Board of Trustees of the Village of Minoa as follows:

Section One (1). PURPOSE AND INTENT.

The purpose of this Local Law is to establish appropriate regulations to license and regulate certain outdoor food service and dining within the Village of Minoa in order to ensure that the health, safety and welfare of the Village is protected.

Section Two (2). Section 110-2 of the Code of the Village of Minoa is hereby deleted in its entirety and replaced with the following language:

In this chapter:

Hawker and/or Peddler shall mean, except as hereinafter expressly provided, any person, either principal or agent, who from any public street or public place or by going from house to house or place of business to place of business, on foot or on or from any vehicle, sells or barter, offers for sale or barter or carries or exposes for sale or barter any goods, wares or merchandise, books, magazines, periodicals or any other item or items of value, except for milk, newspapers and food distributed on regular customer routes and the service and sale of prepared foods. For purposes hereof, "prepared foods" shall mean foods prepared by means of a heat source at or near the time and point of sale.

Solicitor shall mean any person who goes from place to place or house to house or by telephone or stands in any street or public place taking or offering to take orders for goods, wares or merchandise, books, magazines, periodicals or any other item or items of value (except for newspapers, dairy products or milk, or prepared foods), or for services to be performed in the future or for making, manufacturing or repairing any article or thing whatsoever for future delivery at the home or residence of any person who has been solicited prior thereto by telephone, or has responded to any type of advertising media require an appointment or consultation or sales presentation in the home or place of residence of such person.

Section Three (3). A new Section 110-3(5) is hereby added to the Code of the Village of Minoa with the following language:

(5) Of prepared foods which conduct shall be governed under Chapter 104 of the Code of the Village of Minoa.

Section Four (4). A new Chapter 104 of the Code of the Village of Minoa to provide as follows:

Chapter 104
Outdoor Prepared Food Service

§104-1. Title.

This Chapter 104 shall be known as "Outdoor Prepared Food Service."

§104-2. Purpose and Intent.

This Chapter is designed to permit the outdoor service of prepared foods and dining in areas where it is appropriate and to promote and protect the public health, safety and general welfare. Specific purposes of this legislation are:

- A. To ensure adequate space for pedestrians on the sidewalk adjacent to outdoor service and dining areas.
- B. To preserve and enhance the character of the neighborhood where such outdoor service and dining is permitted in the Village and to protect the adjacent areas.
- C. To promote the most desirable use of land.

§104-3. Permit Required; Fee.

- A. No outdoor service of prepared foods or dining shall be allowed unless a permit has first been obtained from the Village Clerk. Every Applicant shall have a copy of the permit issued available for production upon the request of any police officer, codes enforcement or other Village official.
- B. The fee for such permit shall be in such amount as determined from time to time by the resolution of the Board of Trustees. Such resolution may fix fees based upon an annual, monthly or one day permit fee. The Village Board may, upon those not-for-profit, charitable or similar organizations applications not otherwise exempt under §104-17 hereof, as it deems appropriate, waive the permit fee.

§104-4. Eligible Persons/Establishments.

- A. Except as provided at §104-4B, only commercial establishments operating as of right as a restaurant or substantially similar use which take orders and serves food and beverages within their establishments for sit-down or take-out service, may take orders and serve food and beverages outdoors or in outdoor dining areas.
- B. Outdoor prepared foods vending units (e.g., hot-dog/sausage vendor carts) not affiliated with any commercial establishment as required at §104-4A may operate subject to the provisions of this Chapter

104 at such locations on Village (public) property as may be designated by the Village Board of Trustees from time to time by resolution.

§104-5. Application for Permit.

- A. Any application for outdoor service and dining shall be made to the Village Clerk in writing on a form prescribed by the Village Clerk's office. A separate permit shall be required for each vending unit. Applications for permits are made to the Village Clerk on a form prescribed by the Clerk.
- B. The terms "Applicant" and "Permittee" as used herein are synonymous and shall mean the individual or establishment that has applied for, and as applicable, been issued a permit under this Chapter 149.
- C. Such application shall contain the following information:
 - 1. The name, address and telephone number of the applicant.
 - 2. The name, address and telephone number of the establishment to be the subject of the application and the name and telephone number of the owner and/or operator of the establishment or designated responsible representative.
 - 3. Whether alcoholic beverages are to be served and, if so, a copy of the appropriate liquor license issued by the State of New York is to be appended to the application.
 - 4. A survey of the subject property also indicating any adjacent property which is Village owned.
 - 5. A plan showing the complete sidewalk area, with the location of all furniture and fixtures to be used, including a fully dimensioned seating plan and the location of entrances and exits.
 - 6. Descriptive material showing all furniture and fixtures to be used and how such furniture and fixtures shall be stored or secured during nonoperational hours.
 - 7. Whether live or mechanically reproduced music is to be played and a description and site location of the facilities, equipment or other devices needed for amplification of sound.
 - 8. Proof of insurance and security as required in §104-9 of this Chapter.
 - 9. Any other information that the Village Clerk may find reasonably necessary to determine whether a permit should be issued.
 - 10. The Village Board of Trustees may modify, relax or waive any of the foregoing application requirements as long as the intent of this Chapter is nonetheless achieved.
 - 11. (A) statement(s) or other satisfactory proof (certificate, permit or license) from all governmental agency(ies) having jurisdiction over such operations, indicating that the Applicant meets the requirements of all County or State codes, rules, regulations or laws relative to food preparation and service, sanitary practices, collection of New York State sales tax.

