

PART II – GENERAL LEGISLATION

Chapter 133 – Licenses and Business Regulations

[Amended and Adopted, December 27, 2012, as Chapter 133 of the Code]

Article I In General Sections 133-1 – 133-12

[Adopted as G.O. 1930]

Article II Canvassers and Solicitors Sections 133-13 – 133-44

[Adopted Ordinance of 11-1-54]

Article III Garage Sales Sections 133-45 – 133-70

[Adopted as Local Law # 1 of 1997, Amended by Local Law #4 of 2019]

Article IV Home Occupations Sections 133-71 – 133-75

Article I – In General

Section 133-1 – Scope of license requirements – Unless otherwise provided by the Board of Trustees it shall be unlawful for any person to engage in any business, trade, occupation or calling enumerated in Section 133-13, herein, unless such person shall have first obtained from the Village Clerk a license to engage in such business, trade, occupation or calling.

Section 133-2 – License required for circuses, carnivals, etc. – Fee – No person in charge of or connected with any circus, carnival, exhibition, concert or like event shall erect any show tent or building within the Village for the purpose of giving any exhibition, show, circus, performance or entertainment or attempt to show, exhibit or give any public show, performance or entertainment in any street or on any lot within the village without procuring a license therefore. The fee for such license shall be determined by the Board of Trustees from time to time by resolution.

Sections 133-3 – 133-12 – Reserved

Article II – Canvassers and Solicitors

Section 133-13 – Definitions – Unless otherwise expressly provided in this article, the following words, terms and phrases shall, for the purposes of this article, have the meanings herein ascribed to them:

Established place of business: A building or store in or where a person transacts business and deals in the goods, wares and merchandise he peddles or solicits for during regular business hours.

Canvasser: One who attempts to make personal contact with a person at his or her residence within the Village of Marcellus and without his or her prior consent, to:

(i) request or attempt to induce or persuade any person to support a particular charitable, educational, civic, patriotic, political, benevolent, religious or philanthropic project or cause;

(ii) seek or ask for a gift or donation for a public entity or nonprofit organization exempt from federal income tax under 26 U.S.C. 501(c)(3);

(iii) sell goods, wares, merchandise, tickets, articles, services, publications, advertisements, subscriptions or things of any kind or value, with the entire proceeds of such sale to be paid directly to or used exclusively for the benefit of a public entity or nonprofit organization exempt from federal income tax under 26 U.S.C. 501(c)(3);

(iv) personally deliver a handbill or flyer advertising a future event, activity, good or service that is noncommercial in nature or otherwise not-for-profit.

Mobile Vendor: one who is engaged in or who shall hereafter engage in purchasing, buying, bartering, selling, or vending food, goods, wares and merchandise or other personal property or obtaining orders or subscriptions for the sale or purchase thereof or for work, labor or services to be rendered to residents of the Village from a location that is designed to be portable and not permanently attached to the ground.

Person: an individual over the age of 18 years or a partnership, unincorporated association, sole proprietorship, limited liability company or corporation.

Solicitor: one, other than a canvasser as defined herein, who attempts to make personal contact with a person at his or her residence within the Village of Marcellus and without his or her prior consent, to:

(i) Collect or receive money or property;

(ii) Sell goods, wares, merchandise, tickets, articles, services, publications, advertisements, subscriptions or things of any kind or value;

(iii) Invite, request or attempt to induce or persuade any person to contribute any money or thing of value; or

(iv) Invite, request or attempt to induce or persuade any person to become a sponsor, booster or advertiser in connection with a fund-raising campaign.

(v) Personally deliver to the resident a handbill or flyer advertising a commercial event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a future time.

Section 133-14 – Exemptions from article

(a) No provision of this article shall be held to apply to any sales conducted pursuant to statute or by order of any court; to any person selling personal property at wholesale to dealers in such articles, to merchants having an established place of business within the Village or their employees for soliciting orders from customers and delivering the same or to the sale of meats, fish, fruit and farm produce by farmers and persons who produce such commodities.

Section 133-15 – License or permit required – It shall be unlawful for any person, within the corporate limits of the village, to act as a solicitor as herein defined without first having obtained and paid for, and having in force and effect a permit therefore or to act as a mobile vendor as herein defined without first having obtained and paid for, and having in force and effect a license. A permit or license is not required for any person who acts solely as a canvasser within the Village as defined herein.

