

## Chapter 5.06

### TRANSIENT MERCHANTS, PEDDLERS AND SOLICITORS

#### Sections:

- 5.06.010 Definitions.
- 5.06.020 License required.
- 5.06.030 Issuance of license.
- 5.06.040 Local sponsor.
- 5.06.050 Revocation of license.
- 5.06.060 Interstate commerce provisions.

5.06.010 Definitions. For the purpose of this Chapter, the following definitions shall apply unless in conflict with the context or plain meaning.

A. "Commercial door-to-door solicitation" means any act by a peddler or solicitor to enter upon private property without invitation in order to offer for sale or attempt to sell any product or service for the primary purpose of financial gain.

B. "Local sponsor" means a merchant who has paid city sales taxes without delinquency for the previous year with a permanent place of business within the city, a local government, or a Delta County non-profit organization, civic organization or church.

C. "Peddler" means any person, whether a resident of the City or not, who goes from house to house, from place to place, or from street to street by foot or by vehicle, conveying or transporting goods, wares or merchandise and offering or exposing the same for sale, or making sales and delivering articles or services to purchasers.

D. "Permanent place of business" means the permanent place of business where business is regularly kept open for the purpose of said business. Every business not conducted at a permanent place of business as defined herein, for the purpose of this Chapter, is termed a "transient merchant," whether the person conducting such transient business is or is not a resident of Delta County.

E. "Solicitor" means any person, whether a resident of the City or not, traveling either by foot or vehicle from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares,

merchandise or personal property of any nature whatsoever for future delivery, or for services to be performed or furnished in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale, or whether or not he or she is collecting advance payments on such sales.

F. "Transient merchant" means any person, whether a resident of the City or not, who engages in the business of selling or soliciting orders for goods or services, who does not have a permanent place of business within Delta County, and who, in furtherance of said business hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent, hotel, motel or lodginghouse room, apartment, shop, street, alley or other place within the City for the exhibition or sale of such goods, wares, services and merchandise. This term specifically includes food vendors, but does not include: wholesalers; real estate and insurance agents licensed by the State; persons soliciting donations not involving any sales; and persons representing non-profit organizations. (Ord. 4, 2022)

5.06.020 Transient Merchant License required.

A. It shall be unlawful for any person to engage in the business of a transient merchant without obtaining a Transient Merchant License from the City in accordance with this Chapter or being sponsored as provided in Section 5.06.040.

B. A license application shall be filed with the City on forms furnished by the City, and shall provide the following information:

1. The name and address of the applicant and each employee or agent thereof, who will engage in business within the City.

2. A description of the nature of the business and goods or services offered, and the locations within Delta in which the business will be conducted.

C. Accompanying the application shall be an application fee as set by the City's annual fee schedule.

D. A surety bond in the amount of one thousand dollars (\$1,000) shall be submitted conditioned upon:

1. Compliance with all ordinances of the City, and statutes of the State, including payment of all City, County and State taxes and fees, and

2. Payment of any judgment rendered in favor of a resident or business of the City against the applicant or any of

his agents or employees, shall be submitted with the application.

Such bond shall remain in effect for a minimum period of nine (9) months beyond the expiration date of the transient merchant license issued to the applicant. The bond must be approved by the City Attorney prior to the issuance of the license. In lieu of a bond, the applicant may deposit one thousand dollars (\$1,000) in cash, to be held by the City upon the same conditions provided above, which amount shall be returned to the applicant following compliance with the above stated conditions.

E. Also submitted with the application shall be an instrument appointing the City Clerk as the true and lawful agent with full power and authority to acknowledge service of process for and on behalf of the applicant, and their agents or employees, upon a form to be provided by the City. If any process is served upon the City Clerk, the City shall send a copy of such process to the applicant at the address listed on the application by registered or certified mail. (Ord. 3, §4(part), 1987)

#### 5.06.030 Issuance of Transient Merchant License.

A. Following receipt of a properly completed application accompanied by a bond in an amount set by the City's annual fee schedule, appointment of agent for service of process, and the application fee, the City shall issue a Transient Merchant License for a term of one (1) year.

B. The license shall state the expiration date and describe the goods or services to be offered. The license shall contain a notice to customers that a bond has been filed with the City, including the amount of the bond, conditioned on compliance with all City ordinances and State laws, and the payment of any judgment rendered against the applicant in favor of a resident of the City, and that the City Clerk is the licensee's agent for service of process.

C. The applicant shall post a copy of the license at their place of doing business. The applicant and each employee or agent shall carry their copy of the license with them at all times, and produce it upon request to any customer, police officer, or other agent or employee of the City. (Ord. 3, §4(part), 1987; Ord. 4, 2022)

#### 5.06.040 Local sponsor in lieu of Transient Merchant License.

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A. In lieu of the provisions of Sections 5.06.020 and 5.06.030, a transient merchant may be sponsored by a merchant with an established place of business within the City who has paid City sales taxes without delinquency for the previous year.

B. The sponsoring merchant shall file a sponsor letter with the City, on forms provided by the City, in which the sponsoring merchant shall take responsibility for the business related acts of the transient merchant and each agent or employee thereof, and shall guarantee payment of all City, County and State taxes due or judgment rendered against the transient merchant as a result of the business, and shall act as the transient merchant's agent for service of process, and handling of warranty and customer complaints.

