

CHAPTER 122

PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

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122.01 DEFINITIONS. Terms used in this chapter have the following meanings:

1. “Peddler” means any person who goes from house to house, from place to place, or from street to street, conveying or transporting goods, foods which are not potentially hazardous foods, wares or merchandise or exposing the same for sale, or making sales and delivering articles to purchasers.
2. “Potentially hazardous food” means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustaceans or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity value of 0.85 or less.
3. “Pushcart” means a non-motorized vehicle limited to serving foods which are not potentially hazardous foods or commissary-wrapped food maintained at proper temperatures. A motorized vehicle is not considered a pushcart.
4. “Solicitor” means any person who goes from house to house, from place to place, or from street to street, soliciting or taking orders for sale or goods, foods which are not potentially hazardous foods, wares or merchandise, including but not limited to magazines, books, photographs, periodicals, or personal property, for future delivery or for a service to be performed in the future.

5. “Transient merchant” means any person who engages in a temporary business of selling and delivering goods, foods which are not potentially hazardous foods, wares or merchandise within the City, who in furtherance of such purpose leases, uses or occupies any vehicle, trailer, tent, railroad car, or other place in the City for the exhibition and retail sale of such goods, wares or merchandise. “Transient merchant” does not include the temporary sale of goods, foods which are not potentially hazardous foods, wares, or merchandise, by a permanent merchant or private property adjacent to the merchant’s permanent place of business.

6. “Vendor” includes peddlers, solicitors and transient merchants.

122.02 LICENSE REQUIRED.

1. No person shall engage in the business of peddler, solicitor, transient merchant, pushcart operator or vendor in the City without first obtaining a license as provided in this chapter, with the exception of those individuals and organizations identified in subsection 7 of this section. Only one natural person may engage in such activity under one license.

2. Each peddler, solicitor, transient merchant, pushcart operator and vendor shall obtain the necessary licenses and/or permits as may be required by the County, State, or Federal governing bodies. Each applicant shall comply with all applicable County, State, or Federal laws, rules and regulations.

3. Each pushcart shall be separately licensed and may operate only at the location specified in the license as approved by the Council or a duly authorized representative of the City.

4. A license shall not be transferable from person to person or from an approved location to another location without approval of the Council or a duly authorized representative of the City.

5. Each transient merchant shall prominently display the merchant’s license at all times while engaging in a temporary business of selling and delivering goods, foods which are not potentially hazardous foods, wares, or merchandise within the City.

6. The license issued pursuant to this chapter is to be carried at all times by the licensee or a representative of the licensee, when the licensee or representative is engaged in the particular activity for which the license was issued and shall, upon the request of customers or City

employees, exhibit the license as evidence of compliance with all requirements of this chapter.

7. This chapter does not apply to the selling of personal property at wholesale to dealers in such articles; to the sale of produce grown in Iowa; to newspaper vendors; to merchants or their employees, in delivering goods in the regular course of business; to drug retail persons calling on physicians, pharmacists, veterinarians and hospitals; to vendors of milk and other products distributed or sold to regular customers on established routes; or to nonprofit organizations defined and authorized by Chapter 504A of the Code of Iowa, or authorized and organized under statutes or regulations of the United States government, or approved by the Internal Revenue Service, churches, public and private schools and colleges that are located in Linn County, Iowa; nonprofit clubs and lodges when not ordinarily conducted as a business, that do not meet the requirements of Chapter 504A of the Code of Iowa and are located in Linn County, Iowa. This chapter does not prohibit any auction sales required by statute or by order of any Court, or prohibit any auction sales conducted pursuant to law. This section does not exempt any of the above cited individuals, groups, and/or organizations from meeting the requirements of Section 122.06(1).

(Ord. 04-07 – May. 04 Supp.)

122.03 APPLICATION FOR LICENSE; ISSUANCE.

1. An applicant for a license under this chapter shall provide to the Clerk reliable individual identification as determined by the Clerk, and shall file with the Clerk a sworn application in writing, which shall give all of the following information:

- A. The name and physical description of the applicant.
- B. The permanent home address and also the local address of the applicant.
- C. A brief description of the nature of the business and the goods to be sold.
- D. The proposed location, address, route, and/or area in which the business is to be operated.
- E. The name and address of the applicant's employer, if the applicant has an employer.
- F. The length of time for which the right to do business is desired.

