

## CHAPTER 122

### 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 pushcarts, peddlers, solicitors and transient merchants

**122.02 DEFINITIONS.** Terms used in this chapter have the following meanings:

- 1. Peddler.** Any person who goes from house to house, from place to place, or from street to street conveying or transporting goods, non-potentially hazardous foods, wares or merchandise or exposing the same for sale, or making sales and delivering articles to purchasers. All potentially hazardous foods are prohibited from sale. If a vehicle or pushcart is used by a peddler for the sale of any food items, all requirements of this chapter relating to pushcarts, vehicles and foodstuffs shall be applicable.
- 2. Potentially Hazardous Food.** Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less.
- 3. Pushcart.** A non-motorized vehicle limited to serving non-potentially hazardous foods or commissary-wrapped food maintained at proper temperatures. A motorized vehicle shall not be considered a pushcart. All potentially hazardous foods are prohibited from sale.
- 4. Solicitor.** Any person who goes from house to house, from place to place, or from street to street soliciting or taking orders for sale of goods, non-potentially hazardous foods, wares or merchandise, including but not limited to magazines, books, photographs, periodicals, or personal property, for future delivery or for a service to be performed in the future. All potentially hazardous foods are prohibited from sale.

**5. Transient Merchant.** Any person who engages in a temporary business of selling and delivering goods, nonpotentially hazardous foods, wares or merchandise within the city who in furtherance of such purposes leases, uses or occupies any vehicle, trailer, tent, railroad car, or other place in the city for the exhibition and retail sale of such goods, wares or merchandise. All potentially hazardous foods are prohibited from sale. Transient merchant shall not include the temporary sale of goods, non-potentially hazardous foods, wares, or merchandise by a permanent merchant on private property adjacent to the merchant's permanent place of business. Said temporary sales shall not exceed 7 days in duration nor take place more than once every 30 days.

**6. Vendor.** Vendor shall include peddlers, solicitors and transient merchants.

### **122.03 LICENSE REQUIRED.**

1. No person shall engage in the business of pushcart operator or vendor in the city without license as provided in Chapter 122 of this code with the exception of those individuals and organizations identified in subsection (9) of this section. Only one natural person may engage in such activity under one license.

2. Each pushcart shall be separately licensed and may operate only at the location specified in the license as approved by the City Administrator or a duly authorized representative.

3. A pushcart license shall not be transferable from person to person nor from an approved location to another location without approval of the City Administrator or a duly authorized representative.

4. The City Administrator may revoke any license issued under this chapter where the licensee, in the application for the license or in the course of conducting his/her business has made fraudulent, false or incorrect statements, or has violated this chapter or has otherwise conducted his/her business in an unlawful manner. Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint, and the time and place of hearing. Such notice shall be mailed to the licensee at his last known address at least 5 days prior to the date set for hearing.

5. The city reserves the right, in the event public safety or congestion so requires, to limit the number of pushcarts to a maximum of one per block and/or a maximum number within the Business Commercial District. Licenses will be issued in the order of priority based on the first date and time the application is stamped received by the City Clerk.

6. Each pushcart operator and vendor shall obtain the necessary licenses and/or permits as may be required by the county, state, or federal governing bodies. All applicants shall comply with all applicable county, state or federal laws, rules and regulations.

7. Each transient merchant shall prominently display his/her license at all times while engaging in a temporary business of selling and delivering goods, nonpotentially

hazardous foods, wares, or merchandise within the city.

8. The license issued pursuant to this chapter is to be carried at all times by the licensee when he/she is engaged in the particular activity for which the license was issued and shall, upon the request of customers or city employees, exhibit the license as evidence of compliance with all requirements of this chapter.

9. This chapter shall not apply to the selling of personal property at wholesale to dealers in such articles; to newsboys; to merchants or their employees in delivering goods in the regular course of business, to drug retail persons calling on physicians, pharmacists and hospitals; to vendors of milk and other products distributed or sold to regular customers on established routes; to local residents and farmers who offer for sale their own produce and selling as a sole proprietor; or to nonprofit organizations defined and authorized by Chapter 504A of the Iowa Code or authorized and organized under statutes or regulations of the United States government, or approved by the Internal Revenue Service; churches, public and private schools and colleges that are located in Guthrie County, Iowa; nonprofit clubs and lodges when not ordinarily conducted as a business that do not meet the requirements of Chapter 504A of the Iowa Code and are located in Guthrie County, Iowa. This chapter does not prohibit any auction sales required by statute or by order of any court, or prohibit any auction sales conducted pursuant to law. This section does not exempt any of the above-cited individuals, groups and/or organizations from meeting the requirements of Section 122-05(2).

