

ORDINANCE NO. 2331

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, DECLARING THE DOCUMENT ENTITLED THE “2011 AMENDMENTS TO THE CODE OF GILBERT, CHAPTER 14 BUSINESSES, ARTICLES I THROUGH VI” AS A PUBLIC RECORD; AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 14 BUSINESSES, ARTICLE I IN GENERAL, SECTIONS 14-1 DEFINITIONS, 14-2 DELEGATION OF AUTHORITY, 14-3 VIOLATION OF CHAPTER, 14-5 PROHIBITED BUSINESS LOCATIONS, AND 14-6 DELINQUENT FEES; AMENDING ARTICLE II BUSINESS LICENSES, BY AMENDING SECTIONS 14-36 REQUIRED; EXEMPTIONS, 14-37 SEPARATE LICENSES REQUIRED FOR SEPARATE LOCATIONS, 14-38 APPLICATION AND FEE; ISSUANCE, 14-39 EMPLOYER SANCTIONS ACT COMPLIANCE, 14-40 MISTAKE; COLLECTION OF CORRECT AMOUNT, 14-42 DISPLAY; IDENTIFICATION; PERMISSION OF PROPERTY OWNER; EXHIBITION UPON DEMAND, 14-44 DENIAL AND REVOCATION OF LICENSES; HEARING, AND BY REPEALING SECTION 14-41 RIGHT OF ENTRY ALL RELATED TO THE REQUIREMENT THAT PERSONS ENGAGING IN ANY BUSINESS WITHIN THE TOWN FROM A FIXED LOCATION OBTAIN A BUSINESS LICENSE, PROVIDING FOR EXEMPTIONS, SETTING FORTH AN APPLICATION PROCESS AND APPEALS OF DENIALS OR REVOCATIONS OF BUSINESS LICENSES, AND PROVIDING FOR THE ESTABLISHMENT OF FEES; REPEALING ARTICLE IV ROADSIDE SALES AND ARTICLE V EDIBLE FOODSTUFFS VENDORS; AMENDING ARTICLE VI PEDDLERS AND SOLICITORS BY RENAMING IT AS “TRANSIENT MERCHANTS”, AND AMENDING SECTIONS 14-166 DEFINITIONS, 14-167 EXEMPTIONS, 14-168 LICENSE, 14-169 USE OF LOCATION, 14-170 UNLAWFUL NOISE, AND 14-171 SIGNS PROHIBITING PEDDLING ALL RELATED TO THE REGULATION OF TRANSIENT MERCHANTS IN THE TOWN, PROVIDING FOR EXEMPTIONS, AND REQUIRING A BUSINESS LICENSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY; AND PROVIDING PENALTIES.

BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

That certain document known as the "2011 Amendments to the Code of Gilbert, Chapter 14 Businesses, Articles I through VI" three copies of which shall remain on file in the office of the Town Clerk, is hereby declared to be a public record.

The Code of Gilbert shall be amended by adopting by reference that public record entitled the "2011 Amendments to the Code of Gilbert, Chapter 14 Businesses, Articles I through VI" which document is hereby adopted and incorporated by reference.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Civil Sanctions.

Any person found responsible for violating this section shall be subject to the civil sanctions and habitual offender provisions set forth in Section 1-5 of the Gilbert Municipal Code.

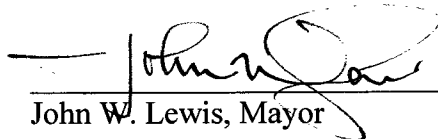
PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 23rd day of June 2011, by the following vote:

AYES: Cook, Cooper, Daniels, Lewis, Petersen, Ray

NAYES: None ABSENT: Sentz

EXCUSED: None ABSTAINED: None

APPROVED this 23rd day of June 2011.



