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## CHAPTER 122

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### PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS

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#### **122.01 PURPOSE.**

The purpose of this chapter is to protect residents of the City against fraud, unfair competition, and intrusion into the privacy of their homes by licensing and regulating peddlers, solicitors, and transient merchants.

#### **122.02 DEFINITIONS.**

For use in this chapter the following terms are defined:

1. “Fundraiser” means a person who solicits funds for any organization or putative organization (unless the organization, for more than one year preceding the commencement of the fundraising activity, has had an established office within the City) and who initiates or attempts to initiate personal contact with another person, without invitation by such other person:

- A. At or near a residence, including any private driveway and parking area for any such residence; or
- B. Upon a public right-of-way, a public sidewalk, or any other public property, in an effort or apparent effort to solicit funds for an organization or putative organization.

2. “Peddler” means any person carrying goods or merchandise who sells or offers for sale for immediate delivery such goods or merchandise from house to house or upon the public street.

3. “Solicitor” means any person who solicits or attempts to solicit from house to house or upon the public street any contribution or donation or any order for goods, services, subscriptions, or merchandise to be delivered at a future date.

4. “Transient merchant” means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases, or occupies any building or structure whatsoever, or who operates out of a vehicle that is parked anywhere within the City limits. Temporary association with a local merchant, dealer, trader, or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader, or auctioneer does not exempt any person from being considered a transient merchant.

#### **122.03 LICENSE REQUIRED.**

Any person engaging in peddling, soliciting, or in the business of a transient merchant in the City without first obtaining a license as herein provided is in violation of this chapter.

#### **122.04 APPLICATION FOR LICENSE.**

An application in writing shall be filed with the Clerk for a license under this chapter. Such application shall set forth the applicant’s name, permanent and local address, and business address, if any. The application shall also

set forth the applicant's employer, if any, and the employer's address, the nature of the applicant's business, the last three places of such business, and the length of time sought to be covered by the license. Applications must be submitted not less than 10 business days prior to the proposed start date of the activity. The City reserves the right to reject any applications that have not been timely submitted to the City. The City shall have the discretionary right to accept an application made less than 10 business days prior to the desired start date.

An application fee of \$10.00 shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

#### **122.05 LICENSE FEES.**

The following license fees shall be paid to the Clerk prior to the issuance of any license.

1. For one day \$25.00
2. For more than one day, less than one week \$100.00
3. For more than one week, up to six months \$200.00
4. For one year or more than six months \$350.00

5. For the purposes of this section, the amounts in Subsections 1, 2, and 3 reset after one year from the date of issuance of the first license (i.e. if a vendor seeks a one day license for \$25.00 and comes in four months later for a second one day permit, they will instead be required to purchase a one week permit). If there is not enough time in the next tier, the applicant shall pay for the next shortest tier (i.e. if a vendor seeks a one week license in January, and comes in September for another license, they shall pay for another one week license since there is less than six months before the anniversary date of the first permit).

#### **122.06 BOND REQUIRED.**

Before a license under this chapter is issued to a transient merchant, an applicant shall provide to the Clerk evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the *Code of Iowa*.

#### **122.07 LICENSE ISSUED.**

If the Clerk finds the application is completed in conformance with the requirements of this chapter, the facts stated therein are found to be correct, and the license fee paid, a license shall be issued immediately.

#### **122.08 DISPLAY OF LICENSE.**

Each solicitor or peddler shall keep such license in possession at all times while doing business in the City and shall, upon the request of prospective customers, exhibit the license as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant's license in the merchant's place of business.

#### **122.09 LICENSE NOT TRANSFERABLE.**

Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

#### **122.10 TIME RESTRICTION.**

All peddler's and solicitor's licenses shall provide that said licenses are in force and effect only between the hours of 8:00 a.m. and 7:00 p.m. Exceptions may be granted by Council resolution, and if it is not practical based on timing to bring the request to the Council, the City Clerk or City Manager are authorized to grant the exception, and shall therefore report the exception, in writing, to the Council at the next regularly scheduled Council meeting.

#### **122.11 REVOCATION OF LICENSE.**

Following a written notice and an opportunity for a hearing, the Council may revoke any license issued pursuant to this chapter for the following reasons:

1. **Fraudulent Statements.** The licensee has made fraudulent statements in the application for the license or in the conduct of the business.
2. **Violation of Law.** The licensee has violated this chapter or has otherwise conducted the business in an unlawful manner.
3. **Endangered Public Welfare, Health, or Safety.** The licensee has conducted the business in such manner as to endanger the public welfare, safety, order, or morals.

The Clerk shall send the written notice to the licensee at the licensee's local address. The notice shall contain particulars of the complaints against the licensee, the ordinance provisions or State statutes allegedly violated, and the date, time, and place for hearing on the matter.

