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John Regan

June 16, 2008

**PUBLIC HEARING
LOCAL LAW #4 FOR
2008 – PEDDLERS,
SOLICITORS, &
OUTDOOR FOOD
SERVICE
REGULATIONS**

Upon due notice to all members of the Village Board, a Public Hearing was held on Monday, June 16, 2008 at 6:35 p.m. at the Municipal Building, 240 N. Main Street, Minoa, NY. The purpose was to consider the enactment of Local Law #4 for 2008 for the Village of Minoa relating to the amendment 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 food service.

PRESENT: Deputy Mayor Brazill
Trustee Champagne
Trustee Cronk
Trustee Theobald
Attorney Primo
Clerk/Treasurer Snider

ALSO PRESENT: Frank Greiner III, John Sears, and Thomas Petterelli

ABSENT: Mayor Donovan

**PROOF OF
PUBLICATION**

A motion was made by Trustee Brazill and seconded by Trustee Cronk agreeing to waive the reading of the Proof of Publication of Public Hearing. All in favor. Motion carried.

**PURPOSE OF PUBLIC
HEARING**

Deputy Mayor Brazill called the Public Hearing to order at 7:34 p.m. for Local Law #4 for 2008 for the Village of Minoa relating to the amendment 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 food service.

Deputy Mayor Brazill turned the Public Hearing over to Attorney Primo for an

overview of the proposed Local Law.

Attorney Primo discussed the following proposed Local Law #4 for 2008:

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 food service.

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 to establish appropriate regulations to license and regulate 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.

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, and 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 Food Service

§104-1. Title.

This Chapter 104 shall be known as "Outdoor 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.

- 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.

§104-4. Eligible Establishments.

- A. 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.

§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.
- B. 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 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.

§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 traffic or use of any other private or the Village owned portion of the property adjacent to the establishment and will not, without written consent, make use of any Village owned or other public property or right of way adjacent to the establishment.
- 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.
- C. The operation of the outdoor service or dining facility must be the same person or entity as 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 in outdoor dining areas is prohibited unless served by the licensed premises and accompanied by 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 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 for outdoor dining 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 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 of such outdoor dining area.

§104-9. Insurance.

Prior to the issuance of a permit, the applicant for a permit shall present to the Village a certificate of insurance for comprehensive general liability, naming the Incorporated Village of Minoa as additional insured, for combined single limits of no less than \$1,000,000 per occurrence and \$2,000,000 general aggregate and umbrella limits of \$1,000,000.

§104-10. Revocation or Suspension of Permit.

The Village Clerk shall have the authority to revoke or suspend a permit, when, in the Clerk's sole discretion, the Clerk finds a violation or any applicable rule, regulation, ordinance, local law or statute, or that a continuation of said permit would constitute a hazard or nuisance, or upon good cause shown.

§104-11. Appeal from Denial, Revocation, or Issuance of Permit.

Appeals from the issuance, denial, revocation or other condition of a permit may be taken to the Village of Minoa Zoning Board of Appeals by any aggrieved person within 30 days from the date of issuance, denial or revocation, by filing a written Notice of Appeal with the Village Clerk.

§104-12. Maintenance of Premises.

Any outdoor service or dining area and adjacent areas shall be periodically 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. Sufficient containers for trash shall be placed in the outdoor dining area.

§104-13. Hours of Operation.

- A. Outdoor dining activities may take place between the hours of 6:30 a.m. and 11:00 p.m. on all days of the week, except Sunday. Sunday hours shall be between 8:00 a.m. and 11:00 p.m.

§104-14. Music and Lighting.

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 direct or indirect illumination from the source of light shall not cause illumination in excess of 0.5 footcandles on any abutting property.

§104-15. Furniture Fixtures and Signage.

All furniture and fixtures used in conjunction with outdoor dining must be of a temporary nature, and must be brought in at closing time or securely fastened against the building façade during nonoperational hours. 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.