John W. Lewis, Mayor

ATTEST:

for Susan Roberts, Deputy
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

Susan D. Goodwin
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By Susan D. Goodwin

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE
AND CORRECT COPY OF THE ORDINANCE NO. 2331 ADOPTED BY THE
COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 23rd DAY OF JUNE 2011,
WAS POSTED IN FOUR PLACES ON THE 24 DAY OF June, 2011.

for Susan Roberts, Deputy
Catherine A. Templeton, Town Clerk

**2011 AMENDMENTS TO THE CODE OF GILBERT, CHAPTER 14
BUSINESSES, ARTICLES I-VI**

ARTICLE I. IN GENERAL

Sec. 14-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this ~~section~~ CHAPTER, except where the context clearly indicates a different meaning:

Business means those activities or acts, ~~personal, or corporate,~~ engaged in or caused to be engaged in with the object of gain, benefit or advantage, OR CONSIDERATION either directly or indirectly; and shall include any trade, game or amusement, calling, profession, occupation, ~~delivery of products~~ or performance of services WHETHER ENGAGED IN FOR PROFIT OR NOT FOR PROFIT.

CASUAL ACTIVITY MEANS A TRANSACTION OF AN ISOLATED NATURE MADE BY A PERSON WHO NEITHER REPRESENTS HIMSELF TO BE NOR IS ENGAGED IN A BUSINESS FOR WHICH A LICENSE IS REQUIRED. THE SALE, RENTAL, LICENSE FOR USE, OR LEASE TRANSACTION CONCERNING REAL PROPERTY IS NOT A CASUAL ACTIVITY.

Conduct means to commence, manage, own, solicit, canvass, practice, transact, engage in or carry on.

Consideration means payment, reward or anything regarded as a return given or suffered by one for the act or promise of another.

Engaging means ~~the exercise of corporate or franchise powers~~ CARRYING ON OR CONDUCTING.

License means a business license required by ~~this~~ ARTICLE II OF THIS chapter.

Moral turpitude means any of the following offenses: Prostitution or solicitation of prostitution; dissemination of obscenity; sale, distribution of harmful material to a minor; sexual performance of a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; distribution of a controlled substance; or any offenses similar to those described above under the criminal or penal code of other states.

Operator means any person on the business premises who plays a significant role in managing or operating the business. A person may be an "operator" even if not an owner, part owner or licensee of the business.

Sec. 14-2. Delegation of authority.

The development services ~~manager~~ DIRECTOR, as delegatee of and on behalf of the town clerk, shall administer the provisions of this chapter.

Sec. 14-3. Violation of chapter.

(a) Any person found to be in violation of this chapter is responsible for a civil violation subject to the penalty provisions set forth in section 1-5, including provisions governing habitual offenders; provided however, persons who violate article XI, Massage; article XII, Sexually oriented businesses; and article XIII, Escorts and escort services shall be guilty of a class one misdemeanor. The conduct of any business in violation of this chapter shall constitute a separate violation for each and every day that such business is conducted.

(b) The development services ~~manager~~ DIRECTOR, the code compliance manager and the town prosecutor may cause complaints to be filed against persons violating any of the provisions of this chapter.

(c) The clerk of the court shall report to the development services ~~manager~~ DIRECTOR all convictions or violations of this section. The development services ~~manager~~ DIRECTOR shall maintain a record for each license issued and record the reports of violations therein.

Sec. 14-4. Conviction not to excuse nonpayment of fee.

The finding of responsibility for a civil violation or the conviction of any person for conducting business without a license, as required under this chapter, shall not excuse or exempt such person from the payment of any license fee or penalty due and unpaid at the time of such conviction.

Sec. 14-5. Prohibited business locations.

(a) No person shall conduct business within the town in any structure or area where conducting such business is prohibited by the town zoning code or is otherwise prohibited by fire or building code regulations.

(b) No person shall conduct business within a public park without obtaining a permit from the parks and recreation director. ~~A license is not required for such business.~~

Sec. 14-6. Delinquent fees.

When any license fee provided for under this chapter remains unpaid for ~~20~~ 30 days after it is due, the license fee shall become delinquent, and the development services ~~manager~~ DIRECTOR shall REFER THE MATTER TO THE CODE COMPLIANCE OFFICER

TO verify that the business is still operating, AND IF SO, HE SHALL PROCEED WITH ENFORCEMENT PROCEEDINGS. ~~If the business is still operating, the development services manager shall refer the matter to the town prosecutor for enforcement.~~

Sec. 14-7. Civil court action.

In any action brought under or arising out of any of the provisions of this chapter, the fact that the defendant is a person who conducted a business for which a license is required by this chapter, or exhibited a sign, business card or other advertisement indicating such business, shall be prima facie evidence of the liability of such defendant to obtain a license and pay a license fee under this chapter.

Sec. 14-8. Form of notice.

