

Minutes
Village of Orchard Park
Board of Trustees

The regular meeting of the Board of Trustees of the Village of Orchard Park was held on Monday, **February 11, 2019** in the Municipal Center, 4295 South Buffalo Street, Orchard Park, New York. Mayor Clinton called the meeting to order at 7:00 p.m. with the Pledge of Allegiance to the Flag.

Members present:

Mayor Jo Ann Litwin Clinton
Deputy Mayor Matthew J. Hartung
Trustee Shannon S. Fuhrman
Trustee Jonathan E. McNatty

Others present:

Dir. Of Public Works Michael P. Murphy
Clerk-Treasurer Mary Beth Jensen
Code Enforcement John Gullo
Attorney Philip M. Marshall

Members excused:

Trustee Francis Hogenkamp

Mayor Clinton made the following announcement:

“Fire exits are located at the rear in the Board Room and at the doorway to the lobby. In the event of a fire, you will be notified by announcement on the public address system. If notified, please move in a calm and orderly fashion to the nearest exit.”

A public hearing has been scheduled and advertised for this time to hear public comment on proposed Local Law #2 of 2019. Mayor Clinton notified the audience that a copy of the proposed laws are on the railing in the front of the room.

Mayor Clinton opened the hearing at 7:04, giving a brief explanation of proposed Local Law #2 of 2019, amending Chapter 204 of the Village of Orchard Park code, entitled “Vehicles, Junk”.

Mayor Clinton then asked three times for comments in support of proposed Local Law #2 of 2019. There were none.

Mayor Clinton then asked three times for comments opposed to Local Law #2 of 2019. There were none.

Moved by Trustee Hartung, seconded by Trustee McNatty to close the hearing at 7:05 p.m.

On the question:	3 voting “Aye”	0 voting “Nay”	Carried
	Trustee Hartung		
	Trustee Fuhrman		
	Trustee McNatty		

Moved by Trustee Fuhrman, seconded by Trustee Hartung that Local Law #2 of 2019 be adopted, amending Chapter 204 of the Village of Orchard Park Code entitled “Vehicles, Junk”, as presented.

SECTION 1: Amending Chapter 204 of the Village of Orchard Park Code entitled “Vehicles, Junk”

SECTION 2: Section 3 Definitions amended definition of Junked Motor Vehicle to read as follows:

JUNKED MOTOR VEHICLE - Any motor vehicle that is wrecked, discarded, abandoned or dismantled or partially dismantled which is in such deteriorated condition that it cannot be legally operated upon the public highway without substantial repairs. With respect to any motor vehicle not required to be licensed or motor vehicles not usually used on public highways, the fact that such motor vehicle has remained unused for more than six months and is not in condition to be moved under its own power shall be presumptive evidence that such motor vehicle is a junked motor vehicle.

SECTION 3: EFFECTIVE DATE: This local law shall take effect immediately upon filing with the Secretary of State.

On the question:	3 voting "Aye" Trustee Hartung Trustee Fuhrman Trustee McNatty	0 voting "Nay"	Carried
------------------	---	----------------	---------

A public hearing was scheduled and advertised for this time to hear public comment on proposed Local Law #3 of 2019.

Mayor Clinton opened the hearing at 7:07 p.m., giving a brief explanation of proposed Local Law #3 of 2019, amending Chapter 225 of the Village of Orchard Park Code entitled "Zoning".

Mayor Clinton then asked three times for comments in support of proposed Local Law #3 of 2019. There were none.

Mayor Clinton then asked three times for comments opposed to Local Law #3 of 2019.

- Kevin Moran (55 Princeton Place) questioned what was considered storage.
 - Code Enforcement Officer Gullo explained that storage would be considered an extended period of time when the trailers are not being used, in the front yard. The intent was to have the trailers parked back from the front corner of the house.
- Nicole Schwartz (161 N Lincoln Ave) asked about recreational trailers that sit for days/weeks when not being used during the season.
 - Mayor Clinton responded that those circumstances are understandable. The amendment is primarily intended for commercial trailers.
- Kevin Wieszczeinski (71 Harvard Pl) brings his work vehicle home every night. Is that a problem?
 - Mayor Clinton explained that is not storage, as it is moved in and out daily.