Section 133-16 – License/permit application generally – Satisfactory proof of good character – Any person desiring to procure a license/permit provided for in this article shall file with the village clerk a written application upon a blank form prepared by the clerk and furnished by the village, and shall file at the same time satisfactory proof of good character.

Section 133-17 – Contents of license application – The license/permit application provided for in this article shall contain the following information:

- (a) The number and kind of vehicles to be used by the applicant in carrying on the business for which the license/permit is desired.
- (b) The kind of goods, wares and merchandise the applicant desires to sell or the kind of service he desires to perform.
- (c) The method of distribution.
- (d) The name and address of the person, firm or corporation the applicant represents.
- (e) The length of time the applicant desires the license/permit.
- (f) Such other information as may be required by the board of trustees or the Village Clerk.

Section 133-18 – License/permit fee – The fee for a license/permit issued under the provisions of this article shall be set from time to time by resolution of the Board of Trustees.

Section 133-19 – Issuance of license/permit generally

- (a) Upon the filing of the application required by this article, the village clerk shall issue a license/permit to the applicant.
- (b) Except as hereinafter provided, no license/permit shall be refused except for a specific reason and for the protection of the public safety, health, morals or general welfare.

Section 133-20 – Issuance of license/permit to minor – No license/permit shall be granted to a person under eighteen (18) years of age.

Section 133-21 – Expiration of license/permit – A license/permit issued pursuant to this article shall automatically expire on January first following the date of issuance, but such license/permit may specifically state and provide for an earlier expiration date.

Section 133-22 – Assignment of license/permit prohibited – A license/permit issued as provided herein shall not be assignable. Any holder of such license/permit who permits it to be used by any other person, and any person who uses a license/permit granted to any other person shall each be guilty of a violation of this article.

Section 133-23 – License/permitted to carry license/permit, exhibit upon demand – Every license/permittee, while exercising his license/permit, shall carry the license/permit with him and shall exhibit the same upon demand.

Section 133-24 – Issuance of duplicate license/permit – Whenever a license/permit which has been issued under the provisions of this article shall be lost or destroyed, a duplicate in lieu thereof under the original application and bond may be issued by the village clerk upon the filing with the clerk by the license/permittee of an affidavit setting forth the circumstances of the loss and what, if any, search has been made for the recovery of the lost license/permit.

Section 133-25 – Revocation of license/permit-Generally – The board of trustees may, at any time, for a violation of this article, any law, regulation or resolution, revoke any license/permit issue under the provisions of this article.

Section 133-26 – Same-Notice – Notice of revocation and the reason or reasons therefore in writing shall be served by the village clerk upon the person named in the application or by mailing the same to the address given in the application, and upon filing a copy of such notice with the village clerk.

Section 133-27 – Same-Fee not refunded – When a license/permit shall be revoked, no refund of any unearned portion of the license/permit fee shall be made.

Section 133-28 – Records of issuance, revocation of license/permits – It shall be the duty of the village clerk to keep a record of all applications and of all license/permits granted under the provisions of this article, giving the number and date of each license/permit, the name and residence of the person license/permittee, the amount of the license/permit fee paid and also the date of revocation of all license/permits revoked.

Section 133-29 – Application for license/permit subsequent to denial, revocation – No person to whom a license/permit has been denied or to whom license/permit has been issued and subsequently revoked shall make further application, until a period of at least six (6)

months shall have elapsed since the last previous denial or revocation, unless he can show that the reason for such denial or revocation no longer exists.

Section 133-30 – Restrictions placed on license/permit

A license/permitted canvasser or solicitor shall not:

- (a) Falsely or fraudulently misrepresent the quantity character or quality of any article offered for sale or offer for sale any unwholesome, tainted or diseased provisions or merchandise.
- (b) Permit any vehicle used by him to stop or remain on any crosswalk.
- (c) Approach any village residence prior to 8 a.m., nor later than 8 p.m.

Section 133-31 – Duty to maintain vehicle, merchandise in clean and sanitary condition

Every person license/permittee under the provisions of this article shall keep the vehicles and receptacles used by him in a clean and sanitary condition and the foodstuffs and edibles offered for sale shall be kept well covered and protected from dirt, dust and insects.

Section 133-32 – Identification of vehicle – Every vehicle used by a licensed/permitted solicitor or mobile vendor in or about his business shall have the name of the license/permittee and his address plainly, distinctly and legibly painted in letters and figures at least two (2) inches in height in a conspicuous place on the outside of each side of every vehicle, and such name and address shall be kept so painted plainly and distinctly at all times while such vehicle is in use during the continuance of the license/permit.