Any notice sent by the town related to denial, suspension, revocation or modification of a license under this chapter shall be in writing, and shall be sent by certified mail, postage prepaid, to such person at his last known address as identified in the application or license on file in town records.

ARTICLE II. BUSINESS LICENSES

Sec. 14-36. Required; exemptions.

(a) ~~Unless exempted by subsection (de) of this section, it shall be unlawful for any person to conduct any of the following businesses within the town without a license. ALL PERSONS ENGAGING IN ANY BUSINESS WITHIN THE TOWN FROM A FIXED LOCATION, EXCEPT FOR THOSE EXEMPTED BY SUBSECTION (Ef) OF THIS SECTION, SHALL OBTAIN A LICENSE PURSUANT TO THIS ARTICLE AND PAY A YEARLY LICENSE FEE ADOPTED BY THE COUNCIL BY RESOLUTION.~~

~~Adult bookstore~~

~~Adult store~~

~~Adult theater~~

~~Alcoholic beverages dealer~~

~~Bathhouse~~

~~Edible foodstuff vendor~~

~~Escort bureau or escort bureau runner~~

~~Introductory service~~

~~Junk collector or junk dealer~~

~~Massage therapy establishment~~

~~Pawnbroker or pawnshop~~

~~Peddler or solicitor~~

~~Roadside sales~~

~~Secondhand dealer~~

(b) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (a), TRANSIENT MERCHANTS AND OWNERS OF COMMERCIAL RENTAL PROPERTIES

LOCATED IN THE TOWN SHALL OBTAIN A BUSINESS LICENSE IN ACCORDANCE WITH THIS ARTICLE AND ARTICLE VI.

(c) ALL LICENSES SHALL BE ISSUED FOR A PERIOD OF ONE YEAR AND SHALL BE VALID FROM THE DATE OF ISSUANCE UNTIL THE ONE YEAR ANNIVERSARY OF SUCH ISSUANCE, WHEN THEY MAY BE RENEWED; PROVIDED, THAT NO LICENSE SHALL BE RENEWED UNLESS THE LICENSEE CONFORMS WITH THE PROVISIONS OF THIS ARTICLE. LICENSES ISSUED UNDER THIS ARTICLE SHALL NOT BE TRANSFERABLE FROM ONE PERSON TO ANOTHER PERSON. BUSINESSES WITH A VALID BUSINESS REGISTRATION ISSUED PURSUANT TO SECTION 66-177 PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE SHALL OBTAIN A LICENSE UPON EXPIRATION OF THE BUSINESS REGISTRATION.

(d) All ~~businesses~~ PERSONS required to be licensed pursuant to this chapter shall, as a condition of the license, comply with the town zoning code and all other applicable codes and ordinances of the town, all requirements of law and the requirements of this chapter.

(ee) The issuance of a license is not deemed evidence or proof that the licensee has complied with the provisions of this chapter, nor shall it prevent prosecution by the town for any violation of this chapter.

(df) A license shall not be required when:

(1) The general law of the state precludes ~~levying~~ REQUIRING a license for the business; OR

(2) The business is conducted as an agency or department of the United States government for which such government has failed to make provisions allowing states and municipalities to license it; or

(3) The business is the sale of food products by an owner, proprietor or tenant of agricultural lands, orchards, farms and gardens on which such food products are grown, raised or prepared for market; OR

(4) EXCEPT FOR TRANSIENT MERCHANTS, THE PERSON CONDUCTING THE BUSINESS IS AN EMPLOYEE OF ANY BUSINESS EITHER POSSESSING A LICENSE OR EXEMPT FROM HAVING TO POSSESS A LICENSE; OR

(5) NEWSPAPER CARRIERS DELIVERING AND SELLING NEWSPAPERS FROM HOUSE TO HOUSE OR BUSINESS TO BUSINESS, STUDENTS ON SCHOOL CLASS PROJECTS, NOR TO ACTS OF MERCHANTS OR THEIR EMPLOYEES IN DELIVERING GOODS IN THE REGULAR COURSE OF BUSINESS; OR

(6) THE ACTIVITY IS A CASUAL ACTIVITY.

Sec. 14-37. Separate licenses required for separate locations.