Mayor Clinton asked an additional time if there were any more comments. There were none.

Moved by Trustee McNatty, seconded by Trustee Fuhrman to close the hearing at 7:14 p.m.

On the question:	3 voting "Aye" Trustee Hartung Trustee Fuhrman Trustee McNatty	0 voting "Nay"	Carried
------------------	---	----------------	---------

Moved by Trustee Hartung, seconded by Trustee McNatty that Local Law #3 of 2019 be adopted, amending Chapter 225 of the Village of Orchard Park Code entitled "Zoning", as presented.

SECTION 1:

Amending Chapter 225 of the Village of Orchard Park Code entitled "Zoning"

SECTION 2:

A. Section 12 (E) is amended to read as follows:

Storage of mobile home, etc. Storage of a mobile home, house trailer, utility trailer, boat, boat trailer, travel trailer, truck camper, or camping trailer is prohibited within the front yard. The restrictions herein set forth as to distance from lot lines shall not apply to any trailer or other habitable vehicle stored in a fully enclosed structure erected and located in accordance with the requirements of this chapter, nor shall these restrictions apply to any such vehicle parked within the area described herein for a reasonable time for the purpose of loading and/or unloading the said vehicle.

B. Section 17 Parking and automotive services (A) Off-street parking (1)(b) is amended to read as follows:

Parking spaces may not be located in any front yard.

SECTION 3: EFFECTIVE DATE: This local law shall take effect immediately upon filing with the Secretary of State.

A public hearing was scheduled and advertised for this time to hear public comment on proposed Local Law #4 of 2019.

Mayor Clinton opened the hearing at 7:14, giving a brief explanation of proposed Local Law #4 of 2019, amending Chapter 166 entitled "Peddlers and Solicitors" of the Village of Orchard Park Code.

Mayor Clinton then asked three times for comments in support of proposed Local Law #4 of 2019. There were none.

Mayor Clinton then asked three times for comments opposed to Local Law #4 of 2019. There were none.

Moved by Trustee Fuhman, seconded by Trustee Hartung to close the hearing at 7:16 p.m.

On the question:	3 voting "Aye"	0 voting "Nay"	Carried
	Trustee Hartung		
	Trustee Fuhrman		
	Trustee McNatty		

Moved by Trustee McNatty, seconded by Trustee Fuhrman that Local Law #4 of 2019 be adopted, replacing Chapter 166 of the Village of Orchard Park code entitled "Peddlers and Solicitors", as presented.

SECTION 1: Replacing Chapter 166 entitled Peddlers and Solicitors of the Village of Orchard Park Code as follows:

Article I: General Provisions

§166-1 Purpose.

The purpose of this article shall be to improve and promote the health, safety and general welfare of the community, and the preservation and protection of the property of the Village of Orchard Park and its inhabitants, by declaring and enforcing certain regulations and restrictions pertaining to peddling and soliciting.

§166-2 Definitions.

A. Words and terms defined. As used in this article, the following terms shall have the meanings indicated:

PEDDLER

Any person who shall engage in peddling as herein defined.

PEDDLING

The selling or offering for sale of any goods, wares or merchandise for immediate delivery, which the person selling or offering for sale carries with him in traveling or has in his possession or control, upon any of the streets, roads or highways or from house to house within the Village of Orchard Park.

PERSON

Any natural person, association, partnership, firm or corporation.

SOLICITING

The seeking or taking of contracts or orders for any goods, wares or merchandise for future delivery upon any of the streets, roads or highways or from house to house within the Village of Orchard Park.

SOLICITOR

Any person who shall engage in soliciting as hereinabove defined.

B. Definitive description. In this article, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

§166-3 Registration required.

No person shall engage in soliciting or peddling within the Village of Orchard Park without procuring a permit from the Village Clerk.

§166-4 Application.

A. No permit shall be issued until an application has first been filed with the Village Clerk by the person seeking the same. The application shall require the applicant to set forth his name, address, his sex, his race, his age, his previous criminal record, if any; the name and address of the person for whom he works, if any; the type or types of article, device, subscription, contribution, service or contract which he desires to sell or for which he desires to solicit within the Village of Orchard Park; the length of time for which he wishes the permit to be issued, not exceeding 60 days; the type of vehicle he uses, if any, and its registration number. Such application shall be referred to the Police Department for approval, and after such approval has been received, the applicant shall be eligible for the issuance of such permit.