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

1. Applicant for a license under this chapter shall file with the City Clerk a sworn application in writing which shall give the following information.

- a. Name and physical description of applicant;
- b. Permanent home address and also the local address of applicant;
- c. A brief description of the nature of the business and the goods to be sold;
- d. Proposed location, address, route, and/or area in which the business is to be operated;
- e. The name and address of employer, if any;
- f. The length of time for which the right to do business is desired;
- g. If employer is a corporation, the state of its incorporation, whether it is authorized to do business in Iowa, and evidence that the corporation has designated a resident agent in the city upon whom legal service may be made and that the corporation will be responsible for the acts of its employees in the city;
- h. A statement as to whether or not applicant has been convicted of any crime,

misdemeanor, or violation of any municipal ordinance other than a traffic violation, the nature of the offense and the penalty imposed;

i. The last municipalities, not exceeding 3, where applicant carried on business immediately preceding date of application and the addresses from which such business was conducted in those cities.

2. In determining whether a license under this chapter should be granted or denied the following standards shall be taken into consideration:

a. If the proposed activity is likely to cause undue congestion of a public area.

b. If the applicant has had an unreasonable number of complaints for misrepresentation, fraud, or selling defective merchandise.

c. If the applicant has been convicted of a violation of a similar ordinance within the last 6 months.

d. If the applicant has been convicted within the last 5 years of any public offense relating to fraud or misrepresentation.

e. If the proposed activity is likely to cause excessive or unusual noise.

#### **122.05 LOCATION RESTRICTIONS.**

1. The pushcart shall be so situated as to be in conformance with all applicable restrictions and ordinances of the city and specifically approved by the City Council or by a duly authorized representative.

2. No person, firm, corporation, or other organization shall sell, display, or otherwise offer for sale any merchandise or other materials on any sidewalk, street, public right-of-way, or other public property without first obtaining approval by the City Council or by a duly authorized representative. Application for such license shall be made in writing to the City Clerk. Said application along with the appropriate department reports shall then be forwarded to the City Council or to a duly authorized representative for action to approve or disapprove.

3. Persons, firms, corporations or other organizations having valid contracts with the City of Panora authorizing activities hereinbefore described in subsection (2) above are excepted from the terms of said paragraph for the activities specifically authorized in the contract.

4. The City Council reserves the right to require the relocation of any licensed pushcart or transient merchant to a new location in the event public safety or congestion so requires, based on the discretion of the Council.

5. No transient merchant shall be permitted to operate from one location for more than 7

consecutive days and no other transient merchant shall be permitted to operate another business at that location within the immediate 30 days following the previous transient merchant.

6. The City Council may by resolution, following a request by a pushcart operator, vendor or permanent merchant, grant exceptions to the time constraints of Section 122.02(5) and the license requirements of Section 122.05 based upon just cause.

7. All pushcart operators and vendors shall comply with all requirements of the City of Panora Zoning Ordinance (Chapter 165, Municipal Code, City of Panora), except that transient merchants shall not be required to provide off-street parking facilities as required by Section 165.28(8) of the City of Panora Zoning Ordinance, however, if off-street parking facilities are provided the design and maintenance of said facilities shall be in accord with the specifications and standards set forth in Section 165.28(8) of the City of Panora Zoning Ordinance.

8. No vendor vending from a motor vehicle shall conduct his/her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay, or constitute a hazard to traffic, life, or property, or an obstruction to adequate access to fire, police, sanitation, or emergency vehicles. Furthermore, no vehicle shall remain in any one place for a period longer than necessary to make a sale after having been approached or stopped for that purpose.

**122.06 PERMANENT LOCATION (HOME BASE).** Every pushcart licensee shall maintain a permanent location within the City of Panora for the storage and preparation of food and beverages carried by the licensee's food carts, and for the cleaning and servicing of carts. Such permanent location shall not be located in any Residential Zoning District as defined in Section 165.24 of the City of Panora Zoning Ordinance unless conforming to all requirements of the Home Occupation Section of the Zoning Ordinance being Section 165.05 of the Municipal Code. Such permanent location shall comply in all respects with requirements of the U.S.D.A. Food and Drug Administration Food Service Sanitation Ordinance passed in 1976, amended in 1981, and as may be amended hereafter. Each pushcart shall return to the permanent location at least once daily for cleaning and servicing. Said location shall be identified in writing to the city, and shall be accessible for inspection.