A separate license shall be required for each branch or separate location of the same business. A separate license shall be required for each business conducted in the same location. Each license issued shall authorize the person obtaining it to conduct only the business described in such license and only at the location or place of business described in such license. A CHANGE OF LOCATION OR OWNERSHIP SHALL NECESSITATE A NEW LICENSE APPLICATION.

Sec. 14-38. Application and fee; issuance.

(a) All applications shall be submitted to the development services ~~manager~~ DIRECTOR. Upon applying for a business license, every applicant shall:

(1) Pay a nonrefundable ~~application fee and a~~ license fee in an amount established by the council by resolution. ~~The license fee will be refunded if the license is denied~~

(2) Complete an application providing the following information: Business trade name, address of business, business mailing address, business owner, ~~home street address,~~ ~~home,~~ ~~telephone number,~~ business telephone number, exact nature of the business, number of employees, ~~driver's license and/or date of birth,~~ date the business will begin in the town, signature of the applicant certifying the statements to be true and correct, and title of the applicant. THE DEVELOPMENT SERVICES DIRECTOR MAY REQUIRE ADDITIONAL INFORMATION NECESSARY TO COMPLY WITH THIS CHAPTER.

(b) The development services ~~manager~~ DIRECTOR shall submit the COMPLETE application to the code compliance manager and other appropriate town departments for review and approval. The application shall be approved or denied within 30 days from the date on the application ~~for a standard application, or within 65 days for any specialized application as described in subsection 14-38(d).~~ If the application is not approved or denied PURSUANT TO SECTIONS 14-39 OR 14-44 within the applicable review period, ~~including completion of any required inspections~~ the reviewing official shall be deemed to have approved the application. Approval by the code compliance manager or other town department to which the application has been referred shall not prevent the application from being denied for other reasons. THIS DEADLINE MAY BE EXTENDED IF THE APPLICANT HAS NOT COMPLIED WITH APPLICABLE REQUIREMENTS FOR ISSUING THE LICENSE.

(c) The development services ~~manager~~ DIRECTOR shall prepare and issue a license to every person required to obtain a license, who is eligible to be licensed under this chapter. The development services ~~manager~~ DIRECTOR shall state in each license the period of time covered by the license, the name of the person to whom the license is issued, the name of the business licensed, and the location where such business is to be conducted.

(d) An applicant for an adult bookstore, adult store, adult theater, escort bureau or escort bureau runner, massage therapy establishment, or operator of a sexually-oriented business also shall submit the following personal information for applicant, operators, and/or employees:

- (1) The full true name of the person and any other names used during the previous five years.
- (2) Proof of the person's age, such as a driver's license, passport or birth certificate coupled with a governmental photo identification document.
- (3) Two portrait photographs of the person, at least two inches by two inches in size, taken within the previous six months.
- (4) A set of fingerprints suitable for conducting background checks must be made by the town police department. The applicant is responsible for making an appointment with the police department and paying any applicable fee at the time fingerprints are taken.

Sec. 14-39. Employer Sanctions Act compliance.

(a) The Arizona Employer Sanctions Act (Laws 2007, Chapter 279) ~~restricts the town's authority to issue business licenses to those applicants lawfully present in the United States.~~ **REQUIRES SPECIFIC DOCUMENTATION TO ISSUE A LICENSE IF THE BUSINESS OWNERSHIP TYPE IS IDENTIFIED AS AN INDIVIDUAL, SOLE PROPRIETORSHIP OR HUSBAND AND WIFE BUSINESS.** Unless the applicant is exempt as described in subsection (b) below, the town may not issue a business license to an individual, SOLE PROPRIETORSHIP OR HUSBAND AND WIFE BUSINESS unless that individual presents any one of the following documents **IS PRESENTED:**

- (1) Arizona driver license issued after 1996 or an Arizona nonoperating identification license;
- (2) Driver license issued by any state that verifies lawful presence in the United States;
- (3) Birth certificate or delayed birth certificate issued in any state, territory, or possession of the United States;
- (4) United States certificate of birth abroad;
- (5) United States passport;
- (6) Foreign passport with a United States visa;
- (7) Form I-95 with a photograph;
- (8) United States citizenship and immigration services employment authorization

document or refugee travel document;

(9) United States certificate of naturalization;

(10) United States certificate of citizenship;

(11) Tribal certificate of Indian blood; or

(12) Tribal or Bureau of Indian Affairs affidavit of birth.