B. Where a person makes application for himself and one or more helpers, all applicable personal information specified above shall be required to be given for each helper, and an individual permit shall be required and issued to each helper. No permit issued under this article shall be transferable from one person to another.

C. The police officer designated by the Police Chief to order and review criminal records ("Criminal Records Officer") may cause the fingerprints of any applicant for a peddling or soliciting permit and any applicable fee to be forwarded to the Division of Criminal Justice Services (DCJS) in the form and manner as prescribed by DCJS for a complete criminal background and investigation upon receipt of the appropriate fee from the applicant.

D. The Criminal Records Officer, the Village Mayor, and the Village Attorney shall review the criminal history record information (CHRI) disseminated by DCJS in connection with the applicant's criminal background and investigation.

E. In making the determination of the applicant's fitness for the requested permit, based upon the information provided by DCJS, New York State Correction Law §§ 701 through 703b and §§ 751 through 753 shall be given due consideration.

§166-5 Fees.

A. No permit shall be issued under this article until the proper fee shall be paid to the Village Clerk.

B. The license fee for each person licensed as a hawker, peddler, or solicitor shall be as set forth in Chapter A232, Fees.

C. The license fee for each person licensed to assist a hawker, peddler or solicitor shall be as set forth in Chapter A232, Fees.

§166-6 Issuance; conditions of permit.

Each solicitor or peddler shall be issued a permit unless he shall have been convicted of a crime involving moral turpitude, or engaged in a business not permitted by law. This permit shall be valid all days between the hours of 9:00 a.m. and 6:00 p.m. from the date of issuance for a period of 180-360 days thereafter, which permit shall not be transferable, but shall be revocable in the event of any violation of the terms and conditions thereof.

§166-7 Evidence of registration.

Every solicitor or peddler shall, at all times, while engaged in soliciting and peddling within the town, carry the permit upon his person and shall exhibit the same upon request to all persons solicited or to any police officer within the town. No solicitor or peddler shall engage in selling or offering for sale, or in seeking or taking orders or contracts for any goods, wares, merchandise, article, device or subscription, nor shall any person use any vehicle for soliciting or peddling other than the vehicle registered upon his license.

§166-8 Noise.

No person engaged in soliciting or peddling shall hawk or cry his goods, wares, merchandise, offers, contracts or services upon any streets, roads or highways within the township, nor shall he use any loudspeaker, horn or any other device for announcing his presence by which members of the public are annoyed.

§166-9 Records of registrations; supervision.

The Village Clerk of the Village of Orchard Park shall keep a record of all vehicle registrations to whom permits have been issued under this article, and the Police Department of Orchard Park shall supervise the activities of all holders of such permits.

§166-10 Exemptions.

A. Notwithstanding any of the provisions herein contained, any person, corporation, partnership or association engaged in charitable, benevolent, patriotic, religious or school purposes, native to the Village, or engaged in selling produce or products raised in the Village which are offered for sale, who are soliciting shall be permitted to obtain a permit in compliance with the regulations hereof, without payment of any fee therefor.

B. Persons under 19 years of age shall not be required to register and obtain a permit as heretofore provided for, in the event that they are soliciting for any purposes directly connected with a religious, charitable, benevolent, school or service organization native to the Village of Orchard Park.

§166-11 Village Clerk records.

The Village Clerk shall keep a record listing the names and numbers of persons to whom permits have been issued, the date of issuance thereof and the expiration date of each permit.

§166-12 Prohibited conduct.

Entering a private residence or place of business in the Village of Orchard Park by a solicitor or peddler, as defined herein, for the purpose of selling or offering for sale or for soliciting orders for goods, wares, merchandise, contracts or personal services, or remaining in a private residence or on the premises thereof, or any place of business or on the premises thereof, after the owner or occupant thereof shall have requested any solicitor or peddler to leave, or going in and upon the premises of a private residence or place of business by a solicitor or peddler, as defined herein, for any such purposes when the owner or occupant has displayed a "no soliciting" sign on such premises, is prohibited and is further declared to be an offense.