§104-16. Permit; Term; Renewals.

- A. Permits shall be issued on or after April 1 of each year. All permits, regardless of when issued shall expire on the last Sunday in November.

- 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.

Attorney Primo said the current code is slightly archaic and not clarified. He said the Village Board desired to protect local businesses by clarifying the street peddler requirements and creating another section for Outside Food Service. Attorney Primo said that the only eligible Outside Food Service would be allowed by established businesses within the Village of Minoa that are owner operated or sub-contract the operation outside. He said there has to be a logical connection between the owner and the sub-contractor, which would protect local ownership.

PUBLIC COMMENTS John Sears, 103 S. Main Street, said the local law was first presented in May and asked what lead up to the presentation of the local law. Attorney Primo said he had been asked for clarification by the Village Office in previous years and upon review, the Board decided the Code should be updated and clarified. He said he then drafted the proposed local law per the Board's request and a Public Hearing was scheduled. Mr. Sears asked if there was a specific incident that caused this action and Attorney Primo said there was not one incident, but a result of numerous requests that were brought to his attention and an unclear Code. He said the Board wished to develop initiatives that would protect property owners that exist within the village.

Mr. Sears said there are three bars within the Village of Minoa and they no longer sell food. He said he did not understand why the Village of Minoa would limit outdoor food service. Mr. Sears said the newsletter advertises for the Field Days, church events, and local businesses and it appears that the Village is promoting local churches and businesses in the newsletter, which creates exclusion and not inclusion. Mr. Sears said the proposed law should have been advertised in the Minoa newsletter and only two people showed up for the Public Hearing. Mr. Sears said he had a problem with the Village only advertising churches and Brad's Diner.

Trustee Cronk clarified that local businesses and all community events are advertised in the Minoa Newsletter.

Deputy Mayor Brazill said that the newsletter is there to encourage local businesses and help the community by listing businesses, events, and community activities. He said there is not enough traffic flow through the Village and the goal is to promote and protect local established businesses.

Mr. Sears said he has seen food carts throughout East Syracuse and said that it would be

nice to have food carts at Lewis Park. He suggested that the Board try the food carts before they pass the local laws.

Trustee Cronk said that he has tried to run a Farmer's Market in the past, but unfortunately, there was not enough interest and/or people to entice vendors.

Attorney Primo said that property owners that pay taxes are concerned that outside vendors will drop in, take up their business and then disappear. He said that outside vendors can work within the Village of Minoa, but they must do it as sub-contractors for an established business for a win-win situation for both businesses and the outside vendor would have a place to sell their goods.

Mr. Sears said that America was based on competition and if they aren't doing their job, they will go somewhere else. He said that the only reason why the Board was protecting Brad's is because he's a Minoa firefighter and he got them all elected.

Trustee Theobald said the goal isn't to kick out the competition, but the Board does not want to set-up roadblocks for existing businesses. He said that businesses are welcome to establish themselves within the Village of Minoa.

Mr. Sears continued to berate the Board and Attorney Primo asked Mr. Sears to keep to the Public Hearing topic and to discontinue insulting the Board with argumentative statements.

Frank Greiner III, 109 Creekview Path, Kirkville, he said that the Local Law was prompted by his request for a permit to sell food from his vending cart "Frank's Franks". He said this is not the first time a municipality has turned down his permit request. He said his request was for one night a week in the north end of the Village of Minoa that would encourage families to come out and enjoy a hot dog in an area that they can walk to. Mr. Greiner said he grew up in this community and remembers a period when families would go out at night for ice cream. He said the law that was sent to him previously denying his request has no teeth in and though he understands the Village's need to protect their businesses, the Village is creating a monopoly by excluding his right to sell his food. Mr. Greiner said that he has gone to the Town of Camillus, Town of Clay, Town of Cicero, and the Town of DeWitt and he has been victorious in getting food vending permit from all of the listed towns. He encouraged the Board to continue with the Farmer's Market and allow for food vendors. Mr. Greiner said the Village encourages churches to hold food sales and they say they are not for profit, but they are all making a profit. He said that his legal advice is free and that he is there for the Public Hearing and he will continue to come after the Village of Minoa for the permit, just as he was successful in other Towns. Mr. Greiner said the