#### **122.12 HEARING.**

The Council shall conduct a hearing at which both the licensee and any complainants shall be present to determine the truth of the facts alleged in the complaint and notice. Should the licensee, or authorized representative, fail to appear without good cause, the Council may proceed to a determination of the complaint.

#### **122.13 RECORD AND DETERMINATION.**

The Council shall make and record findings of fact and conclusions of law, and shall revoke a license only when upon review of the entire record the Council finds clear and convincing evidence of substantial violation of this chapter or State law.

#### **122.14 APPEAL.**

If the Clerk revokes or refuses to issue a license, the Clerk shall make a part of the record the reasons for such revocation or refusal. The licensee, or the applicant, 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 and the Clerk shall carry out the decision of the Council.

#### **122.15 EFFECT OF REVOCATION.**

Revocation of any license shall bar the licensee from being eligible for any license under this chapter for a period of one year from the date of the revocation.

#### **122.16 REBATES.**

Any licensee, except in the case of a revoked license, shall be entitled to a rebate of part of the fee paid if the license is surrendered before it expires. The amount of the rebate shall be determined by dividing the total license fee by the number of days for which the license was issued and then multiplying the result by the number of full days not expired. In all cases, at least \$5.00 of the original fee shall be retained by the City to cover administrative costs.

#### **122.17 LICENSE EXEMPTIONS.**

The following are excluded from the application of this chapter. This section does not constitute authorization to sell in the public right of way or City parks, unless by City Council resolution or listed below.

1. **Newspapers.** Persons delivering, collecting for, or selling subscriptions to newspapers.
2. **Club Members.** Members of local civic and service clubs, Boy Scout, Girl Scout, 4-H Clubs, Future Farmers of America, and similar organizations.
3. **Local Residents and Farmers.** Local residents and farmers who offer for sale their own products.
4. **Students.** Students representing the Sheldon School District and local parochial schools conducting projects sponsored by organizations recognized by the school.

5. Religious Groups. Local religious groups and churches.
6. Route Sales. Route delivery persons who only incidentally solicit additional business or make special sales.
7. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.
8. Minor Businesses. An on-site transactional business traditionally operated exclusively by a person under the age of 18, operated on an occasional basis for no more than 89 calendar days in a calendar year.

*(Code of Iowa, Sec. 364.3[13])*

9. Fire Fighters, Emergency Management, Ambulance Team, and Police. Paid and volunteer members of the Sheldon Fire Department, Sheldon Community Ambulance Team, Sheldon Emergency Management Agency, and the Sheldon Police Department.

10. Annual Celebrations. The annual Sheldon Celebration Days (under the supervision of the Sheldon Chamber of Commerce and Economic Development Corporation and the City), the City's annual fireworks celebration, and other community events as directed by resolution of the Council.

11. School Events. Transient merchants set up on school grounds at any of the City's established public or private schools with classroom in the City (currently but not limited to NW Iowa Community College, St. Patrick's Elementary, Sheldon Christian School, and any school with Sheldon Community School District does not need a permit if operating with written permission on school grounds (excluding public rights of way) for school sponsored event and if such written permission is on visible display and can clearly be seen by customers. The City and Sheldon Police Department to no provide background screening services for organizations or applicants.

#### **122.18 CHARITABLE AND NONPROFIT ORGANIZATIONS.**

Authorized representatives of charitable or nonprofit organizations operating under the provisions of Chapter 504 of the *Code of Iowa* desiring to solicit money or to distribute literature are exempt from the operation of Sections 122.04 and 122.05. All such organizations are required to submit in writing to the Clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and whether any commissions, fees, or wages are to be charged by the solicitor and the amount thereof. If the Clerk finds that the organization is a bona fide charity or nonprofit organization, the Clerk shall issue, free of charge, a license containing the above information to the applicant. In the event the Clerk denies the exemption, the authorized representatives of the organization may appeal the decision to the Council, as provided in Section 122.14 of this chapter.

#### **122.19 MOBILE FOOD AND BEVERAGE VENDORS.**

1. Mobile Food Unit Licensing. It is unlawful for any person to engage in the sale of food or beverages to the public from a temporary or mobile facility within the corporate limits of the City without first obtaining a mobile food unit license from the City, in addition to any other State, federal, or County permits, certifications and licenses.

A. A mobile food unit license is an annual license that expires on April 15 each year and must be renewed prior to the first event after that date.

B. Each mobile food unit shall be licensed separately. No license transfer is allowed.

C. Although certain activities may be exempt from the licensing requirements of this section, any food service to the public in the City is expected to comply with all other local, County, and State requirements for health inspections, licensing, safety and Fire Code requirements.