Section 133-33 – Violations and penalties – Any persons, who himself or by his clerk, agent or employee shall act as a solicitor or mobile vendor as herein defined, without a license/permit, or who shall violate any of the provisions of this article, or who, having had his license/permit revoked, shall continue to act as a solicitor or mobile vendor, shall be punished as provided in section ___ of this Code. Any violation of this article or any part thereof shall constitute disorderly conduct and any person violating the same shall be a disorderly person, and each day on which such violation continues shall constitute a separate offense.

Section 133-34 – Severability

The provisions of this chapter are declared to be severable, and if any section, sentence, clause or phrase of this chapter shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this chapter, but they shall remain in effect, it being the legislative intent that this chapter shall stand notwithstanding the invalidity of any part.

Sections 133-35 – 133-44 – Reserved

Article III – Garage Sales – Sections 133-45 – 133-70

Section 133-45 – Title – This article shall be known and may be cited as the "Garage Sales Law of the Village of Marcellus, New York".

Section 133-46 – Definitions – As used in this Chapter, unless the context or subject matter otherwise requires:

1) "Garage Sale", "porch sale", "tag sale", "attic sale", "barn sale", "yard sale", or the sale of a similar character, shall mean the sale on residential premises of items including but limited to furniture, appliances, furnishing, clothing, bric-a-brac, antiques, toys, tools and similar items used about a household or person, other than by auction or the sale of the entire contents of the household.

Furthermore, it shall be unlawful to bring onto or into any premises for the purpose of the sale any item which has not been customarily located at or used in connection with the residence where the sale is to take place or at the residence of an applicant who is not the owner of the residence where the sale is to take place.

2) "Item" shall mean an individual article or a complete unit.

3) "Person" shall include all occupants residing in the same dwelling.

4) "Village" shall mean the Village of Marcellus.

Section 133-47 – License/Permit Required – No person shall conduct or provide items for sale at a garage sale, porch sale or other similar type sale in any residential district of the Village without first obtaining a license therefore from the Village Clerk, who shall administer the issuance of such licenses which shall be known as a "Garage Sale License."

Section 133-48 – License Term – A Garage Sale License shall be valid for no more than two (2) consecutive days and shall not be issued to anyone one person or residence more than four (4) times in any one calendar year and no sale shall be conducted prior to 8:00 a.m. nor after 8:00 p.m. (Amended by Local Law #4 of 2019)

Section 133-49 – Application fee for license – Any person desiring to procure a Garage Sale License as herein provided shall file with the Village Clerk a written application form furnished by the Village Clerk. Such application shall be issued without payment of a fee and shall be under oath and provide the following information.

1) The name, address and age of applicant.

- 2) The address where the garage sale is to take place and names of the owner of the premises if different from applicant.
- 3) The dates on which the garage sale is to be conducted.
- 4) The last date on which a garage sale was conducted on the premises, or, if the applicant is not resident of the premises, last date on which he/she has participated in a garage sale in the Village.
- 5) A general description of items to be offered for sale.
- 6) Such other information as may be required by the Village Clerk to determine the veracity or to clarify any of the prior statements required in this Section.

Section 133-50 – Issuance of License

A. Grant – refusal – appeal – Upon the filing of the application, as provided in Section 133-49, the Village Clerk shall issue to the applicant a license as provided in Section 133-47 hereof. A license shall be refused if the applicant shall have been convicted of any violation of this chapter within the last two (2) years of if the applicant does not otherwise meet the requirements of this Article. Any applicant who has been refused a license by the Village Clerk may, within twenty (20) days of the refusal, apply to the Board of Trustees, after a public hearing at which the applicant shall be given the opportunity to be heard and to be represented by counsel.

B. Use – A license shall not be assignable. Any holder of such license who permits it to be used by another person, and any person who uses such license granted to any other person, shall each be guilty of a violation of this article.

C. Contents – A copy of all licenses shall be filed in the Village Clerk's Office and shall state clearly the kinds of goods, wares or merchandise to be sold, the dates of issuance and expiration of the license, and the name and address of the licensee.

