

Section 1120 - Transient Sales; Transient Merchant

(Deleted and replaced in its entirety, Ord. No. 19-02)

1120.01. Transient sales. Subdivision 1. Peddler/solicitor. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place, for the purpose of advertising, selling or attempting to sell items that the person is carrying or otherwise transporting, or obtaining or attempting to obtain orders for products or services of which the person may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above.

Subd. 2. License required. No peddler or solicitor shall sell or offer for sale any goods, wares, merchandise, or services for immediate delivery within the City unless a license therefor shall be secured as provided in this section.

Subd. 3. License exemptions.

- (a) For the purpose of applying the requirements of this section, the terms peddler and solicitor do not apply to any person selling or attempting at wholesale any goods, wares, products, merchandise or other personal property to a retailer of the items being sold by the wholesaler. The terms also do not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on the person's established regular delivery route.
- (b) No license shall be required for the following:
  - (1) No license is required for any person to sell the products of the farm or garden occupied and cultivated by that person.
  - (2) No license is required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when such activity is for the purpose of exercising that person's state or Federal Constitutional rights such as the freedom of speech, press, religion and the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.
  - (3) Professional fundraisers working on behalf of an otherwise exempt person or group are exempt from the licensing requirements of this chapter.

Subd. 4. License application and issuance. Application for such license shall be made to the City Clerk on a form supplied by the City. All applications shall be made to the city at least 30 business days before the applicant desires to begin conducting business. The application shall include:

- (a) Applicant's full legal name.
- (b) All other names under which the applicant conducts business or to which applicant officially answers.
- (c) Full address of applicant.
- (d) Telephone number of applicant's permanent residence.
- (e) Full legal name of any and all business operations owned, managed, or operated by applicant, for which the applicant is an employee or agent.
- (f) Full address of applicant's regular place of business (if any).
- (g) Any and all business-related telephone numbers of the applicant.
- (h) The type of business for which the applicant is applying for a license.
- (i) Any and all addresses, telephone numbers, and email addresses where the applicant can be reached while conducting business within the city.
- (j) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.
- (k) A list of all cities where the applicant has conducted business as a peddler/solicitor in the past two years.
- (l) A general description of the items to be sold or services to be provided.
- (m) All additional information deemed necessary by the city.
- (n) The applicant's valid government-issued identification or driver's license or other acceptable form of identification.
- (o) The license plate number, registration information, and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

Subd. 5. License ineligibility. The following are grounds for denying a license under this section:

- (a) The failure of the applicant to truthfully provide any of the information requested by the city as part of the application, or the failure to sign the application, or the failure to pay the required application fee at the time of the application.
- (b) The conviction of the applicant who has not shown sufficient evidence of rehabilitation pursuant to Minnesota Statutes, section 364.03 for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner or that will not adversely affect the health, safety and welfare of the residents of the city. Such violations include but are not limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- (c) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler or solicitor.
- (d) The applicant or company that the applicant is representing is determined to have a bad business reputation. Evidence of a bad business reputation includes, but is not limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months.
- (e) Prior violations of this section.
- (f) Conducting business without the required license.
- (g) A determination of previous fraudulent acts or conduct.
- (h) A record of continual breaches of solicited contracts.
- (i) Any prior revocations or suspensions of peddler or solicitor licenses in any other city within the past five years.

Subd. 6. Police investigation. Every application shall be reviewed by the Chief of Police and a background check shall be conducted to determine whether the merchant has a valid driver's license (if applicable) and assure that there are no active warrants.

Subd. 7. License fees. Fees for licenses shall be set forth in Appendix B. Fees shall include an application fee, which includes the cost of initial investigation. The City Council may waive fees at its discretion.

Subd. 8. Duration of license. No license may extend beyond the 31st day of December of the year in which it is granted.

Subd. 9. License not transferable. All licenses shall be nontransferable. No refunds shall be made on unused portions of licenses except by resolution of the City Council. Each peddler shall secure a separate license.

Subd. 10. License to be carried. All licenses shall be carried by the licensee and the license shall be exhibited to any officer or citizen upon such officer's or citizen's request.

