



CITY OF MIDDLETOWN, NEW YORK APPLICATION FOR SIDEWALK SALE PERMIT

I, the undersigned, do hereby make application for a Sidewalk Sale Permit in the City of Middletown, New York, pursuant to Chapter 475 §28A of the Code of the City of Middletown

Name of Applicant _____

Address of Applicant _____

Phone Number of Applicant _____

Name of Business _____

Address of Business _____

Phone Number of Business _____

Days of the Week Sale will Operate _____

Days & Hours of Operation _____

On a separate sheet of paper, please indicate the following information:

- The number of tables/displays desired for the area of the outdoor or sidewalk sale, and a drawing or rendering of positions of tables and displays relative to entrances and exits of the outdoor sidewalk sale and the main establishment to which the outdoor or sidewalk sale is appended, and relative to the sidewalk.
- A drawing or rendering of the placement of equipment, signs and the like relative to entrances and exits of the main establishment to which the outdoor sales is connected and relative to the sidewalk.
- A description of facilities, equipment and signs to be used whose dimensions do not exceed two feet by three feet.
- A site plan showing proper clearance around ingress and egress to the building and to fire safeguards, and also showing proper amount of clearance on the sidewalk for pedestrian traffic. The site plan must also indicate property lines and which property is owned by the applicant (or by the applicant's landlord) and which property is owned by the City (and if the property is not owned by the applicant, then the landlord's consent to the application must be indicated on the application).

Indemnification Letter signed by Renter and Owner of property - sample attached

Proof of insurance, indemnifying the City of Middletown in an amount no less than one million dollars, must be submitted with this application.

A non-refundable application fee of fifty (\$50.00) dollars must be submitted with this application. The application must be returned to the Office of the City Clerk, City Hall, 16 James Street, Middletown, NY 10940.

Any changes to the site plan for sidewalk sales or signs must be re-submitted to the City Clerk for approval.

By signing this application, the applicant agrees to all the provisions of Chapter 475 §28, a copy of which is attached to this application.

RENTER:

Signed: _____

Date: _____

OWNER:

Signed: _____

Date: _____

SIDEWALK SALE CHECK LIST
Chapter 475-28A of the Middletown City Code

- Hours only 8:00am to 9:00pm only
- Application – Every owner/renter must fill out application
- Application must be signed by owner and renter.
- Days and hours for which the permit is requested
- Current Insurance Certificate – City of Middletown as an additional insured
- Site plan and drawing of the displays and proper clearance for sidewalk and fire safety. If each sale has different displays a new site plan must be submitted.
- Letter of Indemnification letter with the owner and renter signature if applicable.
- Freestanding signs are only permitted and do not exceed two feet by three feet.
- Permit only valid for one year of issue.
- Payment – Check or money order
 - Annual fee \$50

DATE OF LETTER

INDEMNIFICATION LETTER:

NAME OF COMPANY, Inc. agrees to defend, indemnify, and hold harmless to the fullest extent allowed by law the City of Middletown, its officials, employees and agents, against all claims, losses, damages, liabilities, costs, or expenses, including, without limitation, reasonable attorneys fees and costs of litigation, settlement, or both, whether incurred as a result of a claim by a third party or any other person or entity, arising in connection with the sidewalk Sale at ADDRESS OF STORE scheduled for DATE , which the City, or its officials, employees, or agents, may suffer by reason of any negligence, fault, act, or omission of NAME OF COMPANY, Inc., its employees, representatives, assignees, or agents. If any action or proceeding is brought against the City, its officials, employees or agents by reason of such claim, NAME OF COMPANY, Inc., upon notice from the City, shall resist and defend such action or proceeding.

SIGNATURE OF RENTER

SIGNATURE OF OWNER

PRINT NAME

PRINT NAME

Sidewalk Sale Permit Code

Section 1. A new Section 475-28A, Sidewalk Sales, of Chapter 475 (Zoning) is hereby adopted to read in its entirety the following:

§ 475-28A. Sidewalk sales.

