

**AN ORDINANCE AMENDING THE TOWN CODE
OF THE TOWN OF DUCK, NORTH CAROLINA
REGARDING PEDDLERS AND ITINERANT MERCHANTS**

Ordinance No. 10-05

WHEREAS, pursuant to N.C Gen. Stat. §160A-174 a town may by ordinance define, prohibit, regulate or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the town; and

WHEREAS, pursuant to N.C. Gen. Stat. §160-378 a town may by ordinance regulate, restrict or prohibit the business activities of itinerant merchants, salesmen, promoters, peddlers, flea market operators and flea market vendors.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Duck, North Carolina, that Chapter 110 Peddlers and Itinerant Merchants of the Town of Duck Code of Ordinances, is hereby amended, as follows:

PART I. CHAPTER 110: PEDDLERS AND ITINERANT MERCHANTS

Section

110.01 Definitions

110.02 License required

110.03 Permit procedures

110.04 General regulations

110.05 Revocation

110.06 Craft fairs and flea markets

110.07 Mobile ice cream vendors

110.08 Exemptions

§ 110.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ARTICLES OF MERCHANDISING. Anything of value offered for sale to the public by any person.

ITINERANT MERCHANT. Any person who shall expose for sale, either on the street or in a building occupied in whole or in part for that purpose, any goods, wares or articles of merchandise, not being a regular merchant of the Town, and shall include any person who exposes his or her goods for sale in a flea market, a parking lot or an unused portion of a building or from any fixed location within the Town.

MOBILE ICE CREAM VENDOR. Any person who sells ice cream products from a motorized vehicle operating on Town streets.

PEDDLER. Any person engaged in the act of peddling of articles of merchandise.

PEDDLING. The sale or offering for sale from house to house by any persons from a cart, truck, automobile or other vehicle operated over and upon the streets and highways any articles of merchandise and shall include, without limitation, fresh fruits and vegetables, farm products, household medicines, remedies and other articles.

§ 110.02 PERMIT REQUIRED.

It shall be unlawful for any peddler, itinerant merchant, or mobile ice cream vendor to peddle or sell any articles of merchandise within the Town until the person shall have first secured a permit to peddle or sell such articles of merchandise and the itinerant merchant, peddler, or mobile ice cream vendor shall keep and produce and exhibit the permit to any official of the Town upon demand.

§ 110.03 PERMIT PROCEDURES.

(A) Every peddler, itinerant merchant, or mobile ice cream vendor desiring to sell articles of merchandise and any person operating a flea market for itinerant merchants, before doing so, shall apply and make a sworn affidavit as appears in this section before the Town Clerk. Upon making application and swearing to the affidavit, and also after a complete review of the application followed by a determination by the Town that the proposed business operation complies with the applicable provisions of this Chapter, the Town Clerk shall issue to the person a permit to sell the articles of merchandise.

(B) The application must be submitted no later than four working days prior to commencing business.

(C) The affidavit sworn to by the applicant shall be in a format as follows:

I _____, residing at _____, being duly sworn, depose and say:

(1) That all of the articles of merchandise to be sold or proposed to be sold or offered for sale by me in the Town of Duck are as follows: (strike descriptions not applicable)

(a) Fruits and farm products;

(b) Books, periodicals, printed music, ice, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, dairy products, poultry, livestock or articles produced and manufactured by the applicant; and/or

(c) Medicines, drugs or assembled (manufactured) articles.

(2) I am/am not (strike 1) a disabled veteran, or blind person;

(3) I intend to sell my goods, wares and merchandise: (check appropriate categories)

(a) On foot;

(b) From a motor vehicle (automobile, truck and the like) of 1/2 ton capacity or less;

(c) From a motor vehicle of more than 1/2 ton capacity;

(d) By solicitation from house to house;

(e) From a temporary location, flea market or pavilion within the Town of Duck; and/or

(f) (If applicable) the location within the Town of Duck at which I intend to sell my goods, wares and merchandise is described as follows:

(4) I have/have not (strike 1) paid a license tax to the North Carolina Department of Revenue.

This the _____ day of _____, 20____.

Notary Public

My Commission Expires:

(D) Prior to issuing the permit, the Town Clerk shall require the applicant to provide the following information:

(1) Name and physical description of the applicant.

(2) Permanent home address of the applicant.

(3) The name and address of the business as well as the name and address of the principle operator or owner of the business, if different from the applicant.