Subd. 11. License revocation.

- (a) Any license issued under this section may be suspended or revoked for any of the following:
- (1) Fraud, misrepresentation, or incorrect statements on the application form.
  - (2) Fraud, misrepresentation, or false statements made during the course of the licensed activity.
  - (3) Conviction of any offense for which granting of a license could have been denied pursuant to this section.
  - (4) Violation of any provision of this section.
- (b) *Notice.* Prior to revoking or suspending any license issued under this section, the city must provide the license holder with written notice of the alleged violations and inform the licensee of the licensee's right to a hearing on the alleged violation. Notice must be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.
- (c) *Administrative hearing.* Upon receiving the notice provided herein, the licensee has the right to request an administrative hearing. If no request for a hearing is received by the city within 14 regular business days following the service of the notice, the city may proceed with the suspension or revocation summarily. For the purpose of mailed notices, service is considered complete as of the date the notice is placed in the mail. If a hearing is requested within the stated time frame, a hearing must be scheduled within 30 days from the date of the request. If the Hearing Officer determines that a violation of this chapter did occur, that decision, along with the Hearing Officer's reasons for finding a violation and the penalty to be imposed, must be recorded in writing, a copy of which must be provided to the licensee. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, the findings must be in writing and a copy provided to the licensee.
- (d) *Emergency.* If, in the discretion of the city, imminent harm to the health or safety of the public may occur because of the actions of a peddler or solicitor licensed under this section, the city may immediately revoke the person's license and provide notice of the right to hold a subsequent administrative hearing as required herein.

- (e) *Appeals.* The final decision of the administrative Hearing Officer is appealable by petitioning the Minnesota court of appeals for a Writ of Certiorari.

Subd. 12. Practices prohibited. It is unlawful for a peddler or solicitor to conduct business in any of the following manners:

- (a) Calling attention to the person's business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.
- (b) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way.
- (c) Conducting business in such a way as to create a threat to the health, safety, and welfare of any individual or to the general public.
- (d) Conducting business before 9:00 a.m. or after 8:00 p.m.
- (e) Failing to properly display approved license identification in plain view attached to the outer clothing and provide proof of license and identification, when requested.
- (f) Using the license of another person.
- (g) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. It is unlawful for a peddler or solicitor to claim to have the endorsements of the city solely based on the city having issued a license or certificate of registration to that person.
- (h) Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating, or abusive.

Subd. 13. Exclusion by placard. It is unlawful for a peddler or solicitor, unless expressly invited to do so by the property owner or tenant, to enter the property of another for the purpose of conducting business as a peddler or solicitor when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors or Transient Merchants," or "Peddlers, Solicitors, and Transient Merchants Prohibited," or other comparable statement. It is unlawful for a person other than the property owner or tenant to remove, deface or otherwise tamper with any sign or placard under this section.

Subd. 14. Canvasser.

- (a) A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or from place-to-place when such activity is for the purpose of exercising that person's constitutional rights such as freedom of speech, press, or religion is a canvasser except when the person's exercise of these constitutional rights is merely incidental to a commercial activity.

- (b) A canvasser is exempt from the licensing requirements of this subsection, but all other requirements of subsection 1120.01 shall apply.
- (c) Before engaging in any of the activities of a canvasser, a canvasser is required to register with the city on a form provided by the City. Immediately upon completion of the registration form, the City shall issue the registrant proof of the registration.
- (d) No fee is required for registration under this subdivision.

Subd. 15. Hours. A peddler, solicitor or canvasser may not undertake such person's activities except between the hours of 9:00 a.m. to 8:00 p.m.

1120.03. Transient merchant. Subdivision 1. License required. The owner or operator of a vehicle that is used to dispense or vend confections or other goods directly from the vehicle may not do so without a license. This subsection does not apply to persons using vehicles for the delivery of goods or services directly to homes or establishments where the goods are taken by the operator of the vehicle onto private property for delivery, or to the operations of political subdivision. The term "vehicle" means a mobile unit, portable tent, portable trailer, or any similar type unit being used on the public streets for the purpose of vending or dispensing. Exterior sales are also limited by zoning code.