§104-6. Standards for Issuance of Permit.

The following standards shall apply:

- A. The proposed outdoor service or dining area will not interfere with pedestrian or vehicle traffic or use of any other private or Village owned portion of property adjacent to the establishment or unit and will not, without written consent, make use of any other Village owned or other public property or right of way adjacent to the establishment, except as may be permitted in connection with the subject permit. The Applicant's operations shall be confined and limited to that shown on the permit application as approved by the Village.
- B. The applicant is in compliance with and has met all other applicable provision in this Chapter and those in the Village of Minoa Building and Zoning Codes and such use shall not present a public or fire safety hazard.
- C. Except as permitted under Section 104-4B hereof, the operation of the outdoor service or dining facility must be the same person or entity as, or under written contractual agreement providing for such operation with, the principal operation on the premises.

§104-7. Effect of Permit.

- A. Notwithstanding the provisions of Chapter 110 of this Code, establishments issued a permit hereunder may engage in outdoor service and/or dining of prepared food products as set forth in this Chapter.
- B. The consumption of alcoholic beverages of any and all types and kinds is prohibited unless served by the related licensed premises and accompanied by a principal operation of the service and consumption of food. It is the responsibility of the owner and/or operator of the premises who has obtained a permit hereunder for outdoor dining to ensure compliance with this provision.
- C. A permit holder shall be bound by all applicable rules, regulations, ordinances, local laws and statutes. The Board of Trustees may, by resolution, adopt, from time to time, any additional rules and regulations intended to ensure compliance with all applicable rules, regulations, ordinances, local laws and statutes and the general protection of health, safety and welfare.
- D. No other activities of any nature conducted now or hereafter by any commercial establishment, enterprise, business, venture or shop in the Village, otherwise prohibited by all applicable rules, regulations, ordinances, local laws or statutes are changed, amended, suspended or altered in any respect because of this Chapter.
- E. Such outdoor service and dining activities shall, except where permitted under §104-4B hereof, be limited to areas directly to the front or rear of each store or merchant's establishment and not extend beyond the property lines. There shall be a minimum of five feet total sidewalk width clearance to provide adequate and unobstructed pedestrian movement, such width to be measured from the outermost point of the outdoor service and dining area to the nearest obstruction.

§104-8. Liability of Permit Holder.

The person or persons to whom a permit has been issued shall be liable and shall indemnify the Village for any loss, damage, or injury or expense sustained by the Village arising out of any claim or cause of action whatsoever instituted or commenced by any person or persons arising out of the issuance of such permit or as a direct or indirect result of the operation under such permit.

§104-9. Insurance.

Prior to the issuance of a permit, the applicant for a permit shall present to the Village a binder, endorsement or unconditional certificate of insurance (or other proof of insurance satisfactory to the Village attorney) clearly providing for comprehensive general liability, naming the Village of Minoa as additional insured, for combined single limits of no less than \$1,000,000 per occurrence and \$1,000,000 general aggregate. Same shall provide that no cancellation, or material modifications shall occur except upon thirty (30) days prior written notice to the Village of Minoa.

§104-10. Intentionally Omitted.

§104-11. Maintenance of Premises.

All outdoor service dining areas and adjacent areas shall be continuously cleaned and kept refuse free. The outdoor service or dining area and adjacent areas shall be swept and washed down each night just prior to closing and at other times as needed. Trash containers shall be maintained immediately adjacent to the point of sale. Permittees shall collect all litter and debris within 50ft of the point of sale before closing business on each day and shall transport away all trash and dispose of it in a legal and appropriate manner. However, same shall not be deposited in a Village maintained public garbage container. There shall be no storage of equipment on public property outside of the permittees actual hours of operations.

§104-12. Hours of Operation.

- A. Outdoor dining activities except pursuant to Section 104-4(B) may take place between the hours of 8:30 a.m. and 10:00 p.m. on all days of the week, except Sunday. Sunday hours shall be between 9:00 a.m. and 7:00 p.m. Operations pursuant to Section 104-4(B) shall be limited to not earlier than 11:00 a.m. and one half hour before dusk on any day.