C. After approval of the sponsor letter by the City, the transient merchant may conduct the business described thereon. The applicant and each agent or employee shall carry a copy of the approved letter and produce it upon request of any police officer, employee or agent of the City, or any customer. A copy shall be posted at the transient merchant's place of business.

D. In addition to the provisions of subsections A, B and C of this Section, transient merchants participating in a civic event sponsored by a Delta County Civic Organization may be sponsored by such organization in lieu of the provisions of Sections 5.06.020 and 5.06.030 if

1. the sponsor has obtained a "Civic Event" sales tax license or if each transient merchant in the event has obtained any required individual sales tax license and

2. the City approves such sponsorship pursuant to this subsection. The sponsoring civic organization shall file a sponsor application with the City on forms provided by the City listing each transient vendor participating in the civic event and other information convenient for the administration of this provision. (Ord. 3, §3, 1988; Ord. 3, §4(part), 1987)

5.06.050 Transient Merchant License denial and revocation.

A. A Transient Merchant License may be denied or revoked if:

1. A license holder fails to comply with the applicable requirements of this Chapter.

2. Any information or representation on a license application is false, incorrect, or not promptly updated due to changed circumstance.

3. The licensed use, conduct, or activity causes or promotes violations of City, State, or federal laws or regulations, or constitutes an unreasonable public safety hazard.

4. Any person duly authorized to conduct business under the license is convicted of felony.

B. A Transient Merchant License may be revoked by City Council following notice and hearing. Notice of the hearing shall be either served upon the license holder in accordance with the Colorado Municipal Court Rules of Procedure or mailed, postage prepaid, to the license holder at the address set forth in the license application.

C. No license shall be issued to any applicant, or agent or employee thereof, for whom a license has been revoked, until at least one (1) year has elapsed since revocation. (Ord. 3, §4(part), 1987; Ord. 4, 2022)

5.06.060 Solicitation prohibited on private property. No solicitor or peddler shall enter or remain upon any private property without invitation if a "No Solicitation" or "No Trespassing" sign is present at or near the entrance of said property, or if the solicitor or peddler is asked to leave the property.

5.06.070 Solicitation Permit with ID badge required.

A. All peddlers and solicitors shall be required to complete an application, register all personnel engaged in peddling or soliciting within the City, obtain a Solicitation Permit with the City and pay a permit fee as set by the City's annual fee schedule.

B. All permit holders shall be required to obtain identification badges for all persons who will engage in commercial door-to-door solicitation on behalf of the permit holder. All permit holders will pay a fee for each identification badge issued as set by the City's annual fee schedule. It shall be the sole responsibility of the permit holder to:

1. Provide a copy of the permit to each person authorized to engage in commercial door-to-door solicitation under the permit.

2. Ensure that each person authorized to conduct commercial door-to-door solicitation under the permit complies with the terms and conditions of this Chapter.

3. Submit a Colorado Bureau of Investigations criminal background report for all persons authorized to conduct commercial door-to-door solicitation under the permit, dated not more than sixty (60) days from the date of submittal.

4. Instruct and require all peddlers or solicitors to prominently display the identification badge at all times while engaged in solicitation activities within the City.

5.06.080 Solicitation Permit denial and revocation. A Solicitation Permit may be denied or revoked if:

A. A permit holder fails to comply with the applicable requirements of this Chapter.

B. Any information or representation on a permit application is false, incorrect, or not promptly updated due to changed circumstance.

C. Anyone authorized to conduct commercial door-to-door solicitation under the permit has been found by the City to have engaged in any aggressive and/or deceptive tactics that is found to be a menace and/or detrimental to the health and welfare of the public.

D. No person or persons shall be eligible for a permit or identification badge if:

1. Such person has been released within the ten (10) years immediately preceding the application from any form of incarceration, court-ordered supervision, including a deferred sentence, resulting from conviction of any felony or Class 1 misdemeanor under the laws of the State of Colorado or an equivalent offense under any federal, state, county or municipal law; or

2. A corporation or individual operating as a d/b/a seeking a permit is not registered and in good standing with the Colorado Secretary of State.

E. A permit holder fails to procure all other applicable permits and licenses including sales and use tax licenses from the City and/or State.

5.06.090 Adjustment of fees. None of the fees provided for in this Chapter shall be so applied as to occasion an undue burden upon interstate commerce.

A. In any case where a license or permit fee is believed by the applicant to place an undue burden upon interstate commerce, the applicant may apply to City Council for an adjustment of fees.

1. Such application may be made before, at or within six (6) months after payment of the prescribed license or permit fee.

2. Upon receipt of such application, City Council will hold a hearing to consider any adjustment.

3. At the hearing, the applicant shall present testimony and evidence such as their method of business and the gross volume of business and such other information as City Council may deem necessary in order to determine the extent, if any, of such undue burden on such commerce.

4. Following the hearing, City Council shall determine whether the fee fixed by this Chapter is unfair, unreasonable, or discriminatory as to the applicant's business and shall fix the license or permit fee for the applicant in an amount that is fair, reasonable, and not discriminatory, or, if the fee has already been paid, issue a refund to the applicant.

5.06.100 Appeals. All appeals for denial of license/permit or revocation of a permit issued pursuant to this Chapter shall be heard by the City Manager. The City Manager's ruling on appeal shall be final. (Ord. 4, 2022)