(4) A photo identification of the owner and all employees that will operate the business within Town limits, which have been taken within 60 days of filing the application.

(5) The driver's license(s) of all persons who will operate vehicles with Town limits acting as a peddler, itinerant merchant, or mobile ice cream vendor.

(6) Social Security number of the principal operator or owner of the business.

(7) Federal tax identification number of the business.

(8) State sales tax number and business license issued by the state, unless the state license is not required by the General Statutes.

(9) If applicable, the registration number of the vehicle(s) to be operated and proof of vehicle insurance as required in § 110.07. The applicant shall also provide the year, make and model of each vehicle to be operated within Town Limits as well as a photo of the vehicle(s).

(1) A business license issued by the state, unless the state license is not required by the General Statutes; and

(10) If articles are to be sold from a temporary location, the permission, in writing, of the property owner as required by § 110.04 below.

(11) Approval from the Dare County Health Department, if applicable.

(E) The permit provided for by this section shall not be issued until the applicable items listed above are presented and exhibited to the Town Clerk, unless exempt as herein above provided.

(F) Permits issued under this Chapter shall be valid for a period of one (1) year unless issued for a specific event.

§ 110.04 GENERAL REGULATIONS.

(A) It shall be unlawful for any person to expose for sale, offer to sell, barter or exchange, or sell any foods, wares or articles of merchandise within the public street and highway rights-of-way, or on the ocean beaches of the Town, or on parking lots and other outdoor areas open to the public which are located wholly or in part within 50 feet of the rights-of-way, or on Town property, except as otherwise permitted in this Chapter.

(B) Any person selling articles of merchandise from a temporary location shall obtain from the owner of that location permission to temporarily locate himself or herself on the property of the person for the purpose of selling articles of merchandise.

(C) Permission shall be in writing and signed by the owner or lessee of the premises. No person holding a peddler's permit shall offer merchandise for sale from a temporary location as an itinerant merchant.

(D) Any person selling articles of merchandise from a vehicle shall not place or locate his or her vehicle in a parking lot of a business establishment, unless and excepting the remaining parking spaces in the parking lot, not occupied by the itinerant merchant, are at least equal to and not less than the parking required for that business establishment under the zoning laws of the Town.

(E) Any itinerant merchant selling articles of merchandise shall locate only in those areas in which there is sufficient room for the merchant's vehicle and the parking of a minimum of 3 automobiles for customers on the premises where the itinerant merchant is located or in designated on-street parking areas.

(F) An itinerant merchant shall remove his or her vehicle from the premises after his or her normal business hours, and it shall be unlawful for any person selling articles of merchandise to allow his or her vehicle or trailer to remain on the premises between the hours of 12:00 a.m. and 6:00 a.m.

(G) It shall be unlawful to peddle any articles of merchandise from any vehicle or on foot or by any other means between the hours of 8:00 p.m. and 10:00 a.m. in any residential zoning district within the corporate limits of the Town.

(H) An itinerant merchant shall locate for the purpose of selling merchandise only in a VC, C-1 or C-2 Zoning District of the Town. It shall be unlawful for an itinerant merchant to locate in any other zoning district.

(I) The vehicle from which an itinerant merchant sells articles of merchandise shall not be located within the minimum front, side or rear yards required in the zoning district in which the vehicle is located.

(J) Except as provided in § 110.08 below, 1 attached sign may be used to advertise, identify or locate an itinerant merchant. The sign must be attached to the vehicle or structure from which the merchant operates. The sign shall not exceed 10 square feet in area. The sign shall be exhibited only during the time that the itinerant merchant is operating.

§ 110.05 REVOCATION.

Any license or permit issued pursuant to this chapter may be automatically revoked and terminated in the event of violation of any provision of sections § 110.04, § 110.06, or § 110.07 or in the event of providing of false information in the affidavit required by § 110.03 above.

§ 110.06 CRAFT FAIRS AND FLEA MARKETS.