G. If the applicant's employer is a corporation, the state of its incorporation; evidence it is authorized to do business in Iowa; evidence that the corporation has designated a resident agent in the City upon whom legal service may be made; and evidence that the corporation will be responsible for the acts of its employees in the City.

H. A statement as to whether or not the applicant had been convicted of any felony, aggravated or serious misdemeanor, or a violation of any municipal ordinances other than a traffic ordinance. The applicant shall provide information on each such offense or pending charges of each such offense, including the nature of the offense, date of the offense, and penalty imposed for the offense.

I. The names and locations of the last three municipalities where the applicant carried on business immediately preceding this application, and the addresses from which such business was conducted in these municipalities.

J. A description of any motor vehicles to be used in conjunction with the applicant's operation and their respective license plate numbers.

K. A statement that the applicant agrees to leave private property promptly when requested to do so by the owner, tenant, occupant, or person in control of the property.

L. A statement that the applicant will not enter upon private property where a sign is posted indicating *no solicitation allowed, no solicitors, do not disturb*, or words of similar import of any of the phrases.

M. Other pertinent information requested by the Clerk; including but not limited to employer identification and sales tax permit information.

2. In determining whether a license under this chapter should be granted or denied, standards including but not limited to the following shall be taken into consideration:

A. Whether the proposed activity is likely to cause undue congestion of a public area.

B. The number and nature of past and present complaints against the applicant for activities including but not limited to misrepresentation, fraud, selling defective merchandise, entering property posted pursuant to Section 122.03(1)(L) or failure to promptly leave property when so requested.

C. Whether the applicant has been convicted of a violation of a similar ordinance within the last five years.

D. Whether the applicant has been convicted within the last five years of any felony, aggravated or serious misdemeanor, violation of any municipal ordinance other than a traffic offense, that would relate to the public health,

welfare, safety and/or morals in the applicant's conduct of business under the license.

E. Whether the proposed activity is likely to cause excessive or unusual noise in violation of this Code of Ordinances.

3. The Clerk, upon satisfaction that the application for license as provided for in this chapter, is true, correct, and complete and upon payment of the license fee and compliance with the requirements of this chapter shall issue the license. If the Clerk refuses to issue a license, the Clerk shall endorse the reasons upon the application. The applicant then shall have the right to a hearing before the Council at its next regular meeting. The Council may reverse, modify or affirm the decision of the Clerk by a majority vote of the Council members present, if there is a quorum, and the Clerk shall carry out the Council's decision.

4. The Chief of Police shall conduct a background investigation of all applicants. For applicants aged 18 or older, this shall include a check of the applicant's background by the Department of Criminal Investigation.

(Ord. 20-01 – Jun. 20 Supp.)

122.04 LICENSE SUSPENSION. A license under this chapter may be temporarily suspended by the Clerk or Police Chief when upon investigation the Clerk or Police Chief finds any of the following:

1. The licensee has made fraudulent, false, or incorrect statements in the application or in the conduct of the licensee's business.

2. The licensee has violated this chapter or has otherwise conducted the licensed business or activity in an unlawful manner, or contrary to the provisions of this Code of Ordinances applicable thereto.

3. The licensee has conducted business in a manner endangering the public welfare, health, safety, or morals.

4. The license may be temporarily suspended by serving notice on the licensee by personal service or as required for personal service by the Iowa Rules of Civil Procedure. The notice shall state the reasons for suspension and shall state that the licensee has the right to appeal the suspension to the Council by filing an appeal with the Clerk within five (5) days of the receipt of the notice. The appeal shall be conducted pursuant to the procedure of Section 122.05(2) of this chapter but conducted as an appeal of a suspension, not a revocation. The licensee shall not conduct activity permitted by the license while the license is temporarily suspended.

122.05 LICENSE REVOCATION.

1. The Clerk, after giving reasonable notice and a hearing, may revoke any license for the following reasons:

- A. The licensee has made fraudulent statements in the application or in the conduct of the licensee's business.
- B. The licensee has violated this chapter or has otherwise conducted the business or activity in an unlawful manner or contrary to any applicable provisions of this Code of Ordinances.
- C. The licensee has conducted the business or activity in a manner endangering the public welfare, health, safety, order or morals.

The notice shall be in writing and shall be served personally or as required for personal service by Iowa Rules of Civil Procedure. The notice shall state the time and place of the hearing and the reasons for the intended revocation.