**122.07 PUSH CART DIMENSIONS.** No pushcart shall have dimensions exceeding 4 feet in width, 8 feet in length, and 8 feet in height. All pushcarts must be aesthetically pleasing in appearance, and shall be maintained in a neat and orderly fashion. Each pushcart shall be capable of being moved and kept under control by one person traveling on foot. The City Administrator may grant a special license to a handicapped person to operate a pushcart propelled by an electric motor, providing that the applicant meets all other conditions for a license. During transit of the pushcart (whether it be towed by vehicle, carried by trailer, or pushed by hand) the pushcart operator shall be subject to all of the duties applicable to the driver of a motor vehicle as provided by law except as to the provisions which by their very nature can have no application.

**122.08 F.D.A. STANDARD FOR PUSHCART OPERATORS AND VENDORS.** Each pushcart operator and vendor shall meet U.S.D.A.-F.D.A. Food Service Sanitation Ordinance standards and Iowa Department of Agriculture Food Service Sanitation Code for food storage, preparation and dispensing.

**122.09 - HAND WASHING FACILITIES.** Each pushcart operator and vendor shall provide hand washing facilities for the employees of the licensee when required by U.S.D.A.-F.D.A. regulations.

**122.10 - WASTE RETENTION AND REFUSE DISPOSAL.** Each pushcart operator and vendor shall provide a waste retention tank when required by U.S.D.A.-F.D.A. regulations. All waste liquids, garbage, litter and refuse shall be kept in leak proof, nonabsorbent containers which shall be kept covered with tight fitting lids and properly disposed of at the permanent location. No waste liquids, garbage, litter or refuse shall be dumped or drained onto sidewalks, streets, gutters, drains, trash receptacles or any other place except at the permanent location of a pushcart. When leaving the sales area the licensee or his employees shall pick up all litter resulting from his business and shall deposit such litter in an (U.S.D.A.-F.D.A. ordinance) approved container located on his cart. Failure to do so shall be grounds for license revocation and initiation of action on such bonds required in Section 122.13.

**122.11 SIGN DISPLAYING NAME OF OWNER.** Affixed permanently and prominently to each pushcart shall be a sign no smaller than 12 inches by 12 inches displaying the name, address and telephone number of the pushcart owner.

**122.12 LIST OF APPROVED FOOD AND BEVERAGE ITEMS.** The U.S.D.A. Food and Drug Administration has published laws and regulations regarding approved food and beverage items which may be sold by pushcart operators and vendors. No items of any kind, other than those food and beverage items allowed in the U.S.D.A.—F.D.A ordinance shall be sold or dispensed by pushcart operators and vendors.

**122.13 BOND.** An applicant for a license under this chapter shall file with the City Clerk a surety bond in the amount of \$1,000, conditioned that the applicant shall comply fully with all ordinances of the city and laws regulating pushcart operators and vendors, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representation of the licensee, said bond to continue in force as to such surety for not less than one year from the date of execution of such agreement. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given. In lieu of the requirements of this section, an applicant for a license under this chapter may provide proof of insurance as set out in section 122.14

**122.14 INSURANCE.** Each pushcart licensee shall provide proof of general liability insurance, including products liability coverage, in the amount of \$1,000,000 or more per occurrence and \$1,000,000 for property damage. All other licensees shall provide proof of general liability insurance including products liability in the amount of \$300,000 per occurrence and \$100,000 for property damage. A certificate of insurance shall be delivered to the City Clerk prior to the issuance of a license. The City of Panora and its employees shall be named as additional

insured's against any liabilities that may arise in connection with the operations of the licensees.

**122.15 FEES.**

1. License fees for pushcarts under this chapter are as follows: \$10 per day, or \$60 per month, or \$300 per year. Fees for all other licenses issued under this chapter are as follows: \$10 per day, \$25 per week, \$50 per month, or \$150 per year.
2. Fees will not be prorated or refunded unless the license is revoked by the City Administrator or duly authorized representative.

**122.16 LIGHTS AND NOISE MAKERS.** No pushcart operator or vendor, nor anyone in his behalf shall shout, make any outcry, blow a horn, or use any other sound device including any loud speaking radio or amplifying system for the purpose of attracting attention to any goods, wares or merchandise which such pushcart operator or vendor proposes to sell.

**122.17 HOURS OF OPERATION.** No pushcart operator or vendor shall operate before 8:00 a.m. nor after 9.00 p.m. on any day unless specifically approved by the City Administrator or duly authorized representative.

**122.18 ADVERTISING.** No advertising other than that specifically relative to the products being sold on the pushcart shall be placed on the cart.

**122.19 DUTY OF POLICE TO ENFORCE.** It shall be the duty of the police officers of the City of Panora to examine all places of business or persons in their respective territories subject to the provisions of this chapter, to determine if this chapter has been complied with and to enforce the provisions of this chapter against any person found to be violating the same.