

# 'Trump Van,' closure of farmers market vendor cause stir in North Tonawanda

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A pair of news stories that have caused a stir in North Tonawanda were the hot topics at the city's Common Council meeting on July 7. A mobile vendor selling political merchandise at Gratwick-Riverside Park has sparked a debate about political signage on public property, while the closure of a local vendor at the city farmers market has customers and supporters looking for leniency from government officials.

The first item arose via an online comment posted on the meeting's livestream regarding a van selling pro-Trump memorabilia at Gratwick Park. Alderman-at-Large Austin Tylec said that in the last week, a number of complaints were received by residents who believed the business was in violation of the city's codes on political advertising in public spaces. However, the council said that the business is fine to be there, noting the business owner applied for and received a peddler's permit which was approved by the mayor's office. Peddler's permits are valid for one year.

Tylec noted that the permit was obtained when the business operated at an earlier, privately owned location on Payne and Warner avenues and inquired whether the permit continued to cover the issue now that the truck was operating on city-owned property.

North Tonawanda Clerk Treasurer Matthew Parish responded: "(Department of Code Enforcement Officer, Rob DePaolo) addressed this today and said there is no stipulation on that. What they're doing is allowed. We have had multiple questions on that already and basically Rob just said they are well within their rights to do that. As soon as they

were notified they came in and got the permit and there's really nothing else anyone can do about it. ...It's essentially the same as a food truck."

Tylec then asked if the board approves of food trucks on public property, to which board members replied yes. He then asked if the board approves of the truck being able to operate there, to which Mayor Arthur Pappas interjected, "Generally, when somebody comes in for a permit, it doesn't come to the council, it goes through the clerk's office, they apply, and then they come to the mayor's office for final approval."

Tylec indicated that he was simply looking for clarification and was satisfied.

"Business is a business. I don't care if it's a red van or blue van," Tylec said

1st Ward Alderman Robert Schmigel added, "I think you would have a bigger problem if you had told them they couldn't sell. You're restricting political beliefs. As long as they comply with the peddler's permit, I don't think there's an issue."

With the issue behind them, the board proceeded on to other matters. However, a July 13 memo from City Attorney Luke Brown to the mayor and the council seems to indicate the issue may not be so cut and dry.

In the memo, Brown wrote that he had recently been asked to review the city code and advise regarding the legality of advertising on public property. The memo reads: "Attached hereto are city code Sections 76-1 and 31-14 which address this issue. As you can see, those codes strictly prohibit any advertising by any business on public property. As such, reading the code strictly, there should be no advertising at any

city owned property such as Gratwick Park, the Farmers Market, Deerwood Golf Course, Gateway Harbor, etc. This would include vendors' names on trucks at the market, tee signage at Deerwood Gold Course and any other advertisement by any business or commercial enterprise on public property.

"Considering the above, please advise if the Council would like my office to begin the process of advising all businesses with any advertising on any city property to remove such advertising as it is a violation of the code. Additionally, if the council does decide to move forward in this manner, enforcement would have to apply against any and all violators of this provision to avoid any violations of free speech or selective enforcement against any particular business."

This isn't the first time a code regarding political advertising has caused headaches for the city. In February of last year, Chapter 70 of the city's code was repealed under Brown's advice. On that decision, Brown wrote: "After reviewing this matter and the relevant case law, specifically the Supreme Court of the United States decision in Reed v. Town of Gilbert, Arizona ... it is my legal opinion that, as currently written, Chapter 70 would not withstand a legal challenge. As such, I am requesting that Chapter 70 be repealed and all signs, regardless of content, be regulated under ... Chapter 77."

The Tribune reached out to the mayor's office for comment but was unable to obtain a reply.

## Closure of Farmer's Market Vendor Draws Criticism from Supporters

Tylec brought up the issue of Sunny Cove Farms, an organic food vendor that recently had its market permit revoked by the city for employees allegedly not wearing face coverings. According to the mayor's administrative assistant, Daniel Divirgilio, the owners of Sunny Cove were apparently told "several times through verbal and written warnings" that, per New York state guidelines regarding COVID-19, masks were required. Subsequently, their permit was revoked for the remainder of the year.

Tylec said that the business owners have claimed they did not receive any sort of warning. Parish rebuked the claim.

"First of all, the market is managed between the mayor's office and the city clerk's office. They sign off on a set of rules and regulations at the beginning of the year which state the market manager, the mayor or the clerk can suspend a vendor permit at any point in time if they are not abiding by the rules of the market. What you have heard is from the vendor. You're getting exactly one side of this," he said.

Tylec interjected and asked to see the warnings.

