

## **ORDINANCE 2005**

### **AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ANKENY, IOWA, 2008, BY AMENDING PROVISION PERTAINING TO PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS**

**BE IT ENACTED** by the City Council of the City of Ankeny, Iowa:

**SECTION 1. SECTION MODIFIED.** Section 132 of the Code of Ordinances of the City of Ankeny, Iowa, is repealed and the following adopted in lieu thereof:

**132.01 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.

**DEFINITIONS.** For use in this chapter the following terms are defined:

1. "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. An ice cream truck is considered a peddler unless it contains a mobile kitchen and facilitates the preparation, marketing, and sale of food that is whole and unprocessed, packaged, or prepared in which case the ice cream truck is considered a Mobile Food Vendor subject to Municipal Code Chapter 124.
2. "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. The definition of "solicitor" also includes any person engaged in the business of bill posting.
3. "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 which 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.

**132.02 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.

- A. Each person shall be licensed separately. No license transfer is allowed.
- B. Peddlers, Solicitors, and Transient Merchants License shall be issued for the following duration of time.

(1) One day

- (2) One full week (7 consecutive days)
- (3) One month
- (4) One to six consecutive months

C. The amount of the license shall be determined in accordance with an established fee schedule, which fee schedule may be modified from time to time with approval of the council.

### **132.03 APPLICATION FOR LICENSE.**

1. Application Contents: Application for a license pursuant to this chapter shall be in writing on forms furnished by the City Clerk. The application shall contain the following information:
  - A. Full name of applicant
  - B. Applicants contact information including mailing address, phone numbers and email address.
  - C. Applicant's employer including mailing address, phone number and email address.
  - D. Nature of the applicant's business.
  - E. List of the last three places that applicant worked as a peddler, solicitor, or transient merchant.
  - F. List of any vehicle(s) that will be used to conduct business, including license plate number, and proof of vehicle registration and insurance.
  - G. Copy of current photo driver's license or other photo ID if applicant will not be operating a vehicle.
  - H. Dates sought to be covered by the license.
  - I. Copy of bond as required in section 132.04 of this Code. (Applies to Transient Merchant Only)
  - J. Non-refundable application fee.
  
2. Character of Applicant. Upon receipt of the complete application as required by this chapter, the applicant shall be required to complete a background check through a preferred vendor of the City of Ankeny. Upon completion of the background check the City Clerk's Office and or Ankeny Police Department shall investigate the applicant as deemed necessary for the protection of the public health, safety, welfare and good.
  - A. Satisfactory Character and Business Responsibility. If, as a result of such investigation, the applicant's character and business responsibility are found to be satisfactory, the City Clerk may endorse approval on the application, and a license shall be issued.
  - B. Unsatisfactory Character and Business Responsibility. If, as a result of such investigation, the applicant's character or business responsibility are found to

be unsatisfactory such that would harm the public good, the police chief or the chief's designee, may endorse on such application disapproval and state reasons for disapproval and return the application to the City Clerk who shall notify the applicant in writing that the application has been disapproved, stating the reasons for the denial, and the applicant's right to appeal under subsection 3 of this section. The following are requirements for obtaining a Peddlers, Solicitors or Transient Merchants license:

- (1) Applicant must possess a valid driver's license, unless the applicant will not be utilizing a motor vehicle during the license period for any purpose.
- (2) The applicant has not had any misdemeanor convictions, excluding traffic law violations, in the past 2 years.
- (3) The applicant has not had any felony level criminal charges regardless of conviction status in the past 5 years.
- (4) The applicant has not been convicted of, pled guilty to or stipulated to the facts of any felony level crime in the past 10 years.
- (5) The applicant has not been convicted of, pled guilty to or stipulated to the facts of any forcible felony, including any felony child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree or burglary in the first degree, or any sexually motivated crime.

3. **Right to Appeal.** Any applicant whose application for license was disapproved under subsection 2(B) of this section may appeal to the City Council at its next regularly scheduled meeting by filing with the City Clerk a written request for an appeal to the City Council at least seven (7) days prior to the meeting. As a result of this appeal, the City Council may affirm, modify or reverse the decision of the Clerk not to issue the license. If the application for license is denied, the applicant is not eligible for the issuance of a license under this chapter for a period of one year from the date of notification that the license application was disapproved, was served in person or deposited in U.S. mail.

**132.04 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*.

**132.05 LICENSE ISSUED.** If the City 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.

**132.06 LICENSE DENIED.** The license shall be denied if the Clerk finds any of the following:

1. Applicant does not meet the requirements pursuant to Section 132.03 (2).
2. Applicant falsified information on the application.
3. Applicant has been denied a license or has had a license revoked under this chapter within the last year, unless the applicant can show that the reasons for denial or revocation no longer exist.