D. Display – Every license shall be displayed prominently at the place of sale during the conduct of such garage sale.

Section 133-51 - 133-59 – Reserved

Section 133-60 – Signs – Not more than four (4) signs, none of which shall exceed four (4) square feet, shall be permitted to advertise any one "garage sale." Unless the sign is to be

located at the residence where the sale is conducted, it must contain the address where the sale is to be conducted and the date or dates by and month and date. If the sign or signs are to be placed at a location other than the residence where the sale is to be conducted, it shall be the responsibility of the licensee to obtain the permission or consent of the owner where the sign is placed. No sign shall be posted on any telephone or utility pole. No such signs shall be erected for advertisement more than forty-eight (48) hours prior to the commencement of the sale and all such signs must be removed from display within twenty-four (24) hours of the completion of the "garage sale."

Section 133-61 – Exemptions – This chapter shall not apply to:

- 1) A person selling personal property pursuant to an order or process of a court or competent jurisdiction, or to any public official acting pursuant to and within the scope of his authority;
- 2) Any person advertising in a publication of general circulation the sale of tangible personal property not displayed to the public;
- 3) Any sale of personal property authorized or licensed to do so pursuant to any state statute or any other local law, ordinance, rule or regulation;
- 4) Any charitable, educational, cultural, fraternal, religious corporation, association, or institution, civic group, service club, voluntary associations or not- for-profit corporations;
- 5) Any sale conducted by merchant or mercantile or other business establishment from or at a place 'of business wherein such sale would be permitted by the Zoning Ordinance or the Village of Marcellus.

Section 133-62 – Other Requirements – The licensee for a garage sale shall be responsible for the maintenance of good order and decorum on the premises during the hours of the garage sale, and shall not permit the parking of motor vehicles on or about the public streets or such premises which would impede the flow of vehicular traffic and shall not obstruct or impede pedestrian traffic on the sidewalks of the Village.

Section 133-63 – Enforcement and Penalties – A violation of this chapter shall constitute a violation and shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) and each day a violation of the local law shall continue shall constitute a separate offense.

Section 133-64 – 133-70 – Reserved

Article IV – Home Occupations

Section 133-71 – Purpose – Home occupations are accessory activities and they have special regulations that apply to ensure that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations ensure that the accessory home occupation remains subordinate to the residential use, and that the residential viability of the dwelling is maintained. The regulations recognize that many types of jobs can be done in at home with little or no effects on the surrounding neighborhood.

Section 133-72 – Regulations – Home occupations shall be permitted in any zone, subject to the following requirements:

A. Definition – a home occupation is an accessory use of a character customarily conducted within a 1 or 2-family dwelling by the resident(s), which is clearly secondary to the residential use of the dwelling, and does not change the character or have any exterior evidence of such secondary use, except signs as permitted by this local law.

B. Examples – home occupations include jobs such as barbers, and sale of home-produced crafts, or a professional office or studio of an architect, artist, dentist, doctor, engineer, lawyer, musician, real estate broker or agent, surveyor, teacher or member of a similar established profession (but not including an office or establishment of a mortician, undertaker or embalmer) residing on the premises.

C. Requirements

1. The home occupation shall be conducted wholly within the primary structure on the premises. Not more than 15% of the floor area of the primary structure or more than 50% of the area of the ground floor shall be so used.

2. No more than one person not residing in the dwelling unit may be employed in the home occupation.

3. Uses such as studios for instruction in vocal or instrumental music or dancing shall be quipped and used so that sounds therefrom shall not be heard on nearby premises.

4. Signs shall be no more than 1 square foot, shall be affixed to the house, and shall not be neon or flashing or of such character as to be distracting.

5. Adequate off-street parking spaces for the traffic generated shall be provided so as to effectively eliminate problems created by on-street parking.

6. A special permit will be required for a home occupation if any of the following are present or intended:

- a) Sign
- b) Regular delivery or pickup of goods
- c) Non-resident employee(s)
- d) Additional parking for work-related visitors

Section 133-73 – Exception – An exception to these requirements shall be made for the operation of a group home for persons with disabilities and adult care, day care centers, home day care centers, model homes and swimming schools.

Section 133-74 – Hazardous Materials – Any home occupation desiring to use hazardous materials, as defined in this ordinance, must first secure a special use permit. No home occupation may use hazardous material without a special use permit. Special use permits for the use of hazardous materials will only be issued after the Village is satisfied that proper handling, storage, and disposal safeguards can and will be followed for the health, safety and welfare of the neighborhood and community.

Section 133-75 – Uses Not Permitted – The following uses that are not permitted as a home occupation include, but are not necessarily limited to, the following: The physical sale or distribution of commodities, other than home-produced crafts, on the premises and motor vehicle repair. The Code Enforcement Officer or his designee shall render decisions on home occupations permitted with appeal to the Village Board of Trustees.