§166-13 Penalties for offenses.

Any person who shall violate any of the provisions of this article shall, upon conviction thereof, be guilty of an offense and shall be required to purchase a license as provided herein and shall be sentenced to pay a fine not to exceed \$100 or imprisonment not to exceed 30 days, or both, for each and every offense.

§166-14 **When effective.**

This article shall take effect immediately upon filing with the Secretary of State of the State of New York.

§166-15 **(Reserved)**

Article II **Transient Retail Merchants**

§166-16 **Purpose.**

This article is enacted for the purpose of regulating the conduct and business practices of transient merchants within the Village of Orchard Park.

§166-17 **Definitions.**

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

PERSON

An individual, firm, partnership, corporation, voluntary association, incorporated association and principal or agent thereof.

TRANSIENT RETAIL BUSINESS

A retail or wholesale business conducted in a temporary structure or tent; from a truck, van or trailer; on a parking lot or vacant parcel of land; on a part of public right-of-way; or in any other place for a temporary period of time. Lack of a rental or leasing agreement of three months' or more duration, sealed by monetary consideration, shall be presumptive of a temporary situation. The type of merchandise being offered for sale will have no bearing on the designation.

§166-18 **Objectives.**

The purpose of this article is to assist the government of the Village of Orchard Park, the management of its business, the preservation of good order and the peace, health, safety and welfare of its inhabitants and the protection and security of their property.

§166-19 **License required; fee.**

A. No person shall engage in business as a transient merchant unless he shall first obtain a license to do so from the Village Clerk no later than 14 business days before the first date of business.

B. The fee for a transient merchant's license shall be at the rate as set forth in Chapter A232, Fees.

C. Any honorably discharged member of the United States Armed Forces who has procured a license under Article 4 of the General Business Law of the State of New York shall obtain a license as required under this article but shall be exempt from any fee.

D. All license applications of transient retail merchants shall require the approval of the Village of Orchard Park Police Department, Legal Department and Building Inspection Department.

§166-20 License application.

An application for a transient merchant's license shall provide the following information:

A. The address of the applicant's residence.

B. The firm or firms represented, together with copies of documents establishing the firm's state or county, form of organization, ownership and qualifications to do business in the State of New York, including but not limited to, doing business as certificates, certificates of incorporation, certificate of authority from the New York Sales Tax Department, Disability and Workers' Compensation Insurance and the exact relationship between the firm and the transient merchant.

C. A brief description of the firm and the kind of goods or commodities the applicant desires to sell.

D. The hotel, room or other location where the applicant proposes to sell such merchandise, and the time during which said business is to be conducted.

E. Background check.

(1) The police officer designated by the Police Chief to order and review criminal records ("Criminal Records Officer") may cause the fingerprints of any applicant for a transient retail merchant license and any applicable fee to be forwarded to the Division of Criminal Justice Services (DCJS) in the form and manner as prescribed by DCJS for a complete criminal background and investigation upon receipt of the appropriate fee from the applicant.

(2) The Criminal Records Officer, the Village Clerk, and the Village Attorney shall review the criminal history record information (CHRI) disseminated by DCJS in connection with the applicant's criminal background and investigation.

(3) In making the determination of the applicant's fitness for the requested permit, based upon the information provided by DCJS, New York State Correction Law §§ 701 through 703b and §§ 751 through 753 shall be given due consideration.

§166-21 Exemptions.

This article shall not be held to apply to any of the following:

- A.** Sales conducted pursuant to statute.
- B.** Sales conducted pursuant to the order by any court.
- C.** Any person selling personal property at wholesale to dealers in such articles.
- D.** The sale of fruits and vegetables raised on the property where being sold.
- E.** Persons soliciting, collecting or operating a sale on behalf of any bona fide charitable educational, scientific, health, religious, patriotic or other organization of worthy cause deemed to be in the public interest.
- F.** Any person selling personal property at a garage sale held at his residence.

§166-22 Compliance.