**132.07 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.

**132.08 TIME RESTRICTION.** All peddler's and solicitor's licenses shall provide that said licenses are in force and effect only between the hours of 9:00 a.m. and 7:00 p.m., Monday through Saturday, excluding national holidays.

**132.09 REVOCATION OF LICENSE.** The City Clerk or the Police Department may revoke any license issued under 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.

**132.10 NOTICE.** The City Clerk shall send a notice to the licensee at the licensee's local address, not less than ten (10) days before the date set for a hearing on the possible revocation of a license. Such 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.

**132.11 HEARING.** The City Clerk 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 City Clerk may proceed to a determination of the complaint.

**132.12 RECORD AND DETERMINATION.** The City Clerk 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 City Clerk finds clear and convincing evidence of substantial violation of this chapter or State law.

**132.13 APPEAL.** If the City Clerk revokes a license, the City Clerk shall make a part of the record the reasons therefor. The licensee, or the applicant, shall have a right to a hearing before the Council at its next regular meeting by filing with the City Clerk a written request for an appeal to the City Council at least seven (7) days prior to the meeting. The Council may reverse, modify, or affirm the decision of the City Clerk by a majority vote of the Council members present and the City Clerk shall carry out the decision of the Council.

**132.14 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.

**132.15 LICENSE EXEMPTIONS.** The following are excluded from the application of this chapter.

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 produce on private property.
4. Students. Students representing Local School Districts conducting projects sponsored by organizations recognized by the school.
5. Route Sales. Route delivery persons who only incidentally solicit additional business or make special sales.
6. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.
7. City-sponsored and/or community events held on City property.

**132.16 CHARITABLE AND NONPROFIT ORGANIZATIONS.** Authorized representatives of charitable or nonprofit organizations operating under the provisions of the Code of Iowa desiring to solicit money or to distribute literature are exempt from the operation of Sections 132.02. All such organizations are required to submit in writing to the City Clerk the name and purpose of the cause for which such activities are sought, the name of each representative of the organization, names and addresses of the officers and directors of the organization, a list of any vehicles used and the license plate number of any such vehicles, 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 City Clerk finds that the organization is a bona fide charity or nonprofit organization the City Clerk shall issue, free of charge, a license containing the above information to the applicant. In the event the City Clerk denies the exemption, the authorized representatives of the organization may appeal the decision to the Council, as provided in Section 132.13 of this chapter.

**132.17 PEDDLERS OPERATING UPON STREETS.** No peddler shall sell or offer for sale upon the public right-of-way any goods or merchandise for immediate delivery unless such vendor complies with the conditions set forth in this section.

1. Hours of Sales. All sales made by such vendors must be made only between 9:00 a.m. and one hour before sundown, and may only be made from a vehicle which is parked in a driveway or other off-street parking area.
2. Oscillating Light Required on Vehicle. Any such vehicle must be equipped with a yellow or amber oscillating light, mounted to the top thereof, which light shall be in operation during all times that sales are being conducted.
3. Stopping for Delivery Prohibited; Sales on Streets or in Parks Prohibited. No person operating a vehicle (peddler's ice cream truck is exempt) may stop for the purpose of delivering goods or merchandise on the paved portion of the public right-of-way. In no

event shall sales be permitted on any collector or arterial street within the City or within any public park.

4. Peddler's License Required. No person shall sell or offer for sale goods and merchandise, under the provisions of this section, without first obtaining a peddler's license under the provisions of this chapter.

5. Applicability of Provisions. The requirements of this section shall not be deemed to apply to the delivery of goods or merchandise by route salesmen if such goods or merchandise are delivered to the dwelling of the customer.

**132.18 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 five hundred dollars (\$500.00) and may also be punishable as municipal infractions subject to a civil penalty as set forth in this Code. Each day a municipal infraction occurs and/or is permitted to exist constitutes a separate offense. Police officers, code enforcement officers or 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.

**132.19 FIREWORKS LICENSE.** Notwithstanding anything contained in this Chapter 132, the sale of First Class Consumer Fireworks and Second Class Consumer Fireworks as defined in Iowa Code Section 727.2 shall not be subject to this Chapter but shall be in accordance with Ankeny Municipal Code Sections 192.13.

**SECTION 2. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 3. SEVERABILITY CLAUSE.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**SECTION 4. WHEN EFFECTIVE.** This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

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Gary Lorenz, Mayor

ATTEST:

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Denise L. Hoy, City Clerk

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