D. The following shall be exempt from this requirement:

- (1) Catering businesses.

(2) Grilling and food preparation activities of brick and mortar establishments on the establishments' premises for immediate consumption by patrons or employees.

(3) Concession stands associated with sports, recreational, Chamber of Commerce, and religious assembly venues that have been approved as part of a site plan.

2. License Fee. At the time of the submittal of a license application, the applicant shall pay to the Clerk the applicable license and permit fees in addition to any application fees.

A. The Council shall establish the amount of the license fee by resolution.

B. Any licensee who surrenders his or her license prior to the date of expiration shall not be entitled to a refund of any portion of the fee.

3. Mobile Food Unit Vendor Licensing Application.

A. License Required. All mobile food vendors operating within the City must obtain a mobile food vendor license from the City. An exception to this requirement is a community event sponsored by the Chamber of Commerce or approved by the Council.

B. Application Requests. Application requests shall be filed with the Clerk on the form provided by the City. No application request shall be accepted for filing and processing unless it conforms to the requirements of this chapter. This would include a complete and true application and all of the required materials and information prescribed, accompanied by the appropriate fees.

C. Submission Time Frame. Applications must be submitted not less than 10 business days prior to the proposed start date of the mobile food unit activities. The City reserves the right to reject any applications that have not been timely submitted to the City. The Clerk shall have the discretionary right to accept an application made less than 10 business days prior to the desired start date.

D. Additional Approvals. Receiving approval of a mobile food unit license from the City shall not preclude, supersede, circumvent, or waive the applicant's responsibility to obtain any additional permits, licenses, and approvals for other applicable local, State, and federal regulations.

E. Application Contents. Application shall be made on a form provided by the City and shall include:

(1) Full name of the applicant.

(2) Applicant's contact information including mailing address, phone numbers and e-mail address.

(3) State health inspection certificate with the classification level of the state license identified.

(4) Description of the kitchen facilities, cooking facilities, preparation area, safety features (suppression system, etc.) of the mobile food unit.

(5) Photographs of the mobile food unit.

(6) Make, model, and year of vehicle to be used.

(7) County, State, and license plate number.

(8) Overall size of the vehicle; length and width.

(9) Application and license fees.

F. Applications Deemed Withdrawn. Any application received shall be deemed withdrawn if it has been held in abeyance, awaiting the submittal of additional requested information from the applicant, and if the applicant has not communicated in writing with the City and made reasonable progress within 30 days from the last written notification from the City to the applicant. The application fee is nonrefundable. Any application deemed withdrawn shall require submission of a new application and fees to begin a new review and approval process.

G. Issuance of License. Upon completion of the review process and a determination of compliance with the applicable regulations, the Clerk will issue a mobile food unit license. The license shall be placed in the upper left (passenger side) of the front windshield or the left front side of a trailer or cart to aid in the visual verification of the licensing for that year.

H. Modification of License After Issuance. Should the mobile food vendor change the food or beverage being offered during the term of an issued license that would change the designation of the mobile food unit to a higher State licensing level classification, a new application and fire inspection shall be required.

5. Mobile Food Units on Public Property. No mobile food unit may be operated on public property except as part of an event approved under a special event permit by the Clerk's office or as authorized by the Parks and Recreation Commission, within a City park.

6. Unattended Mobile Food Unit. No mobile food unit shall be left unattended on any site overnight, unless that property is under the ownership of the operator of the unit and in compliance with all other Code requirements. No mobile food unit shall be allowed to be stored on a site that is not zoned appropriately for storage and warehousing, screened in accordance with Code requirements, and/or having received prior Council approval through an entitlement process. Any mobile food unit found unattended shall be considered in violation of these regulations and subject to license revocation, municipal infraction, towing, or any other action legally allowed.

7. Music and Sound-Making Devices. The use of music or sound-making devices as a part of a mobile food unit are prohibited, unless expressly allowed as part of an approved event.

8. Mobile Food Unit Performance Standards. Persons conducting business from a mobile food unit must do so in compliance with the following standards:

A. The mobile food vendor must obtain expressed written consent of the property owner to use the business property on which they propose to operate. The written consent must be kept in the unit at all times that the unit is on the property.

B. The operator of the mobile food unit shall display their City license in full view of the public in the unit.

C. Mobile food units shall only be allowed on nonresidential properties.

D. Mobile food units within 300 feet of a residential use or residentially zoned property, shall be limited to hours of operation between 7:00 a.m. and 10:30 p.m.

E. Mobile food units shall be limited to a maximum duration of eight hours per day on any site, unless part of an approved event permit. A mobile food unit shall be at one location a maximum of five consecutive days per week.

