AMENDED ORDINANCE

SECTION 13.152

ITENERANT MERCHANTS, PEDDLERS OR VENDORS

SECTION 13.152 – ITENERANT MERCHANTS, PEDDLERS OR VENDORS[[1]](#footnote-1)

SECTION 13-152.1 – Definitions; compliance required; applicability.

 (a) *Definitions*. The following words, terms and phrases, when used in this

 article, shall have the meanings ascribed to them in this section, except

 where the context clearly indicates a different meaning:

 *Peddler* means any person, firm or corporation, whether as owner, agent, consignee or employee, whether or not a resident of the Town, who engages in the business of carrying any goods, wares or merchandise from place to place and offering to sell or barter, or actually selling or bartering, such goods or merchandise.

 *Transient merchant, itinerant merchant and itinerant vendor* (all such terms referred to in this article as “itinerant merchant”) means any person, firm or corporation, whether as owner, agent, consignee or employee, whether or not a resident of the Town, who engages in a temporary business of selling and delivering goods, wares and merchandise within the Town, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, trailer, railroad box car, truck or boat, public room in hotels, motels, lodginghouses, apartments or shops, or any street, alley or other place within the Town for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction, provided that such definition shall **NOT** be construed to include:

 (1) Any person selling at a flea market taxed under G.S. 105-53(d).

 (2) Any person selling at a yard sale.

 (3) Any person, firm or corporation that otherwise meets the requirements of

 this definition, but who is part of a group of ten or more merchants selling

 at a shopping area or trade show, and is selling at the invitation of the

 shopping area or trade show, and where such sales activities do not last for

 a period of time longer than seven days.

 (4) A traveling salesman.

 (b) *Relief from compliance by association*. For the purpose of this article, a

 person, firm or corporation engaged in a transient business shall not be

 relieved from complying with the provisions of this chapter merely by

 reason of temporarily associating with any local dealer, trader, merchant or

 auctioneer or by conducting such transient business in connection with, as a

 part of, or in the name of any local dealer, trader, merchant or auctioneer.

 (c) *Applicability*. The provisions of this section dealing with transient

 merchants, itinerant merchants, itinerant vendors and peddlers shall not

 apply to any person, firm or corporation who sells, or offers for sale, books,

 periodicals, printed music, ice, wood for fuel, fish, beef, mutton, pork,

 bread, cakes, pies, dairy products, poultry, eggs, vegetables, fruits,

 livestock or articles produced by the individual vendor offering such

 articles for sale, but shall apply to medicines, drugs or assembled articles.

SECTION 13-152.2 – Permit required.

 It shall be unlawful for a transient merchant, itinerant merchant, itinerant vendor or peddler to engage in such business with the Town of Wagram without first obtaining a permit in compliance with the provisions of this article.

 State Law reference – Peddlers, itinerant merchants and specialty market operators, G.S. 105-53.

SECTION 13-152.3 – Permit applications.

 Applicants for a permit, as required in Section 13-152.2, shall file a written application on a form developed by the Town and approved by the Town attorney. The application shall contain the following information:

 (1) A description of the goods, wares or merchandise for sale.

 (2) The names of the persons, and any employees or agents, having the

 management or supervision of the applicant’s business during the time that

 it is proposed that such business will be carried on in the Town; the local

 addresses of such persons while engaged in such business; the permanent

 addresses of such persons; the capacity in which such persons will act,

 whether as proprietor, agent or otherwise; the name and address of the

 person, firm or corporation for whose account the business will be carried

 on, if any and, if a corporation, under the law of what state the corporation

 is incorporated.

 (3) Proof of state sales tax reporting number issued by the State Department of

 Revenue.

 (4) Places within the Town where the applicant proposes to conduct business

 and the length of time during which it is proposed that such business shall

 be conducted, and the provisions the applicant has for access and parking.

 (5) Proof of the property owner’s permission to conduct such business.

SECTION 13-152.4 – Bond.

 Before any license shall be issued under the provisions of this article for engaging in a transient or itinerant business, an applicant shall file a bond with the Town Clerk in the currently required amount, executed by the applicant, a principal or surety, upon which service of process may be made within the state. Such bond shall be conditioned that the applicant shall fully comply with all provisions of the ordinances of the Town and the statutes of the state regulating and concerning the sale of goods, wares and merchandise, and will pay all judgments rendered against the applicant for any violation of such ordinances or statutes, together with all judgments and costs that may be recovered against the applicant by any person for damage arising out of any misrepresentation or deception practiced on any person transacting such business with the applicant, whether such misrepresentations or deceptions were made or practiced by the applicant or its servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold, or any part thereof. Any aggrieved person may bring action against the licensee in the general court of justice of the county. The bond required by this section shall be posed and shall remain in effect at all times the license is in effect. Such bond shall be approved by the office of the Town attorney, both as to form and the responsibility of the surety.

SECTION 13-152.5 – Permit fee.

 Before issuing a permit under this article, the Town of Wagram shall collect a permit fee in an amount which shall be set from time to time and is on file in the Clerk’s Office, which shall be for a term of one year from the date of issuance and shall not be prorated due to the permit being issued later than July 1. The permit shall not relieve the applicant of paying any other state or local taxes required by law.

SECTION 13-152.6 – Investigation of application; issuance of permit; term of validity;

 change of location; transferability.

 (a) The Clerk of the Town of Wagram shall investigate all applications within

 five days from receipt of the application.

 (b) If the applicant satisfies all the requirements of this article, the Clerk of the

 Town of Wagram shall issue a permit. The Town of Wagram shall

 maintain a copy of all permit applications and all permits issued.