§104-13. Music and Lighting.

Except for permits issued pursuant to §104-4(B), music may be provided so long as it is not a type or volume as to violate any applicable law or ordinance or create a nuisance to surrounding residents or property owners. Lighting shall be minimal and shall be installed so that no point source shall be observed for any neighboring properties nor shall any other direct or indirect illumination from the source of light cause illumination in excess of 0.5 footcandles on any abutting property.

§104-14. Furniture Fixtures and Signage.

All furniture and fixtures used in conjunction with outdoor service must be of a temporary nature, and must be brought in at closing time or except under permits issued pursuant to §104-4(B) securely fastened against the building façade during nonoperational hours. Except as hereinafter permitted, no signage shall be permitted to be affixed to any temporary structures. All furniture and fixtures shall be approved by the Village Clerk in conformity with guidelines established by the Board of Trustees. For Applicants operating under Section 104-4(B), signage shall be limited to one permanently mounted on the vending unit and one sandwich board sign located within 5ft of the unit not to exceed 4 sq. ft. on either side.

§104-15.

No Applicant shall employ any moving display, flashing or revolving light, nor shall Applicants call out to passerby to attract attention to their business.

§104-16. Permit; Term; Renewals.

- A. Permits shall be issued after Village Board review and approval of a permit application. All permits, regardless of when issued shall expire on the date stated therein.
- B. Applications for renewal of permits shall be made in the same manner as original applications. Permits are not assignable.

§104-17. Excepted Conduct.

The provisions hereof shall not be applicable to the temporary use of premises in connection with not-for-profit, charitable and similar uses such as field days, church bazaar and the like or municipal uses, provided in each such case the Village of Minoa Board of Trustees has been made aware of and formally recognized such exempt activity.

§104-18. Suspension or Revocation of Permit

A Permit may be suspended or revoked by the Village Clerk, any Village officer or law enforcement officer for any of the following:

- A. Violation by the Applicant of any of the provisions of this Chapter 104, the permit issued hereunder, or of any code, rules, regulations or other provisions of law required to be abided by hereunder;
- B. False or fraudulent material statement contained in the Application for Permit; or
- C. Any material fraudulent or false statement made in connection with the sale of any item;

§104-19. Appeal of Denial, Revocation of Permit

Any Applicant whose license is not granted or suspended or revoked pursuant to this Section may appeal such non-issuance, suspension or revocation to the Village Board of Trustees. The Applicant shall within thirty (30) days of written request for an appeal be granted an opportunity to be heard before the Board of Trustees at which time the only issues to be heard shall be whether the non-issuance, suspension or revocation was proper in light of the provisions and requirements of this Chapter 104 of the Village Code. The Applicant, Village

Board of Trustees, and any enforcement officials shall have the full right to examine and cross examine all physical evidence and witnesses. The Board of Trustees shall issue a written decision and a copy of which shall be mailed to the Applicant within thirty (30) days thereafter.

§104-20. Violation, Penalty.

A violation of this Chapter shall be subject to §104-18 and in addition shall be punishable pursuant to §113 of the Village of Minoa Code.

Section FIVE (5). EFFECTIVE DATE.

This Local Law shall take effect immediately upon its filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No.4 of 2008 of the ~~(County)~~(City)(Town)(Village) of Minoa was duly passed by the Village Board of Trustees of the Village of Minoa on August 18, 2008, 2008 in accordance with the applicable provisions of law.

~~2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the ~~(County)~~(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed

~~_____ (Name of Legislative Body) disapproval) by the _____ and was deemed duly adopted on _____, 199_~~
~~(Elective Chief Executive Officer*)~~

~~in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 199_ of the ~~(County)~~(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 19__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 19__.

~~(Elective Chief Executive Officer*)~~

~~Such local law was _____ to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19__, in accordance with the applicable provisions of law.~~

4. ~~(Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19__ of the ~~(County)~~(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19__, and was (approved)(not approved)(repassed after

~~(Name of Legislative Body)~~

~~disapproval) by the _____ on _____ 19__ Such local law was subject to~~

(Elective Chief Executive Officer*)

permissive referendum and no valid petition requesting such referendum was filed as of _____ 19__, in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

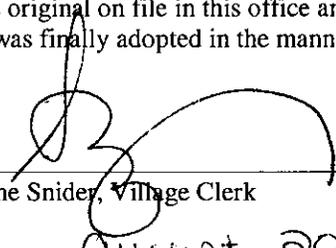
I hereby certify that the local law annexed hereto, designated as local law No _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19__, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No _____ of 19__ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one (1) above.



Suzanne Snider, Village Clerk
Date: August 20, 2008

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONONDAGA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature
Steven J. Primo
Attorney for the Village
Title
County
City of Minoa
Town Village
Date: 8/20/08 2008

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a countywide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.