(b) If all of the following apply, an individual is exempt from the requirement that he present one of the documents listed in subsection (a) above, prior to being issued a business license:

(1) The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country; and

(2) The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

(c) The application shall be denied if the applicant cannot provide satisfactory proof that he is authorized to hold a business license pursuant to the Employer Sanctions Act

Sec. 14-40. Mistake; collection of correct amount.

In no case shall any mistake made by the development services ~~manager~~ DIRECTOR in stating, fixing or collecting the amount of any license fee prevent or prejudice the town from collecting the correct amount due as provided in this chapter. IF THE TOWN HAS COLLECTED MORE THAN THE REQUIRED LICENSE FEE, THE TOWN SHALL REFUND THE OVERPAYMENT WITHIN 60 DAYS FROM THE DISCOVERY OF SUCH OVERPAYMENT.

Sec. 14-41. ~~Right of entry.~~ RESERVED

~~The code compliance manager, police officers and development services manager shall have and exercise the power to enter, free of charge, during normal business hours, any location or place of business for which a license is required by this chapter, and to demand the exhibition of the license for the current term from any person conducting such business.—Denial of the right of entry by any person conducting a business for which a license is required under this chapter shall be a civil violation.~~

Sec. 14-42. Display; identification; permission of property owner; exhibition upon demand.

(a) Every person having a license under the provisions of this chapter and conducting a business at a fixed location shall keep such license openly posted and exhibited in a

conspicuous part of such location, OR IF THE BUSINESS IS A HOME OCCUPATION, SHALL PRESENT SUCH LICENSE WHENEVER REQUESTED TO DO SO BY THE DEVELOPMENT SERVICES DIRECTOR, ANY POLICE OFFICER OR THE CODE COMPLIANCE MANAGER.

~~(b) Every person having such a license and not having a fixed location shall carry such license and personal identification at all times while conducting such business for which the license was granted.~~

~~(c) Except for peddlers and solicitors, eEvery person having a license and not having a fixed location shall also carry with him at all times while conducting such business the written permission of the property owner for use of the property, IF APPLICABLE.~~

~~(d)~~ (b) Every person having a license under the provisions of this chapter AND NOT HAVING A FIXED LOCATION SHALL CARRY WITH HIM AT ALL TIMES AND shall produce and exhibit such license and, where applicable, written permission OF THE PROPERTY OWNER FOR USE OF THE PROPERTY and personal identification, whenever requested to do so by the development services ~~manager~~ DIRECTOR, any police officer or the code compliance manager.

Sec. 14-43. Other certificates or permits required.

(a) When any business is required by federal, state, county or local law to obtain any other permit, license, certificate, or examination, a license shall not be issued until the applicant produces proof of such permit, license, certificate or examination including a use permit required by the town zoning code or any permit, license, certificate or examination required by various health departments, as provided in A.R.S. Title 36.

(b) Obtaining any permit, license, certificate or examination required by federal, state, county or local law shall be the sole responsibility of the applicant.

(c) The issuance of a license under this chapter shall not be evidence that the town knew or should have known that another permit, certificate, or examination was required or was otherwise improperly issued.

Sec. 14-44. Denial and revocation of licenses; hearing.

(a) Licenses required under this chapter may be denied, modified, suspended or revoked by the development services ~~manager~~ DIRECTOR after notice and hearing before the town manager for any of the following causes:

(1) Fraud, misrepresentation of false statement contained in the application for license.

(2) Any violation of this chapter or failure to meet any licensing requirements, including timely payment of fees.

- (3) Conducting a business in violation of any federal, state, county or local law.
- (4) The licensee is convicted of untrue, fraudulent, misleading or deceptive advertising.
- (5) The licensee is a corporation and is no longer qualified to transact business in the state.
- (6) FAILURE TO PAY ANY FEE REQUIRED TO BE PAID AT THE TIME OF ISSUANCE OR RENEWAL OF A LICENSE.
- (7) Failure to provide the information required by section 14-39.
- (b) Notice of a hearing shall be mailed to the licensee by the town manager, setting forth specifically the grounds of complaint and the time and place of hearing.
- (c) The town manager shall issue a written decision and mail notice thereof within ten days after the hearing, setting forth the findings and grounds for the decision, to the applicant/licensee.

Sec. 14-45. Appeal.