2. Appeal. If the Clerk revokes a license, the Clerk shall immediately notify the Council in writing, giving the reasons for the revocation. The licensee then shall have a right to a hearing before the Council at its next regular meeting. The Council may reverse, modify or affirm the decision of the Clerk by a majority vote of the Council members present, if there is a quorum.

3. Effect of Revocation. Revocation of a license shall bar such person from being eligible for a license for a period of one year from the date of revocation.

122.06 RESTRICTIONS.

1. No person or other organization shall sell, display, or otherwise offer for sale any merchandise or other materials on any sidewalk, street, public right-of-way, or other public property, without first obtaining written approval by the Clerk or by a duly authorized representative of the Clerk. Application for such license shall be made in writing to the

Clerk. The Clerk may refer such application to appropriate City departments for review and report. Said application along with the appropriate department reports shall then be forwarded to the Clerk for action to approve or disapprove.

2. Persons having valid contracts with the City authorizing activities described in subsection 1 above are excepted from the terms of said subsection for the activities specifically authorized in the contract.

3. The Council reserves the right to require the relocation of any licensed pushcart or transient merchant to a new location in the event public safety or congestion so requires, based on the discretion of the Council.

4. Transient merchants who are engaging in business on private property may only do so in the following zoning districts as defined in the Zoning Ordinance: C-1, C-2, C-3, C-4, and I-1 or I-2.

5. No transient merchant shall be permitted to operate from one location for more than seven (7) consecutive days; and no other transient merchant shall be permitted to operate another business at that location within the immediate 30 days following the previous transient merchant.

6. The Council may by resolution, following a request by a pushcart operator, vendor, or permanent merchant, grant exception to time constraints of Section 122.19(3) and Section 122.06(5), and the license requirements of Section 122.06, based upon just cause.

7. All pushcart operators, transient merchants and vendors shall comply with all requirements of the Zoning Ordinance. However, transient merchants shall not be required to provide off-street parking facilities except when off-street parking facilities are provided in the design and maintenance of said facilities.

8. No vendor vending from a motor vehicle shall conduct the vendor's business in such a way as could restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay, or constitute a hazard to traffic, life, or property, or an obstruction to adequate access to fire, police, sanitation or emergency vehicles. Furthermore, no vehicle shall remain in any one place for a period longer than necessary to make a sale after having been approached or stopped for that purpose. Notwithstanding the above, no such vehicle shall remain stopped or parked for business purposes at any one location for a

period exceeding fifteen (15) minutes and if parked adjacent to a public park, shall not operate any audible sound system while so parked.

(Ord. 03-18 – Nov. 03 Supp.)

9. No licensee under this chapter shall refuse to exhibit that license when requested by a customer, potential customer, or City employee. No licensee under this chapter shall refuse to leave private property when requested to do so by the owner, tenant, occupant or person in control of the property. No licensee under this chapter shall enter upon private property and contact the owner, tenant, occupant or person in control of the property, when the private property has posted thereon a sign indicating *no solicitation allowed, no solicitors, do not disturb*, or words of similar import of any of these phrases.

10. It shall be unlawful for any person, whether licensed under this chapter or not, to sell, peddle, or solicit any person to purchase any article or service whatsoever in a public park or on the sidewalks adjacent to said park on both sides of the right-of-way, when that park has been rented by or reserved by a person or organization for a specific event and that event is taking place. This subsection does not apply to: the sale of newspapers, vendors approved to be in the park by the Park Board, or approved by the person or organization having rented or reserved the park. This subsection also does not apply to any business located within the central business district that has a written encroachment agreement with the City provided that its activities are restricted to the area directly adjacent to its business; or to any business located within the central business district during a City approved sidewalk sale provided that its activities are restricted to the area directly adjacent to its business. Central business district, as used in this subsection, means the area north of 6th Avenue, south of 8th Avenue, east of 9th Street and west of 13th Street.

(Ord. 12-08 – May 12 Supp.)

122.07 FDA STANDARD FOR PUSH CART OPERATORS AND VENDORS. Each pushcart operator and vendor shall meet the Food and Drug Administration Food Service Sanitation standards and the Iowa Department of Agriculture Food Service Sanitation Code, and applicable rules and/or regulation, for food storage, preparation, and dispensing.

122.08 HAND-WASHING FACILITIES. Each pushcart operator and vendor shall provide hand-washing facilities for the employee of the license, when required by the Food and Drug Administration regulations.

