

CHAPTER 6: GENERAL REGULATIONS

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ORDINANCE 61 TRANSIENT MERCHANTS, PEDDLERS, AND SOLICITORS

Section 61.01: DEFINITIONS. The following terms are defined as used in this Ordinance:

Subd. 1: Transient Merchant. Any Person selling, or attempting to sell or dispense any goods, products or merchandise, either as principal or agent from a building or lot which he or she occupies as a tenant or under a lease for a shorter term than six (6) months, or from trailer, tent, portable trailer, empty store front or railroad car who do not remain or intend to remain in any one location for more than fourteen (14) consecutive days.

Section 61.01, Subd. 1 amended on 9/2007

Subd. 2: Peddler. Any Person selling, attempting to sell, offering or dispensing any goods, products or merchandise or going about from place to place carrying the goods or products for sale and delivery. The term peddler shall mean the same as the term “hawker”.

Subd. 3: Solicitor. Any Person going from place to place offering or attempting to obtain goods, products or merchandise or services for which delivery or performance shall occur at a later time or to collect donations. Any Person taking orders to be filled by goods delivered to the purchaser from other states in the original package shall not be included.

Section 61.02: LICENSING.

Subd. 1: License Required. No transient merchant shall sell or offer for sale any good, product, merchandise, service, or attempt to do any business in this City without obtaining a license from the County Auditor and the City Clerk/Administrator.

Section 61.02, Subd. 1 amended on 9/2007

Subd. 2: License Application. Application for a license shall be made to the City Clerk/Administrator on a form the City provides, which may include the following information:

- a) The name of the applicant and all persons associated with him or her in that business;
- b) The type of business for which the license is desired;
- c) In the case of transient merchants, the place where the business is to be carried on;
- d) The length of time for which the license is desired;

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- e) A general description of the thing or things to be sold;
- f) Address and telephone number of applicant's permanent residence;
- g) Proof of any County license needed;
- h) The applicant's present place of business along with its address and telephone number;
- i) The applicant's places of residence for the last five (5) years.
- j) Any other information the City requires.

Subd. 3: Fees. Application and license fees shall be as established in Appendix A.

Subd. 4: Procedure. Upon receipt of the completed application and payment of the license fee, the City Clerk/Administrator shall, within two regular business days of receipt, shall determine if the application is complete and shall inform the applicant of any necessary information which is missing. The Clerk shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving the application, the City Clerk/Administrator, shall determine whether or not to issue the license. If the Clerk approves the application, the Clerk shall issue a license to the applicant. If the Clerk rejects the application, the applicant shall be notified in writing of the Clerk's decision, the reason for the denial, and of his or her right to appeal the denial by requesting, within 20 days of receiving the Clerk's notice of rejection, a public hearing before the City Council within 20 days of the date of the request. The final decision of the Council following the public hearing shall be appealable by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

Subd. 5: Duration. Each license shall be valid only for the period specified in the license.

Subd. 6: License Not Transferable. Licenses issued under this Ordinance shall be non-transferable. No refunds shall be made on unused portions of licenses except upon resolution of the Council. Each person engaged in the business of vending or peddling goods shall secure a separate license.

Subd. 7: License to be Carried. All licenses issued under this Ordinance shall be carried by the licensee or conspicuously posted in his or her place of business and the licensee shall whenever requested show the license to any officer or citizen who demands to see the license.

Section 61.03: INELIGIBILITY FOR LICENSE. The City Clerk may deny a license if:

Subd. 1: The applicant fails to obtain and show proof of any required County license.

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Subd. 2: The applicant fails to truthfully provide any of the information the City requested as a part of the application, to sign the application, or to pay the required application fee.

Subd. 3: The applicant has been convicted within the past five years from the application date 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 City resident's health, safety and welfare. Such violations shall include but not be limited to: burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another Person.

Subd. 4: The applicant has had a license or permit issued to the applicant for conducting business as a peddler, solicitor, or transient merchant revoked within the past five years.

Subd. 5: The applicant is determined to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaint(s) 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 twelve months, or five such complaints filed against the applicant

Section 61.04: SUSPENSION AND REVOCATION.

Subd. 1: The City Council may suspend or revoke any license issued under this Section for violation of any of the following:

- a) Fraud, misrepresentation, or incorrect statements on the application form.
- b) Fraud, misrepresentation, or false statements made during the course of the licensed activity.
- c) Conviction of any offense for which granting of a license could have been denied under Section 61.03.
- d) Any Violation of this Ordinance.

The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as transient merchants on behalf of the licensee, shall serve as a suspension or revocation of each such authorized person's authority to conduct business as a transient merchant on behalf of the licensee whose license is suspended or revoked.

Subd. 2: Notice. Before revoking or suspending any license issued under this Ordinance, the City shall provide the license holder with written notice of the alleged violation(s) and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall 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.

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Subd. 3: Public Hearing. Upon receiving the notice provided in Subdivision 2, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Clerk/Administrator within ten regular business days following the service of the notice, the City may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

Subd. 4: Emergency. If in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a transient merchant licensed under this Ordinance, the Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in Subdivision 3 of this Section.

Subd. 5: Appeals. Any person whose license is suspended or revoked under this Section shall have the right to appeal that decision in Court.

Section 61.04 amended on 9/2007

Section 61.05: REGISTRATION. All solicitors, and any person exempt from the licensing requirements of this Ordinance under Section 61.08, must register with the City on the same form required for a license application but shall pay no fee. Immediately upon completion of the registration form, the City Clerk/Administrator shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

Section 61.06: PROHIBITED ACTIVITIES. No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

Subd. 1: Calling attention to his or her 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.

Subd. 2: Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right-of-way.

Subd. 3: Conducting business in such a way as to create a threat to the health, safety and welfare of any Individual or the general public.

Subd. 4: Conducting business before 8:00 a.m. or after 9:00 p.m.

Subd. 5: Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person.

Subd. 6: Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant

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shall claim to have the endorsement of the City solely based on the City having issued a license or certificate of registration to that person.

Subd. 7: 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.

Section 61.07: EXCLUSION BY PLACARD. No peddler, solicitor, or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor, or transient merchant when the property is marked with a sign or placard at least three and three-quarter (3-3/4) inches long and three and three-quarter (3-3/4) inches wide with print of at least forty-eight (48) point in size stating "No Peddlers, Solicitors, or Transient Merchants," or "Peddlers, Solicitors, and Transient Merchants Prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

Section 61.08: EXEMPTIONS. This Ordinance shall not apply to:

- a) Sales under Court order;
- b) Any bona fide auction sale;
- c) A sale at wholesale to a retailer dealer;
- d) Sale of farm or garden products by the person producing them;
- e) Any person selling or attempting to sell any goods, products or merchandise or personal property at wholesale to a retailer of the items being sold;
- f) Any person who makes initial contacts with others to establish a regular customer delivery route for perishable goods and dairy products or anyone delivering the same;
- g) Garage, rummage or estate sales; multi-person bazaars and flea markets.
- h) Any person exercising their State and related Constitutional rights, unless it is incidental to a criminal activity;
- i) A non-profit organization under federal tax law; or
- j) A school or school-sponsored organization.

Section 61.09: PENALTY. Any Person violating this Ordinance shall be guilty of a petty misdemeanor upon the first offense and a misdemeanor upon the second and subsequent offenses. Each day a violation exists shall be a separate violation. Fines for violations are as established by the City Council in Appendix A.

Section 61.09 amended on 1/4/06