Subd. 2. Application. Application for a license is made to the Clerk. The application must describe the vehicle or vehicles from which the vending operations will be carried on, the requested duration of the vending operations, and give the names of the persons interested in the business. The applicant must describe the type of confections or other goods which will be sold from the vehicle. Licenses expire annually on December 31. The license fee is set by Appendix B.

Subd. 3. Hours, routes and noise. A transient merchant may not carry on the vending operations except between the hours of 9:00 a.m. to 8:00 p.m. More than ten days before commencement of operations the transient merchant must file with the Chief of Police a proposed route or routes or location over which the vehicles will travel or be located each day. The transient merchant must follow such route or location while operating in the City. Proposed changes must be filed with the Chief of Police at least ten days in advance. If the Chief disapproves of the proposed routes or location, the transient merchant may appeal the ruling to the City Council. Approved routes or locations must minimize the hazard to customers of the vehicle and which minimize traffic difficulties which may arise out of such operations. The use of a radio device, mechanical device, loudspeaker or device casting sound upon the public streets in conjunction with such vending or dispensing requires a permit under this code.

Subd. 4. Safety requirement. Vehicles must be parked at the curbside or other approved location while engaged in vending operations. Vending may be done only at the curbside of the vehicle. The applicant must provide a certificate of insurance with the City with public liability insurance of not less than \$2,000,000 combined single limit issued by an insurance company authorized to do business in the state of Minnesota. The policy must provide that it may not be cancelled by the issuer except upon ten days' written notice to the City. If the insurance is cancelled the license or permit will be automatically suspended until the insurance is replaced. No transient merchant shall use a motor vehicle for such person's activities unless such person maintains a valid driver's license.

1120.05 Certain Transient Merchants. Subdivision 1. A state-licensed mobile food unit dispensing and vending at a temporary fixed location is subject to the requirements of this subdivision. A mobile food unit can be a motorized vehicle or trailer-mounted food establishment.

(a) License required. The owner or operator of a mobile food unit may not dispense food to the public without a license. Mobile food unit sales which meet the definition of a food truck are also regulated by city's zoning code. Each license is valid for only the specified dates. The license fee is set by Appendix B.

(b) Application. Application for a license is made to the Clerk. The license application must also include the dates, description of vehicles used, description of food items, location and site plan for set up, a copy of the state license(s), a safety plan, and written authorization from the property owner where the mobile food unit will be located.

(c) Noise. The use of a radio device, mechanical device, loudspeaker or device casting sound upon the public streets in conjunction with such vending or dispensing requires a permit under this code.

(d) Hours and Locations. The city establishes the hours of operation and the duration of occupancy. Exterior sales are allowed at locations permitted by the zoning code. City council approval is required for dispensing and vending in a city park.

(e) Insurance. No transient merchant shall use a motor vehicle unless such person maintains a valid driver's license. A mobile food unit proposed to be located on city property must provide a valid certificate of insurance to the City with public liability insurance of not less than \$2,000,000 combined single limit issued by an insurance company authorized to do business in the state of Minnesota.

1120.07. Going out of business sales. Subdivision 1. For purposes of this subsection the terms defined in this subdivision have the meanings given them.

- (a) "Advertise" means the use of any means, whether oral, written, lettered or by picture, used to give notice of intention to conduct a sale or to advertise merchandise for sale at such sale; the term includes, but is not limited to, oral announcement made at the place of sale, or oral announcement by sound truck or by radio or television, by written, printed or pictured notice, by newspaper advertisement, magazine advertisement, handbill, printed display, poster, label, price tag, circular, pamphlet or book.
- (b) "Merchandise" means goods, wares and merchandise usually sold for consumption.
- (c) "Sale" or "regulated sale" means a sale or offer to sell to the public merchandise on hand and in stock, in connection with a declared purpose, as set forth by advertising on the part of the seller that such sale is:

- (1) anticipatory to the termination, closing, liquidation, windup-discontinuance, conclusion or abandonment of the business and advertised in the following phrases or in any other phrase or phrases of like or similar language which reasonably convey to the public that the sale is being conducted for such purpose: "going out of business sale", "trustee's sale", "liquidation sale", "executor's sale", "administrator's sale", "adjustment sale", "reorganization sale", "creditor's sale", "creditor's committee sale", "assignee's sale", "receiver's sale", "loss of lease sale", "forced out of business sale", "removal sale". A "removal sale" is a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location in the City or will then continue business from other existing locations in the City.
- (2) a result of damage or alteration to the merchandise being offered for sale by disaster or other fortuitous occurrence, and advertised in the following phrases and in any other phrases or phrases of like or similar language which reasonably convey to the public that the sale is being conducted as a result of such occurrence: "fire sale", "insurance salvage sale", "damaged goods sale", "smoke sale", "water damage sale".

Subd. 2. Exception: actual disaster sale. This subsection does not apply to a sale held by a regularly established retail or wholesale merchant at a regular place of business, provided that such sale is held for not over ten days during the period of 45 days immediately following actual damage to the merchant's stock or goods by fire, water, smoke or other chance circumstance. A permit issued by the clerk is required for such a sale. The permit fee is set by Appendix B.

Subd. 3. Exception: regular sale of damaged goods consigned from insurance companies. This subsection does not apply to a person who has and maintains a permanently established place of business solely confined to the sale or property damaged by fire, water, smoke, or other chance circumstance, which property is taken on consignment directly from insurance companies who have taken such property as settlements of losses, and who does not advertise in the terms used in the definition of "sale" in subdivision 1.

Subd. 4. License required. It is unlawful to advertise or conduct a regulated sale without a license.

Subd. 5. Application for license. A person desiring to advertise and conduct a regulated sale must apply to the clerk. The application must be in writing and in the name of the true owner of the merchandise to be sold. The application must state:

- (a) the name and address of the applicant, together with the names and addresses of all individuals who are members of the partnership, association or firm making such application and of all officers of any corporation making the application;
- (b) the type of sale to be conducted and the reason for conducting the sale;

- (c) the address at which the sale will be held;
- (d) the nature of the occupancy of the premises where the sale is to be held, whether by lease or sublease, and the date of termination of such occupancy;
- (e) whether or not the applicant has held a regulated sale at the premises referred to in the application in the one year period preceding the date of the application;
- (f) the date of acquisition by the applicant of the business with respect to which the sale is to be held;
- (g) the names and addresses of the individuals who will have charge of the sale;
- (h) an inventory containing:
  - (1) A legible, orderly, detailed, complete and accurate descriptive list of the merchandise to be offered for sale which inventory shall include only merchandise owned by the applicant which applicant expects to include in such sale located on the premises where the sale is to be held and in warehouses. The inventory may include all goods which have been purchased by the applicant for resale on bona fide orders without cancellation privileges and may not comprise goods purchased on consignment. The inventory may not include goods ordered in contemplation of conducting a regulated sale. Any purchase or additions made within 90 days immediately prior to the filing of an application which increases the inventory beyond the average inventory for 12 full and successive months next preceding the application is deemed an unusual purchase or addition and made in contemplation of having a sale as regulated by the terms of this chapter; provided, however, that in determining the average monthly inventory seasonable purchases and inventories will be considered and adjusted.
  - (2) Insofar as reasonably possible on the basis of available record data regularly kept by the applicant, the dates of acquisition of the merchandise, the names and addresses of the persons from whom obtained, and the manner of acquisition. The inventory must contain the cost price of the merchandise to be sold, and the regular price at which the merchandise was sold prior to the making of the application. The application and the inventory must be verified in duplicate under oath by the individual making the application or by a member of the partnership making the application or by the general managing officer or agent of the association, joint enterprise, firm or corporation, making the application, and must be filed in duplicate with the clerk.