122.09 WASTE RETENTION AND REFUSE DISPOSAL. Each pushcart operator and vendor shall provide a waste retention tank when required by Food and Drug Administration regulations. All waste liquids, garbage, litter and refuse shall be kept covered with tight-fitting lids and appropriately disposed of at the permanent location. No waste liquids, garbage, litter or refuse shall be dumped or drained onto sidewalks, streets, gutters, drains, trash receptacles, or any other place except at the permanent location of a pushcart. When leaving the sales area, the licensee or licensee's employees shall pick up

all litter resulting from the licensee's business, and shall deposit such litter in an approved container in compliance with the Food and Drug Administration Food Service Sanitation Code and regulations, located on the licensee's cart. Failure to do so shall be grounds for license revocation.

122.10 LIST OF APPROVED FOOD AND BEVERAGE ITEMS. The Food and Drug Administration has published laws and regulations regarding approved food and beverage items which may be sold by pushcart operators and vendors. No items of any kind, other than those food and beverage items allowed in the Food and Drug Administration regulations shall be sold or dispensed by pushcart operators and vendors.

122.11 FEES. Fees for all licenses issued under this chapter are as follows: \$20.00 per day, \$35.00 per week, \$65.00 per month, or \$200.00 per year; and the applicant shall also pay to the Marion City Clerk all of the costs associated with any background investigation conducted pursuant to this chapter. Fees will not be prorated or refunded unless the license is suspended or revoked by the Council. *(Ord. 05-16 – Nov. 05 Supp.)*

122.12 REBATES. A licensee shall be entitled to a rebate of part of the fee paid for an annual license upon surrender of the license to the City prior to expiration. The rebate shall be pro rated based upon unexpired quarters. In all cases, at least fifteen dollars (\$15.00) of the original fee shall be retained by the City to cover administrative costs. Any license issued for a period of less than one year shall not be eligible for a rebate.

122.13 BOND. An applicant for a license under this chapter shall file with the Clerk a surety bond in the amount of one thousand dollars (\$1,000.00) conditioned that the applicant shall comply fully with all ordinances of the City and laws regulating the licensee's operation, and guaranteeing to any resident of the City that all money paid will be accounted for and applied according to the representation of the licensee. The bond shall continue in force as to any surety for not less than one year from the date of execution of such agreement. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given.

122.14 INSURANCE. All licensees under this chapter shall provide proof of general liability insurance including products liability in the amount of \$300,000 per occurrence and \$100,000 for property damage. A certificate of insurance shall be delivered to the Clerk prior to the issuance of a license. The City and its employees shall be named as additional insureds against any liabilities that may arise in connection with the operations of the licensees.

122.15 LIGHTS AND NOISEMAKERS. No pushcart operator or vendor, nor anyone on behalf of the pushcart operator or vendor, shall shout, make an outcry, blow a horn, or use any other sound devices including but not limited to any loud speaking radio or

amplifying system which exceed the noise levels set forth in Chapter 53 of this Code of Ordinances.

122.16 HOURS OF OPERATION. No pushcart operator or vendor shall operate before eight o'clock (8:00) a.m. or after nine o'clock (9:00) p.m., on any day, unless specifically approved by the Council.

122.17 SALES ON RIGHT-OF-WAY. The sale of any goods within any public right-of-way by a person licensed under this chapter is prohibited unless the person has the prior approval of the Clerk and has executed a hold harmless agreement with the City. This provision shall not apply to the sale of newspapers.

122.18 TRUCK SALES PROHIBITED. A person licensed under this chapter shall not operate a truck or semi-truck upon any street except those designated as truck routes. However, this section does not apply to licensed persons selling milk or dairy products, who may operate trucks upon any City street.

122.19 POTENTIALLY HAZARDOUS FOODS.

1. Peddlers are prohibited from selling all potentially hazardous foods. If a vehicle or pushcart is used by a peddler for the sale of any food items, all requirements of this chapter relating to pushcarts, vehicles, and foodstuffs shall be applicable. This provision does not prohibit the distribution of printed materials door to door.
2. All potentially hazardous foods are prohibited from being sold from a pushcart by a solicitor or by a transient merchant.
3. Temporary sale of goods, foods which are not potentially hazardous foods, wares or merchandise by a permanent merchant on private property adjacent to the merchant's permanent place of business shall not exceed seven (7) days in duration or take place more than once every thirty (30) days.