A. The regulations as set forth in this section regarding sidewalk sales by retail stores are designed to permit such sales only in the area encompassed by the geographic boundaries of the Downtown Business Improvement District and to promote and protect the public health, safety and general welfare. Specific purposes of this section are:

- (1) To ensure adequate space for pedestrians on the sidewalk adjacent to the location of sidewalk sales by retail stores.
- (2) To preserve and enhance the character of area contained within the Downtown Business Improvement District.
- (3) To simplify administrative and strengthen enforcement procedures for sidewalk sales that are effective, efficient and enforceable.
- (4) To promote the most desirable use of land and to provide compensation to the City for use of City-owned land for sidewalk sales by retail stores.

B. For the purposes of this section, the following terms shall have the following meanings:

CITY CLERK

The City Clerk, Registrar and Clerk of the Common Council or his/her designee.

PERMIT

Written authorization issued by the City Clerk pursuant to this section permitting the sidewalk sales.

SIDEWALK SALES

Use of sidewalks adjacent to retail stores located within the geographic boundaries of the Downtown Business Improvement District for outdoor sales by those retail stores of items otherwise sold within those stores and for signs advertising sales by those retail stores.

C. No sidewalk sales shall be allowed to operate unless a permit has been obtained from the City Clerk. The following procedures (which may be supplemented by the City Clerk as he/she deems necessary and appropriate) must be followed before the City Clerk can issue such permit:

- (1) Any request to conduct sidewalk sales must be in writing on such application form(s) as may be required or designated by the City Clerk.
- (2) No construction or alteration of existing premises will be allowed in connection with the sidewalk sales.
- (3) The application must be accompanied by a nonrefundable fee of \$50 and shall include at least the following information
 - (a) The name, address and telephone number of the applicant.
 - (b) The name, address and telephone number of the establishment which is the subject of the application.
 - (c) The days and hours for which the permit is requested.
 - (d) A drawing or rendering of the placement of equipment, signs and the like relative to entrances and exits of the main establishment to which the outdoor sales is connected and relative to the sidewalk.
 - (e) A description of facilities, equipment and signs to be used.
 - (f) A site plan showing proper clearance around ingress and egress to the building and to fire safeguards, and also showing proper amount of clearance on the sidewalk for pedestrian traffic. The site plan must also indicate property lines and which property is owned by the applicant (or by the applicant's landlord) and which property is owned by the City (and if the property is not owned by the applicant, then the landlord's consent to the application must be indicated on the application).
 - (g) Proof of insurance, in such forms and amounts as required by the Corporation Counsel.
 - (h) Any other information as the City Clerk may deem reasonably necessary or appropriate for the fair determination as to whether a permit should be issued.
- (4) Prior to making a decision with respect to the permit application, the City Clerk shall send a copy of the application to the Commissioner of Public Works, the Corporation Counsel, the Chief of Police and the Chief of the Fire Department for their comments.
- (5) The City Clerk shall issue a permit upon a finding that the proposed sidewalk sales will not unreasonably interfere with the pedestrian traffic or use of the City-owned

portion of property to be used; that the applicant has complied with the requirements of the City's Department of Public Works with respect to any issues under the New York State Uniform Fire and Building Code; that the applicant has complied with the requirements of the Corporation Counsel with respect to insurance; that the applicant has obtained approval of the Board of Estimate and Apportionment of the City for the use of City-owned property; and that the applicant has met all other applicable provisions of this chapter of the City, including site plan and special use permit approval, if required, for the use of the main building to which the sidewalk sales area is appended for a retail store. Notice of permit issuance shall be given to the Commissioner of Public Works, the Corporation Counsel, the Chief of Police and the Chief of the Fire Department. The permit holder must also post the permit in a conspicuous place in the area of the sidewalk sales so that the permit is visible from the street.

(6) Notwithstanding the foregoing, the City Clerk may deny a permit upon a finding that the proposed sidewalk sales will have an undue adverse effect upon nearby property, the character of the neighborhood, vehicular traffic conditions, pedestrian traffic, parking, or other matters affecting the public health, safety, welfare or convenience.

(7) In making the determination of whether or not to issue a permit, the City Clerk may hold an administrative hearing with the applicant for a permit and with any other interested persons to assist the City Clerk in making such a determination. Such hearing shall be upon five days' notice to the applicant, the Commissioner of Public Works, the Corporation Counsel, the Chief of Police, the Chief of the Fire Department and the President of the Common Council.