F. Only one mobile food unit shall be allowed on a property, unless part of an approved event or the property has received a multiple vendor permit. Mobile food units not under a multiple vendor permit and on adjacent properties must maintain a minimum separation between units of 50 feet.

G. Mobile food units shall serve patrons which are on foot only; no drive-up service to the mobile food unit itself shall be provided or allowed.

H. The mobile food unit must be located on a paved surface, unless approved as part of an event permit.

I. No mobile food unit may be located on a vacant property or lot with a vacant building.

J. No mobile food unit may operate within 200 feet of a permanent restaurant or business offering food or beverage services.

K. No alcoholic beverages may be sold as a part of a mobile food unit.

L. Any mobile food unit shall maintain a minimum 15-foot separation from a building as measured to the closest building element including awnings or canopies, tents, or membrane structures. Location of the mobile

food unit shall not impede pedestrians entering or exiting of a building.

M. Mobile food vendors shall be placed no closer than 15 feet from a front property line.

N. Signs are limited to those that are attached to the exterior of the mobile unit and must be mounted flat against the unit and not project more than six inches from the exterior of the unit. No freestanding signs, banners, flags, etc., are allowed. Off premises signs directing patrons to the mobile food unit are prohibited.

O. During business hours, the mobile food vendor shall provide a trash receptacle for use by customers.

P. The mobile food vendor shall keep the area around the mobile food unit clear of litter and debris at all times.

Q. All mobile food units shall be located in such a manner as to not create a safety hazard, such as blocking emergency access to buildings and the site, obstructing access to fire hydrants and Fire Department connections, impeding entering and exiting from a building, creating a visual impediment for the motoring public at drive entrances, intersections, pedestrian crossings, etc.

R. No mobile food unit shall be parked in or otherwise impact access to/from ADA parking stalls.

9. Property Owner Responsibility. By allowing the mobile food unit on their property, property owners share in the responsibility of ensuring that the performance standards listed above and the safety of pedestrians and access of emergency vehicles to and around the site are maintained. Failure to do so could result in the property owners being party to any enforcement actions or penalties allowed by law, including, but not limited to, the alteration or revocation of a multiple vendor permit.

10. Other Licenses and Permits to Be Maintained. Failure of any applicant to maintain the appropriate County, State, and federal licenses and permits, during the term of the local license or permits shall be considered an unlawful act and subject to revocation or any other penalties available to the City.

11. Suspension or Revocation of License. Any license issued under the provisions of this chapter may be suspended or revoked by the City as follows:

A. Grounds. The Clerk may suspend any license issued under this chapter, pending the outcome of an administrative hearing, for any of the following reasons:

(1) The licensee has made fraudulent statements in their application for the license or in the conduct of their business.

(2) The licensee has violated this chapter or any other chapter of this code or has otherwise conducted their business in an unlawful manner.

(3) The licensee has conducted his/her business in such manner as to endanger the public welfare, safety, order, or morals.

(4) The Clerk has received and investigated three or more found complaints during the licensed period related to the manner in which the licensee is conducting business.

B. Notice. The Clerk shall have the licensee served with notice either in person or by regular mail to the licensee's address shown on the license application notifying them of the license suspension, the specific reasons for such action, and date and time of hearing with the Clerk to review the particulars of the suspension. The licensee shall be prohibited from any further activities covered by the license until such time that the hearing has been held and a determination of suspension and revocation resolved.

C. Hearing. A hearing shall be conducted by the Council not more than five business days after the suspension of a license. The licensee and any complainants may be present to determine the truth of the alleged violation of this chapter. Should the licensee or their authorized representative fail to appear without good cause, the Council may proceed with the hearing and make their findings.

D. Revocation. After the Council has reviewed the facts, they shall revoke a license if they find by the preponderance of the evidence that a violation has occurred. The revocation shall be effective immediately.

E. Appeal. If the Clerk revokes or refuses to issue a license, the licensee or the applicant shall have a right to a hearing before the Council as provided in Section 122.14 of this chapter. The Council may reverse, modify, or affirm the decision of the Clerk.

F. Effect of Revocation. Revocation or denial of any license shall bar the licensee or applicant from being eligible for any license under this chapter for a period of one year from the date of the revocation or denial. There shall be no refund of any fees for any revocation.

12. Penalty. Unless another penalty is expressly provided by this chapter for any particular provision or section, violations of this chapter are simple misdemeanors subject to a fine of not more than \$855.00 and may also be punishable as municipal infractions subject to a civil penalty as set forth in this Code of Ordinances. Each day a municipal infraction occurs and/or is permitted to exist constitutes a separate offense. Police officers, code enforcement officers and the Police Chief's designees shall have the authority to issue citations for violations of this chapter and shall have the discretion to enforce this chapter as either a simple misdemeanor or municipal infraction.