The laws of the Village of Orchard Park, including but not limited to Chapter **225**, Zoning, of the Village of Orchard Park shall apply to all licenses granted under this article. The town reserves the right to revoke any license which violates such laws of the Village of Orchard Park.

§166-23 Penalties for offenses.

Any person violating the provisions of this article shall be guilty of a violation and, upon conviction thereof, shall be fined not less than \$100 nor more than \$200 for each offense and, further, shall be directed to obtain a license pursuant to this article, paying the appropriate fee. Every day that a violation of this article shall continue shall constitute a separate and distinct offense.

§166-24 Severability.

The provisions of this article are declared to be severable, and if any section, subsection, sentence, clause or part thereof for any reason is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this article.

§166-25 Repealer.

All local laws or parts of local laws inconsistent or in conflict with this article are hereby repealed to the extent of such conflict of inconsistency.

§166-26 **Effective Date**

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

On the question:	3 voting "Aye" Trustee Hartung Trustee Fuhrman Trustee McNatty	0 voting "Nay"	Carried
------------------	---	----------------	---------

Moved by Trustee McNatty, seconded by Trustee Hartung to accept the minutes of January 28, 2019 as presented.

On the question:	3 voting "Aye" Trustee Hartung Trustee Fuhrman Trustee McNatty	0 voting "Nay"	Carried
------------------	---	----------------	---------

Moved by Trustee Hartung, seconded by Trustee McNatty that the vouchers numbering 2704 to 2731 in Abstract #12 of 2018-2019 in the amount of \$228,138.77 be paid as presented.

On the question:	3 voting "Aye" Trustee Hartung Trustee Fuhrman Trustee McNatty	0 voting "Nay"	Carried
------------------	---	----------------	---------

Comments from the floor of items not on the agenda.

- Michael Foley (31 Harvard Pl)
 - Commented on the new LED lighting in the Village, asking what type of lights and how many Kelvins they will be. He also inquired if they are dimmable.
 - Mayor Clinton responded that there are two types of LEDs available, stark bright light and the other is a softer light. The Village has opted for the softer light.
 - Trustee Hartung thinks they will be 2800 Kelvins.
 - Mayor Clinton did not believe they will be dimmable.
 - The lights in Mangia's parking lot are lighting up part of Harvard Pl. He feels they should be directed downward, not toward Harvard.
 - Mayor Clinton has discussed the lighting with the Building Inspector and the owner of Mangia. She reported that the lights are turning on at dusk and off at dawn, for security.
 - The Building Inspector will be checking the lumens.
 - John Ricotta (owner of Mangias) asked that if anyone has a complaint about his property that they address it with him. He will do whatever he can, within reason.

Moved by Trustee Hartung, seconded by Trustee McNatty that the reports of the Village Justice, Associate Village Justice, Water Department and Treasurer for the month of January be received and filed.

- Code Enforcement Officer John Gullo had nothing to report.
- Director of Public Works Murphy spoke to the State while they were repairing the pothole on South Buffalo St at Clark St and they tried something different by heating the cold patch.
- Trustee McNatty had nothing to report.

- Deputy Mayor Hartung encouraged residents to report potholes...
 - On Village streets to report it to the Village.
 - On State roads to call 1-800-POTHOLE
 - On County roads to call 713-858-7966 or email potholes@erie.gov
- Trustee Fuhrman had nothing to report.
- Clerk Treasurer Jensen had nothing to report.
- Attorney Marshall had nothing to report.
- Mayor Clinton reported
 - The DPW crew did a great job during the blizzard last week.
 - She is still trying to set up a meeting regarding the deer population.
 - Any students looking for intern hours should call the Village Office between 8:30 and 4:30.

Other business

Moved by Trustee Hartung, seconded by Trustee McNatty that the following addition be made to the Fee Schedule § A232-1:

Chapter 166, Peddlers and Solicitors
License fee for Transient Retail Merchant per day \$500

On the question:	3 voting "Aye" Trustee Hartung Trustee Fuhrman Trustee McNatty	0 voting "Nay"	Carried
------------------	---	----------------	---------

Moved by Trustee Hartung, seconded by Trustee McNatty to adjourn at 7:28 p.m.

Respectfully submitted

Mary Beth Jensen
Village Clerk-Treasurer