"This is not an issue brought up by the council. They were warned repeatedly and (the decision) was made for the safety of the public and they were the only vendors at the market who refused to wear a mask after being warned multiple times. Again, this was an internal deci-

sion that was made by multiple departments who manage the market and it was for the safety of the public. That was explained to them and, like anyone else, they would want to come back and defend themselves," Parish said.

Tylec interjected again, asking if there was documentation of the warnings. Pappas replied that the business owners had been sent numerous guidelines including some from the Agricultural Department. He then read the following notice directed to the business owners.

"We are currently experiencing a worldwide pandemic due to the COVID-19 virus. You were mandated by the state of New York to follow strict guidelines, which include social distancing and wearing a mask or face covering at all times in order to reduce the possible spread of this deadly virus.

"You have been repeatedly asked by the market clerk to wear a mask and have been unable to comply with his request. Therefore, from this point forward, beginning June 30, you will no longer be permitted to participate in the North Tonawanda Market as a vendor. You are welcome to reapply for a vendor stall next year at the outset of the 2021 market season."

"This was sent to them and they all get this, along with the signs that were posted, as well as anything that came through from the health department, and New York state itself."

Tylec said he wants officials to give Sunny Cove another chance, citing the potential financial costs the company may ensue by not being able to operate in the market.

"I think we should give them another opportunity and watch them carefully and make sure they're abiding by the rules," he said. "If they're the only business that seems to be a problem, I think we should talk to them at further length because we shouldn't be making it harder for any business."

Parish reaffirmed that this isn't a council issue and that the matter will be addressed internally by the market operators, the city clerk and the mayor.

Pappas was firm in his reply. "As of now, the answer is no," he said.

Elsewhere, Alderman Schmigel said that, while he understands Tylec's concerns, "In the grander scope of what we're looking at when it comes to COVID-19, I don't know if it's in the best interest of the city to say 'It's OK this time,'" he said, adding "We as a city benefit nothing from the market. It's a public service and I think for the safety of all those who frequent the market, I sort of lean the other way, 'Shame on you for not protecting yourself and the market.'"

## Pecoraro Gives Statement on Bullying

•Alderman-at-Large Robert Pecoraro read an impassioned statement regarding the 14-year-old girl who was attacked by bullies on high school property earlier this month. Within, he also reaffirmed the city's anti-bullying laws:

"I abhor bullying. That is why

in 2017, I was a proponent for the resolution to amend the North Tonawanda city code section 70A: Promoting The Welfare of Minors In Public Places, specifically 70A-3: bullying, and/or harassment. The council passed, quote: 'It is unlawful for a person to engage in the harassment or bullying of a person or to induce another person to engage in such bullying or harassment. Section 70A-3: defines bullying as "a form of harassment and defined as an intentional course of conduct that is reasonably likely to intimidate, emotionally abuse, slander or threaten another person which serves no legitimate purpose.'"

"This law also states that it is 'unlawful for a custodian, parent or guardian of any unemancipated minor to allow or permit such a person to violate any provisions of this section. The fact that prior to the present offense a parent, guardian or custodian was informed, in writing, by a law enforcement officer of a separate violation by the same minor occurring within 90 days prior to the present offense shall constitute a rebuttable presumption that such parent, guardian or custodian allowed or permitted the present violation. The fact that prior to the present offense a parent, guardian or custodian was informed, in writing, by a law enforcement officer of a separate violation by the same minor occurring within 90 days prior to the present offense shall constitute a rebuttable presumption that such parent, guardian or custodian allowed or permitted the present violation.'

"Since the passage of this law, our municipality was highlighted as one of the first in the nation to take a strong stand against bullying and harassment. However, we the Common Council should not rest until this present situation is examined against this revision. That situation where actions against a teenage girl were reported make it obvious as to what occurred on the North Tonawanda school property on July 1.

"We are thankful that the parents of the victim have since shared that their daughter is OK. They are thankful for the kind words, gifts, and especially the insurances that she is not alone currently being investigated by the North Tonawanda police.

"We uplift the two men identified as Anthony and Simon, who came to her assistance and stopped the brutal attack. We thank these young men for having the courage to step into a volatile situation to protect the victim. We should all learn by the actions of these two young men, who stayed up to hatred and bullying, and hold them as an example of how we should strive to live our lives.

"Therefore in the strongest way possible I want our legal system to do two things: One, prosecute the attackers to the maximum extent allowed by the current law, and two review possible scenarios where the crime is so heinous that we can pursue other avenues. Now when we drafted this law I did not envision a vicious attack of this nature and I think we need to revisit it."

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