 (c) The permit shall be issued for a period of one year. Itinerant merchant

 permits will be valid for the location indicated on the permit. If the

 location changes, the itinerant merchant shall apply for a new permit.

 (d) The permit is not transferable to other persons or locations.

SECTION 13-152.7 – Posting of Permit.

 The permit issued under this article shall be conspicuously posted in the place of business named on such permit.

SECTION 13-152.8 – Exemptions.

 This article shall not apply to civic clubs located within the county, nor to any bona fide charitable, educational, religious, cultural or governmental institution or organization when the proceeds of the sales are used directly for the institution’s or organization’s charitable purpose.

SECTION 13-152.9 – Enforcement.

 Violation of this ordinance is a misdemeanor and may be enforced by any means available to the Town of Wagram for the enforcement of the ordinances: criminal, civil or equitable.

SECTION 13-152.10 – Revocation of permit.

 (a) Permits issued under the provisions of this article may be revoked by the

 Clerk of the Town of Wagram, after notice and hearing for any of the

 following causes:

 (1) Fraud, misrepresentation or a false statement contained in the

 application for the permit;

 (2) Fraud, misrepresentation or a false statement made in the course of

 carrying on the business as peddler or itinerant merchant;

 (3) Any violation of this article;

 (4) Convictions of any crime or misdemeanor involving moral turpitude;

 (5) Conducting the business of peddler or itinerant merchant in an

 unlawful manner or in such a manner as to constitute a breach of the

 peace or a detriment to the health, safety or general welfare of the

 public.

 (b) Notice of the hearing for revocation of the permit shall be given in writing,

 specifically setting forth the grounds of the complaint and the time and

 place of the hearing. Such notice shall be mailed, postage prepaid, to the

 permittee at his/her last known address at least five (5) days prior to the

 date set for the hearing.

SECTION 13-152.11- Appeals.

 Any person aggrieved by the action of the Clerk of the Town of Wagram in the denial of an application for a permit as provided in Section 13-152.3 or in the decision with reference to the revocation of a permit as provided in Section 13-152.10 shall have the right to appeal to the Wagram Town Board of Commissions in writing by the applicant, addressed to the Mayor, if the same is done within fourteen (14) days of the denial. The appeal shall contain a written statement fully setting forth the grounds for the appeal. The Wagram Town Board of Commissions shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the applicant in the same manner as provided in Section 13-152.10 (b) for notice of a hearing on revocation of a permit. The decision and order of the council on such appeal shall be final and conclusive.

SECTION 13-152.12 – Violations; penalties

 (a) Any violation of this article shall be a misdemeanor, and every person

 convicted of a violation of this article may be punished in accordance with

 Section 1-12.

 (b) Each day’s violation of this article shall constitute a separate and distinct

 offense.

 (c) Notwithstanding subsection (a) of this section, the provisions of this article

 may be enforced by an appropriate equitable remedy issued from a court of

 competent jurisdiction.

 (d) The violation of this article shall subject the offender to a civil penalty in

 the amount of $250.00, provided, the offender does not pay the fine within

 ten days after he has been convicted of a violation of this article.

SECTION 13-152.13 – Food trucks

 (a) *Definitions*. The following words, terms and phrases, when used in this

 article, shall have the meanings ascribed to them in this section, except

 where the context clearly indicates a different meaning:

 *Area number* means the locations that are designated by the Town for the operation of food trucks.

 *Food truck* means a licensed, motorized vehicle, or mobile food unit licensed by the NCDMV and as authorized by G. S. 130A-247 et seq., which is temporarily stored in a location where food items are sold to the general public.

 *Food truck operator* means any person who owns, operates or manages a business that uses or applies for a food truck permit.

 *Permit holder* means any person who holds a current food truck permit.

 (b) *Permits*.

 (1) A food truck operator must complete a permit application that is

 submitted to the Town of Wagram. The application shall be

 accompanied by all required elements listed on the application and

 the submittal fee.

 (2) Multiple food trucks may be permitted in a single designated area

 not to exceed the area number determined by the Town. The permit

 must be permanently displayed during operation.

 (3) Annual permits will be issued only for the areas designated by the

 Town within the Central Business District. Any other food

 truck operation will be handled as temporary sales and require a

 permit each time the food truck sets up along with written

 permission from the property owner.

 (4) The food truck operator must comply with all applicable local, state,

 and federal regulations. Any food truck operated in a manner not

 consistent with these regulations is illegal and the permit shall be

 revoked.

 (5) The food truck operator must dispose of all waste associated with the

 food truck operation. Town receptacles may not be used for this

 purpose. No liquid grease may be poured into any tree pit, storm

 drain, gutter pan, sidewalk or any other public space. Grease shall

 not be released into the Town’s sanitary sewer system.

 (6) If at any time evidence of improper disposal of liquid waste or

 grease is discovered, the food truck permit will be revoked and the

 food truck business will be required to cease immediately.

 (7) The permit holder has to be on site during the operation of the food

 truck.

 (c) *Locations*.

 (1) The permit holder may operate during the hours of 8:00 a.m. through

 8:00 p.m. in the areas designed by the Town within the Central

 Business District.

 (2) The permit holder may operate during the hours of 8:00 a.m. through

 8:00 p.m. Saturday and Sunday only in the areas designated by the

 Town within the Central Business District.

1. Footnote: State Law Reference – Authority to Regulate Solicitation Campaigns, Flea Markets and Itenerant Merchants, J.S. 168-178. [↑](#footnote-ref-1)