- (a) Any person aggrieved by the denial, modification, suspension, or revocation of a license under this chapter shall have the right to appeal to the council. The appeal shall be filed with the clerk no later than 14 days after the town manager's decision has been mailed to the person, and shall consist of a written statement fully describing the grounds for appeal.
- (b) The clerk shall set a time and place for a hearing before the council on such appeal, to be held within 30 days from the filing date of the appeal. Notice of such hearing shall be mailed by the clerk, to the appellant setting forth specifically the time and place of the hearing.
- (c) The decision of the council on appeal shall be final, except any person aggrieved may appeal the decision to superior court.
- (d) Any non-renewed or revoked license shall be surrendered to the development services ~~manager~~ DIRECTOR on demand at the expiration of the appeals process.

Sec. 14-46 Interim licenses.

- (a) A licensee may obtain an interim license to conduct business operations pending its appeal to the town council pursuant to subsection 14-45(a) or to a court pursuant to subsection 14-45(c). An application for an interim license may be submitted to the development services ~~manager~~ DIRECTOR, along with a copy of the notice of appeal. The development services ~~manager~~ DIRECTOR will issue an interim license within one

business day of receipt of the foregoing materials. No fee will be charged for an interim license.

(b) If a business has been issued an interim license and this chapter also requires the operator of the business to have an operator license, an operator may obtain an interim license pending the town's decision to issue a final operator license, or pending the town's decision to deny, modify, suspend or revoke the operator license, as the case may be. The interim operator license is only valid with respect to operations at the identified business, and its sole purpose is to allow such business to remain open for business pending the outcome of the appeal.

(c) An interim license does not constitute permission to violate laws or create a public nuisance. A business premises may be immediately closed if it constitutes an immediate threat or danger to public health and safety or property, pursuant to applicable building, fire, health and safety regulations or as determined by the court.

(d) An interim license automatically expires upon the final disposition of the appeal and shall be surrendered to the development services ~~manager~~ DIRECTOR within ten days thereafter.

Sec. 14-47. Re-application for license.

No person may apply for a license under this chapter within one year from the ~~denial or~~ revocation of any such license.

ARTICLE III. RESERVED

ARTICLE IV. ~~ROADSIDE SALES~~ RESERVED

~~Sec. 14-106. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Roadside sales* means the sale of any produce, product or merchandise, other than prepared food, on private property and not at a fixed location.~~

~~Sec. 14-107. License required.~~

~~It shall be unlawful for any person to conduct a roadside sale in the town without first obtaining and maintaining in effect a license.~~

~~Sec. 14-108. Special requirements.~~

~~(a) *Location.* Roadside sales shall be set up in one location only at any one time. The roadside sale business shall not repeat the same location more than one time in any seven day period. Roadside sales shall not be conducted in the public right of way.~~

~~(b) *Seller's identity and authorization.* Every person conducting a roadside sale shall carry with him at all times while conducting the business his license, personal identification and the written permission of the property owner for use of the property.~~

~~(c) *Validity of license; renewal.* The license shall be valid for one month, but may be renewed at the request of the licensee so long as the licensee remains in compliance with requirements of this chapter.~~

ARTICLE V. ~~EDIBLE FOODSTUFFS VENDORS~~ RESERVED

~~Sec. 14-136. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Edible foodstuffs vendor* means any person who conducts the business of selling edible foodstuff by foot, cart, wagon, automobile or any other type of conveyance from place to place, from house to house, from street to street or business to business and regulated by the county health department. Edible foodstuffs vendor includes hot dog stands, sandwich wagons, ice cream trucks and similar businesses, but shall not include food producers described in subsection 14-36(d)(3).~~

~~Sec. 14-137. License required.~~

~~It shall be unlawful for any person to conduct a business of edible foodstuffs without first obtaining and maintaining in effect a license~~

~~Sec. 14-138. Use of location.~~

~~It is unlawful for any licensee under this article to conduct business:~~

~~(1) In the traveled portions of a public right of way or have any exclusive right to any location in a public right of way.~~

~~(2) In a stationary location upon any public or private property unless the location is on improved property, adjacent to an occupied business, and the operator has written permission from the business owner or manager and property owner, with hours of operation restricted to the business hours of the adjacent business. The use shall not interfere with or prevent compliance with other town codes, state and federal requirements for access by persons with disabilities and shall not impede access to any~~

adjacent use. For the purpose of this section a stationary location shall mean the same location or within 300 feet of the same location for longer than one hour.