Itinerant merchants may be grouped together or occupy, from time to time, pavilions and other structures, whether permanent or temporary, in craft fairs and flea markets, subject to the following rules and regulations:

(A) The pavilion or other structures shall be located only in a VC, C-1 or C-2 Zoning District of the Town. Further, any like structure must meet all requirements of the Uniform State Building Code and the Town Zoning Chapter for a commercial structure. Further, parking areas meeting the requirements of the Town Zoning Chapter must be provided;

(B) All signs advertising, identifying or locating the various itinerant merchants located in a structure must be contained wholly within the structure in which the itinerant merchants are located. One commercial sign identifying the craft fair, flea market or pavilion may be constructed pursuant to the sign regulations contained in the Zoning Chapter of the Town;

(C) Articles of merchandise offered to be sold shall be permitted to remain on the premises of the structure during the term of the occupancy thereof by the itinerant merchant; and

(D) Except as provided in § 110.08 below, all itinerant merchants must comply with the applicable provisions of this chapter, including, without limitation, the permit procedures.

§ 110.07 MOBILE ICE CREAM VENDORS

(A) Any person may sell or offer for sale, on the streets of the Town, any ice cream products from approved motorized vehicles, subject to the requirements of this section.

(B) Persons desiring to sell ice cream products from motorized vehicles shall obtain and maintain a valid Town permit to operate as a mobile ice cream vendor as prescribed in § 110.03 above.

(C) *Health department approval required.* If applicable, any person operating or managing any such vehicle shall first obtain approval from the Dare County Health Department which shall provide the operator or manager with certification that the vehicle meets health department requirements. This approval must be posted conspicuously in the ice cream vending vehicle at all times. In addition, the standards for the composition of ice cream and other frozen products sold shall in all instances conform to the requirements of the North Carolina Department of Agriculture.

(D) The permit required to be issued pursuant to this section must be posted conspicuously in the ice cream vending vehicle at all times, and must be produced upon request by a law enforcement officer or other Town staff.

(E) A person or person(s) authorized to operate as a mobile ice cream vendor shall not otherwise operate as a peddler or itinerant merchant.

(F) The duration of sales within any one Town block in any one day shall be limited to thirty (30) minutes.

(G) Sales shall only be conducted between the hours of 10:00 a.m. and 8:00 p.m.

(H) Bells, whistles and gongs may be used to advertise the sale of such products so long as the Town's noise ordinance, Town Code §91.35, is not violated. Sound amplifying devices may not be used to advertise or announce sales of such products.

(I) Sales are prohibited on the following street(s):

1. NC 12 (Duck Road)

(J) Nothing in these regulations shall be construed to relieve the operator of such vehicle from obeying Town ordinances and state laws with respect to noise and traffic, and nothing shall give such operator the right or privilege to obstruct traffic with such vehicle.

(K) Every vehicle and everything pertaining thereto used by a vendor shall at all times be maintained in a clean and orderly condition, and no portion of the contents thereof shall be thrown, spilled or deposited upon the streets or other public place. The operators of such vehicles shall at all times keep the sidewalks, streets, or other public spaces around such vehicle clean and free from paper and refuse of any and all kinds.

(L) Every ice cream vending vehicle shall be clearly marked with the name of the vendor and the location where such vehicle is stored when not in use. Additionally, all such vehicles shall be marked, in a way that is clearly visible to other motorists, to indicate that they are ice cream vending vehicles.

(M) *Insurance requirements.* Each vehicle used on the streets of the Town for the sale of such products shall be insured by an insurance company licensed to write public liability insurance in this state in the amounts of \$100,000.00 for a single injury or death, \$500,000.00 for injury or death to two or more people resulting from one accident and \$75,000.00 for property damage. Evidence that such insurance has been issued and is in force shall be provided to the administrator at the time of application for a permit to operate as a mobile ice cream vendor.

§ 110.08 EXEMPTIONS.

The following individuals and activities are exempted from the provisions of this chapter:

(A) Churches, civic organizations and nonprofit organizations that are tax exempt under the provisions of the Internal Revenue Code are exempt for activities involving craft fairs, flea markets and yard sales; provided that those activities will not be held on more than 4 days in any 12-month period. Further, a permit must be obtained at no cost, and the activity must comply with the provisions of § 110.02 above;

(B) Children under the age of 18 years who are students in a public or private school and who conduct door to door solicitations for magazine subscriptions or donations for school activities; and

(C) Itinerant merchants offering for sale or selling goods in a craft fair, flea market or pavilion for which the sponsor shall have obtained the licenses as provided in the General Statutes and the Town permit required by this chapter.

PART II. This ordinance shall be effective upon its adoption.

Dave Wessel, Mayor

ATTEST:

Town Clerk

Date adopted: April 7, 2010

Motion to adopt by: Mayor Pro Tempore Kingston

Vote: 4 AYES 0 NAYS