Subd. 6. Limitations. A person who has not been the owner of a business described in the application for a period of at least six months prior to the date of application may not be granted a license. A person who has held a regulated sale at the location designated in the application within one year last past from the date of the application may not be granted a license. If a person applying for a license operates more than one place of business the license issued applies to only the one store or branch specified in the application, and no other store or branch may advertise or represent that it is cooperating with it, or in any way participating in the licensed sale, nor may the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in the regulated sale.

Subd. 7. License fee: term: renewals. The license fee is set by Appendix B. The license is granted by the council. Licenses are for a period of not to exceed 30 days. Upon proof that all of the merchandise listed in the inventory attached to the original application has not been disposed of and that no items of merchandise not listed in the inventory have been or are to be sold at the sale, the clerk must investigate the truthfulness of the application and the supporting data, and recommend to the council the granting or denial or a renewal, and the renewal may be for no more than 30 days. The fee for a renewal is set by Appendix B. If a second renewal for 30 days is applied for, the fee for such renewal is set by Appendix B for each day of such sale to defray the cost of daily supervision by the clerk during the period of the sale.

Subd. 8. Proof required. Renewal applications are made to the clerk and must be accompanied by an inventory containing a legible, orderly, detailed, complete and accurate descriptive list of the merchandise then on hand unsold. The renewal application and accompanying inventory must be executed and verified under oath by the individual making the application, or by a member of the partnership making the application, or by the general managing officer or agent of the association, joint enterprise, firm or corporation making the application.

Subd. 9. Renewals. Applications for renewals must be made not less than ten days prior to the expiration of the existing license. No more than two renewals may be granted for a regulated sale at the same location.

Subd. 10. Conditions of license. The license is subject to the following conditions:

- (a) the sale shall be conducted on the premises specified in the application, during the period of the license and any renewals thereof, and no longer;
- (b) merchandise not described in the inventory may be added to or included with that specified in the inventory furnished with the application and offered for sale at the sale: each sale of merchandise not included in the inventory constitutes a separate violation of this condition;
- (c) the sale must be advertised and conducted in the name of the licensee only and no reference to the reasons for the sale may be advertised unless the reasons must be in conformity with those stated in the application and will be applicable to the licensee at the time of such advertisement;

- (d) the license must be conspicuously displayed during the duration of the sale near the entrance to the premises where the sale is being held;
- (e) a duplicate original of the application and inventory pursuant to which the license was granted, must be available at the premises where the sale is being held to the officers and agents of the city and the licensee must permit city officials to examine all merchandise on the premises for comparison with the inventory;
- (f) at the close of business each day there must be noted on the inventory attached to such duplicate original application the items disposed of during that day;
- (g) suitable books and records must be kept by the licensee and available at all times to the officers and agents of the city;
- (h) an advertisement may not contain any assertion, representation or statement of fact which is untrue, deceptive or misleading as to the ownership of the merchandise, the source from which it was obtained, the quantity, nature, condition or quality thereof, or the value or price thereof, or the savings or discounts offered with respect thereto, and, if any price comparisons or percentages of savings or discounts are quoted in any advertisement, such savings or discounts must be computed upon the prices stated in the inventory with respect to the items referred to in such advertisement; provided, however, that no comparison in either general or specific terms may be made in any such advertisement with respect to either the regular wholesale or regular retail prices of any merchandise unless the regular wholesale or regular retail price of such merchandise so referred to is stated in the inventory attached to such application;
- (i) the licensee must promptly at the conclusion of a regulated sale file with the clerk's office a true inventory of all merchandise, if any, then remaining unsold.

Subd. 11. License to refrain for six months. A person who has conducted a regulated sale may not engage in the same type of business at a location within a distance of one-half mile measured from front entrance of previous place of business within a period of six months after the termination date of the regulated sale.

Subd. 12. Sheriff's sales, etc., excepted. This subsection does not apply to the advertisement or conduct of sales by sheriffs, constables, marshals or other public or court officers in the performance of their official duties as such, or to trustees in bankruptcy, or any other person or persons acting under the direction or authority of any court, state or federal, selling merchandise in the course of their official duties.

Subd. 13. Each day a separate offense. Each day of conduct of a regulated sale without a license is a separate offense.