Village will end up spending a lot of money defending them against his pursuit. He said he does not offer the same food as Brad's and it's expensive for food vendors to operate and he can guarantee that his vendors cart is significantly cleaner than the current establishments. Mr. Greiner said that by helping these businesses, the Village is hurting his business. He said that he's not sure why the Board wouldn't want the townfolk to come into town and enjoy some time with their neighbors.

Mr. Greiner said he submitted all the required paperwork to the Village Office and then he promptly received a denial letter, which did not pertain to him because the law pertains to peddlers and solicitors only. He said that while he was waiting for the Public Hearing he only saw one person jog through town. Mr. Greiner said that it is discrimination and feels that he contributes to the community and the Board is showing preference to local businesses.

Deputy Mayor Brazill stated that Brad's does serve the same items as Mr. Greiner.

Trustee Theobald said he remember previous instances that would have had negative impacts on similar businesses in Minoa. He said that he believes in free enterprise, but he also believes that if someone is going to spend money to start their own business and pay a rent, lease, utilities, employees, then it is unfair for someone to come in and compete against their establishment. Trustee Theobald said that it's important to protect local businesses and though he agrees that it would be nice to have a business in the north end of the Village, he would prefer that it would be a permanent established business.

Attorney Primo said the goal of the law is to encourage businesses to move to Minoa and flourish without the threat of food cart vendors and to protect all of the food establishments within the Village of Minoa. He said this is not a Brad's issue, but a global issue for all established businesses.

Mr. Greiner said the law is designed to protect specific businesses and did not feel that his cart would compete with that business. He said his business plan centered on the Municipal Building area and bringing people into the north side of town with the Village's approval. He said that he would be willing to donate funds to the little league for the ability to sell food and is only requesting one evening a week.

Mr. Greiner said that there is interest in his business from the apartments behind the Municipal Building and he has done his research. He said he would like to participate in the Field Days and pay a rental fee.

Mr. Sears said he would be willing to collect signatures on Mr. Greiner's behalf in

support of his hot dog stand if the Board were to continue the Public Hearing.

**COMMENTS FROM
THE VILLAGE
BOARD**

Trustee Champagne said that Mr. Greiner has some valid points, but the law was originally designed to protect local businesses. He said that he needed more time to think about the law, because it has posed some questions for him to review.

Trustee Cronk said that he is concerned that there was just not enough business to support his vending cart due to his experience with the Farmer's Market. He said he had tried crafters along with the food sales, but could not pull in the residents to buy their items.

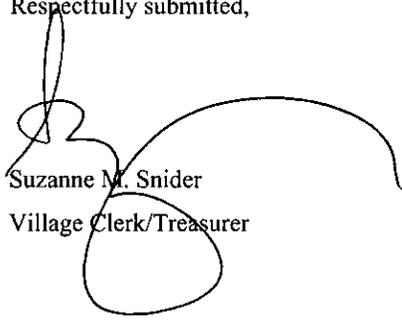
**PUBLIC HEARING
TO BE CONTINUED**

A motion was made by Trustee Champagne and seconded by Trustee Theobald to continue the Public Hearing on July 14, 2008 at 7:00 p.m. All in favor. Motion carried.

**PUBLIC HEARING
CLOSED**

A motion was made by Trustee Champagne and seconded by Trustee Theobald to adjourn the Public Hearing for Local Law #4 for 2008 at 8:14 p.m. All in favor. Motion carried.

Respectfully submitted,


Suzanne M. Snider
Village Clerk/Treasurer