~~(3) Within 300 feet of a public school ground. This provision shall not apply to school grounds where such vendors have obtained permission in writing from the school superintendent or his designee.~~

~~(4) Within a public park or within 300 feet of a public park, and then only if the vendor has obtained a permit from the community services director. A license is not required for operation within a park and permission.~~

~~(5) In any congested area where the business might impede or inconvenience the public and, for the purposes of this section, the judgment of a police officer, exercised in good faith, shall be deemed congested or the public impeded or inconvenienced.~~

ARTICLE VI. ~~PEDDLERS AND SOLICITORS~~ TRANSIENT MERCHANTS

Sec. 14-166. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

SEASONAL SALES MEANS THE SALE OF MERCHANDISE RELATED TO A RECOGNIZED STATE HOLIDAY OR SEASONAL EVENT, INCLUDING BUT NOT LIMITED TO CHRISTMAS TREE SALES, PUMPKIN SALES AND SALES OF PERMISSIBLE CONSUMER FIREWORKS WHEN OFFERED FOR SALE IN CONJUNCTION WITH A STATE HOLIDAY OR SEASONAL EVENT.

SPECIAL EVENTS VENDOR MEANS A VENDOR SELLING OR OFFERING FOR SALE MERCHANDISE AS PART OF A SPECIAL EVENT IN ACCORDANCE WITH CHAPTER 15.

~~*Peddler*~~ *TRANSIENT MERCHANT* means any person who conducts the business of COLLECTION, SALE, SOLICITATION OR TAKING OF ORDERS FOR FUTURE DELIVERIES OF goods, wares, OR merchandise, INCLUDING BUT NOT LIMITED TO, intangibles, prepackaged OR EDIBLE foods, RECYCLABLES, JUNK, or personal property of any nature whatsoever and ~~who does not intend to establish a permanent business location within the town or~~ who conducts such business by foot, cart, wagon, automobile or any other type of conveyance from place-to-place, house-to-house, street-to-street, business-to-business OR ON PROPERTY ADJACENT TO A STREET BUT NOT AT A FIXED LOCATION. A PERSON MAY BE A TRANSIENT MERCHANT REGARDLESS OF WHETHER SUCH PERSON POSSESSES, CARRIES, OR EXPOSES FOR SALE A SAMPLE OF THE SUBJECT OF AN ORDER FOR GOODS, WARES OR MERCHANDISE AND REGARDLESS OF WHETHER SUCH PERSON COLLECTS ADVANCE PAYMENT ON SUCH ORDERS. SPECIAL EVENT

VENDORS AND PERSONS WHO CONDUCT SEASONAL SALES ARE
TRANSIENT MERCHANTS.

~~Solicitor means the same as peddler, except that such person takes or attempts to take orders for the sale and future delivery of goods, wares, merchandise, intangibles, personal property of any nature whatsoever or services to be furnished or performed in the future, rather than selling such items from inventory or stock. A person may be a solicitor regardless of whether such person has, carries, or exposes for sale a sample of the subject of such order, and regardless of whether such person collects advance payment on such sales or orders.~~

Sec. 14-167. Exemptions.

Persons conducting sales required by statute, sales by order of any court or bona fide auction sales pursuant to law; or persons invited by the owner or occupant to a private residence for the purpose of making sales, soliciting orders, or delivering goods, AND MEMBERS OF A CHARITABLE OR RELIGIOUS NON-PROFIT ORGANIZATION SOLICITING DONATIONS OR SELLING GOODS TO BENEFIT THE CHARITABLE NON-PROFIT ORGANIZATION shall be exempt from the provisions of this article.

Sec. 14-168. BUSINESS License.

(a) *Required.* It is unlawful for any ~~peddler or solicitor~~ TRANSIENT MERCHANT to conduct business without first obtaining and maintaining in effect a BUSINESS license PURSUANT TO THIS CHAPTER.