(8) Any person or entity to whom or to which a permit is issued by the City Clerk shall be bound by all applicable federal, state and local rules, regulations, ordinances, local laws and statutes. The permit may be conditioned on the applicant making such modifications or conforming to such restrictions as may be necessary or appropriate to ensure compliance with the provisions of this section and to protect the public health, safety, welfare or convenience.

(9) A permit issued pursuant to this section shall be valid for one year from the date of its issuance. Permits may be renewed upon the filing and approval of an application consistent with the requirements of this section.

D. The person, persons or entities to whom permits are issued under this section, by applying for and accepting such permit, understand and agree that such person, persons or entities shall be liable to and shall indemnify the City against, and hold the City harmless from, any and all losses, damages, injuries and claims, including attorney fees, sustained by any person whatever by reason of the negligence of the person, persons or entities to whom or to which the permit shall have been issued, or which may arise from or be attributable to the operation of the sidewalk sales by the person, persons or entities to whom or to which the permit shall have been issued and such person's, persons' or entities' employees, agents, contractors, guests and invitees. The applicant for a permit shall present to the City a certificate of insurance, prior to the opening and operation of

the sidewalk sales and prior to the issuance of the permit, which names the City as an additional insured. The amount and form of the insurance must be acceptable to the Clerk and the Corporation Counsel of the City. The City Clerk may, in his/her discretion, waive the requirement for insurance when circumstances warrant.

E. The City Clerk may revoke a permit issued under this section if the City Clerk finds that the person, persons or entities to whom or to which such a permit has been issued has violated any provision of this section or any other applicable federal, state or local rule, regulation, ordinance, local law or statute. In addition, the Police Department of the City, upon inspection and discovery of a violation of any provision of this section or other applicable federal, state or local rule, regulation, ordinance, local law or statute, may immediately cause the offending sidewalk sales to be cleared of patrons, if such action is reasonably necessary to protect the public health, safety, welfare or convenience. In such case, the Police Department shall, by the next business day, report such action to the City Clerk.

F. Appeals from the issuance, denial, revocation or other condition of a permit may be taken to the Zoning Board of Appeals in accordance with the procedures established in this chapter for such Board.

G. Miscellaneous provisions.

(1) The area of the sidewalk sales shall be cleaned on a daily basis and shall be kept free of refuse at all times. No large containers for trash shall be placed in or adjacent to the area of the sidewalk sales.

(2) At the expiration of the term of the permit, all City-owned property shall be delivered back to the City in good condition. City-owned property may not be altered in any way during the term of the permit without the express written approval of the Commissioner of Public Works and the Corporation Counsel.

(3) Sidewalk sales may be conducted no earlier than 8:00 a.m. and shall close by no later than 9:00 p.m.

(4) All fixtures, equipment and furnishings of a temporary nature must be secured if left outside. All such fixtures, equipment and furnishings are understood to be the personal property of the owner of the retail store to which they relate, and the City of Middletown is held harmless with relation to any claims resulting from said fixtures, equipment and furnishings being left outside of the retail store. No additional signage shall be permitted to be affixed to a retail store's temporary structures or accessories, although freestanding signs may be allowed so long as they are approved as to size and location by the City Clerk and whose dimensions do not exceed two feet by three feet.

(5) For all sidewalk sales, there shall be a minimum of five feet or 50% of the total sidewalk width (whichever is greater) for clearance, to provide adequate and unobstructed pedestrian movement, such measurement being made from the outermost

point of the sidewalk sales area to the unobstructed inner edge of the curb. The City Clerk, in his/her sole discretion, may require a larger pedestrian right-of-way based on the proposed location and volume of pedestrian traffic typically experienced at that location.

(6) Sidewalk sales cannot extend for more than ten linear feet or thirty percent of the width of the retail store to which such sales relate, whichever is smaller.

H. Violations of this section shall be punishable in accordance with § 475-50 of this chapter. In addition, the City Clerk may revoke the permit (as set forth in Subsection E above) for any violation of this section.

Section 2. Article X of Chapter 416 of the Code of the City of Middletown (Streets and Sidewalks), Section 416-41 through 416-43, is hereby repealed in its entirety.

Section 3. This resolution and ordinance shall take effect immediately.