

PEDDLING AND SOLICITING

Chapter 176

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[HISTORY: Adopted by the Town Council of the Town of Windham; Art. I, 8-9-1977; Art. II, 7-10-1984. Sections 176-14 and 176-22 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

**ARTICLE I
Home Solicitation
[Adopted 8-9-1977]**

§ 176-1. Scope.

This article shall apply to persons, both principals and agents, offering goods, wares and merchandise for unsolicited sale by sample for future delivery; to those who offer for unsolicited sale goods, wares and merchandise at retail from a motor vehicle; and to hawkers or peddlers on the streets or peddlers from motor vehicles.

§ 176-2. Exemptions.

Sections 176-3, 176-4, 176-5, 176-6, 176-7, 176-8, 176-12 and 176-14 shall not apply to charitable solicitors and route salespersons as defined below:

CHARITABLE SOLICITOR-- Any person, firm or organization acting on behalf of any church, civic group, public institution, youth organization or any organization which is granted tax-exempt status by the State of Maine.

ROUTE SALESPERSON-- Any individual who has established customers to whom he makes periodic deliveries on a regular basis.

§ 176-3. License required.

No person described in §176-1 shall be or remain in or on any of the streets, ways or public places of the Town of Windham without obtaining a license which has been duly issued by the Chief of Police.

A license granted under this Article shall be denied or revoked when any applicant or licensee has received a disqualifying criminal conviction, as defined in §176-15 of this Ordinance, at any time either during the five (5) years immediately preceding the application or while a license granted under this Article is in effect or when an applicant or licensee has been imprisoned at any time during said periods for a disqualifying criminal conviction, provided that said conviction was for an offense which is rationally related to the purpose of licensing persons described in §176-1 for home solicitation. **(Amended by Town Council by Order 18-091 on 6/12/2018.)**

§ 176-4. Application.

The application for such a license shall be on a form provided by the Town Clerk and shall contain at least the following information:

- A. The name of the applicant.
- B. His home address.
- C. His home telephone number.
- D. The name of his employer.
- E. The address of his employer.
- F. The telephone number of his employer.
- G. The license number and general description of any motor vehicle or motor vehicles which the applicant intends to use in the conduct of his business.
- H. A complete record of the applicant with respect to any disqualifying criminal conviction, as defined in § 176-15 of this Ordinance, or statement that no such conviction exists. **(Amended by Town Council by Order 18-091 on 6/12/2018.)**
- I. An authorization for the release of any information about the applicant from any law enforcement agency to the Town of Windham.
- J. The application must be signed under oath.

§ 176-5. Insurance required.

In addition to the information required in §176-4, an applicant for a license shall provide a certificate of insurance indicating that he carries motor vehicle liability insurance coverage in amounts not less than fifty thousand dollars (\$50,000.) for injury to or death of one (1) person; one-hundred thousand dollars (\$100,000.) for injury to or death of more than one (1) person in a single incident; and property damage insurance in the amount of not less than twenty-five thousand dollars (\$25,000.).

§ 176-6. License fee.

The license fee shall be twenty-five dollars (\$25.) and shall be paid at the time of filing the application.

§ 176-7. License expiration.

All licenses issued under this Article shall expire ninety (90) days from their date of issuance.

§ 176-8. Display of license.

All licenses granted under this Article shall be conspicuously displayed at all times while the licensee is conducting his business in the Town of Windham.

§ 176-9. Notice of right of rescision.

- A. Before executing any contract for the sale of goods in excess of two-hundred fifty dollars (\$250.), which sale is regulated by this chapter, the seller shall give the buyer a notice on a form provided by the Town Manager's office, obtain the buyer's signature on the notice in the space provided and affix the notice to either the copy of the contract or any receipt given by the seller to the buyer and return said notice to the Town Manager's office within forty-eight (48) hours of the date of the execution of the contract.
- B. Said notice shall, at least, specify the consumer's rights under 9-A M.R.S.A. §3-502(1).

§ 176-10. Prohibited acts.

It shall be unlawful for any person to engage in any of the practices described below:

- A. Uses any plan, scheme or ruse or makes any statement which indicates that the purpose of such person's visit is other than to obtain orders for or to make sales of goods or services.
- B. Does not disclose to the prospective customer at the outset his name and company and product he represents.

- C. Fails to show, upon request, company identification setting forth his name and the company's name and address.
- D. Misrepresents the right of a buyer to rescind or cancel a sale under state and federal law.
- E. Causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services.
- F. Causes likelihood of confusion or misunderstanding as to affiliation, connection or association with or certification by another.
- G. Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation or connection that he does not have.
- H. Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- I. Makes false or misleading representations of fact concerning the reasons for existence of or amounts of price regulations.
- J. Makes false or misleading representations concerning the availability of credit or the nature of the transaction or obligation incurred.

§ 176-11. Hours of solicitation.