(b) *Application.* In addition to the requirements set forth in section 14-38, applicants for a license shall file with the development services ~~manager~~ DIRECTOR the following information:

(1) A description of the goods to be sold OR COLLECTED and in the case of products of farm or orchard, whether produced or grown by the applicant

(2) If APPLICANT IS AN employeE OR AGENT OF THE BUSINESS FOR WHICH THE LICENSE WILL BE ISSUED, the name and address of the employeE OR AGENT, IF DIFFERENT FROM THE BUSINESS ADDRESS, together with credentials establishing the exact relationships

(3) The length of time for which the right to do business is desired.

(4) If a vehicle is to be used, a description and sketch or a picture of the vehicle must be submitted, together with the license number or other means of identification.

(5) A statement as to whether or not the applicant has been convicted of any felony, misdemeanor or violation of any ordinance, the nature of the offense and the punishment or penalty addressed therefor.

(6) The location from which the applicant intends to conduct business AND A PERMANENT ADDRESS TO WHICH NOTIFICATIONS MAY BE SENT.

(7) THE FULL NAME OF THE PERSON AND ANY OTHER NAMES USED DURING THE PREVIOUS FIVE YEARS.

(8) PROOF OF THE PERSON'S AGE, SUCH AS A DRIVER'S LICENSE, PASSPORT OR BIRTH CERTIFICATE COUPLED WITH A GOVERNMENTAL PHOTO IDENTIFICATION DOCUMENT.

~~(c) Investigation prior to issuing license—~~

~~(1) Upon receipt of an application, the development services manager may cause such investigation as deemed necessary for the protection of the public good. If, as a result of such investigation, the development services manager determines that the granting of the application would be detrimental to the public health, welfare or safety, the application shall be denied. The development services manager shall keep a full record of all licenses issued or denied.~~

(2c) In addition to the other requirements of this article, a peddler or solicitor TRANSIENT MERCHANT who conducts business from a vehicle shall provide proof of vehicle liability insurance which shall be maintained during the term of the license and shall be in at least the minimum amount required by law.

Sec. 14-169. Use of Location.

(a) SALES BY TRANSIENT MERCHANTS MAY BE CONDUCTED ON A PAVED SURFACE ADJACENT TO AN OCCUPIED COMMERCIAL BUILDING OR STORE FRONT.

(b) SALES BY TRANSIENT MERCHANTS MAY BE CONDUCTED IMMEDIATELY ADJACENT TO A PUBLIC STREET SO LONG AS SUCH BUSINESS IS SET UP IN ONE LOCATION ONLY AT ANY ONE TIME. SUCH TRANSIENT MERCHANT SHALL NOT REPEAT THE SAME LOCATION MORE THAN ONE TIME IN ANY SEVEN-DAY PERIOD.

(c) It is unlawful for any licensee under this article to conduct business:

(1) In the traveled portions of a public right-of-way or have any exclusive right to any location in a public right-of-way.

- (2) In a TEMPORARY stationary location upon any public or private property WITHOUT PERMISSION OF THE PROPERTY OWNER. For the purpose of this section a TEMPORARY stationary location shall mean the same location or within 300 feet of the same location for longer than one hour
- (3) Within 300 feet of a public school ground.
- (4) Within a public park unless the licensee has obtained a permit from the parks and recreation director pursuant to subsection 14-5(b).
- (5) Within 300 feet of a public park unless the licensee has obtained a permit from the parks and recreation director.
- (6) In any congested area where the business might impede or inconvenience the public and, for the purposes of this section, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.
- (7) WITHOUT WRITTEN PERMISSION OF THE PROPERTY OWNER FOR USE OF THE PROPERTY, WHICH WRITTEN PERMISSION SHALL BE CARRIED WHEN CONDUCTING SUCH BUSINESS.

Sec. 14-170. Unlawful noise.

No licensee, nor any person in his behalf, shall shout, make any noise, cry out, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound amplifying system upon any of the streets, alleys, parks and other public places of the town or upon any private premises of the town where sound of sufficient volume is emitted or produced therefrom SO AS to VIOLATE SECTION 42-61. ~~capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which the licensee proposes to sell.~~

Sec. 14-171. Signs prohibiting peddling.

It is unlawful for a ~~peddler, solicitor, canvasser, transient, itinerant merchant or itinerant vender~~ TRANSIENT MERCHANT, in the course of his business, to ring the doorbell or knock at any building whereon any of the following signs is exposed to public view: No peddlers, no solicitors or canvassers, no transient merchants or no trespassing.

Secs. 14-172 – 14-200 - Reserved