No sale or offer to sell regulated by this Article shall be made between the hours of 9:00 p.m. to 8:00 a.m.

§ 176-12. False statements.

Any false statement in an application, either original or supplementary, for a license shall subject such applicant or licensee to the same penalty as if he had no license.

§ 176-13. Violations and penalties.

Anyone found guilty of violating any provision of this Article shall be subject to a fine of not less than fifty dollars (\$50.) nor more than two-hundred dollars (\$200.). Each day that such violation continues shall be deemed to be a new offense.

§ 176-14. Appeals.

Denial of a license under this Article may be appealed through the municipal officers in the Town of Windham.

ARTICLE II
Mobile Food Services
[Adopted 7-10-1984]

§ 176-15. Definitions.

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

DISQUALIFYING CRIMINAL CONVICTION – Includes any conviction of any criminal offense punishable by imprisonment for more than one (1) year, whether or not the sentence was imposed or served, but shall not include any conviction which is shown to have been set aside on appeal or collaterally or for which a pardon, certificate of rehabilitation or equivalent under the law of the sentencing jurisdiction has been granted.

MOBILE FOOD SERVICE UNIT (hereinafter ‘MFSU’) – Includes only a food service establishment which has all utilities and facilities contained within it, other than a power source, which has no fixed location for the operation or transaction of business and which is moved from one (1) privately owned location or on property owned by the Town of Windham as may be authorized by the Town to a different location under separate ownership not less frequently than once every twenty-four hours, in order to serve persons otherwise present at such locations at such time. **(Amended by Town Council by Order 18-091 on 6/12/2018.)**

§ 176-16. License.

An applicant for a MFSU license shall annually make application to the Windham Town Council, or such other official as the Council may designate. Said license shall expire on May 31 of each year. Fees will not be prorated. The annual license fee shall be fifty dollars (\$50.).

§ 176-17. Application.

The application shall be on a form provided by the Town Clerk and shall require the applicant to furnish the following information:

- A. The name, address and telephone number of the owner.
- B. The name, address and telephone number of the operator if different from the owner.
- C. Identification of sites where MFSU will operate.
- D. Description of vehicle and its license number.
- E. A certificate of insurance as required by §176-21.

- F. A photograph of the unit.
- G. A certificate of approval issued by the Department of Human Services of the State of Maine.
- H. A complete record of the applicant with respect to any disqualifying criminal conviction of statement that no such conviction exists.
- I. An appropriate form of statement, over the signature of the applicant, giving all person and governmental agencies having information relevant to the above items permission to release the same to the Clerk.
- J. A description of those items which the applicant proposes to sell and dispense.

§ 176-18. Disqualifying criminal convictions.

A license granted under this Article shall be denied or revoked when any applicant or licensee has received a disqualifying criminal conviction at any time either during the five (5) years immediately preceding the application or while a license granted under this Article is in effect or when an applicant or licensee has been imprisoned at any time during said periods for a disqualifying criminal conviction, provided that said conviction was for an offense which is rationally related to the purpose of licensing operators of MFSU's.

§ 176-19. Scope.

A licensee under this Article shall be authorized to sell and dispense only those items which have been described in the application and which the unit is equipped to dispense pursuant to the rules described by the Department of Human Services, as they may be amended from time to time. No MFSU shall operate within two-hundred (200) feet of a licensed food service establishment. An MFSU shall operate only on private ways and not within or on any public ways.

§ 176-20. Rubbish containers required.

A sufficient number of covered metal rubbish containers shall be provided at each site immediately adjacent to the MFSU to hold material discarded by its customers. In no case shall such containers be more than ten (10) feet from the unit. A licensee shall keep sidewalks, roadways and other public or private spaces adjoining and adjacent to his locations clean and free from paper and refuse of other kind which may be generated by the operation of his business.

§ 176-21. Insurance required.

The licensee shall provide an insurance policy covering the period of the license and executed by an insurance company authorized to issue such policy in the state in the usual form of automobile liability insurance policies in this state for injuries to persons and property resulting from the use an operation of the vehicle to be licensed. Such policy of insurance shall be issued for the

principal sum sufficient to provide indemnity in an amount of not less than the maximum amount available under the automobile insurance plan, also known as the "assigned risk plan", for bodily injury, death and property damage. A certificate of insurance bearing an endorsement thereon by the issuing agent shall be deposited with the Clerk. Such certificate shall state that the issuing agent will notify the Clerk, in writing no less than thirty (30) days prior to the cancellation thereof.

§ 176-22. Certificate of approval suspension or revocation.

No license granted under this Article shall be effective for any period during which the licensee's certificate of approval, issued by the Department of Human Services, is suspended or revoked.

§ 176-23. Grounds for suspension or revocation.

A license granted under the authority of this Article may be suspended or revoked by the Town Council, after notice and hearing, when the Council determines that the licensee has violated any condition of this Article, any other applicable ordinance of the town or of the license granted to him.