

CHAPTER 8

PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS

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5-8-1: **PURPOSE OF THIS CHAPTER:**

The purposes of this Chapter shall be to protect the health, safety, and welfare of residents of the City by means of investigation and regulation of peddlers, solicitors, canvassers, and transient merchants. (1016)

5-8-2: **LICENSE REQUIRED:**

It shall be unlawful for any peddler, solicitor, canvasser, transient merchant, itinerant merchant, or itinerant vendor as the same is herein defined to engage in such business within the corporate limits of the City without first obtaining a license therefor in compliance with the provisions of this Chapter; provided, however, that the provisions of this Chapter shall not apply to the producers of agricultural products as defined in A.R.S. §3-561 or to any member of the family or agents or persons in the service of the producer when the agricultural products are sold or disposed of on behalf of and for the benefit of the producer or to persons soliciting for newspaper subscriptions. (1428,1891)

5-8-3: **DEFINITIONS:**

PEDDLER: Any person who, either personally or through agents or employees or by transporting either persons or property, whether a resident of the City or not, travels by foot, motor vehicle, or any other type of conveyance from place to place, from house to house, or from street to street carrying, conveying, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions who offers and exposes the same for sale or who makes sales and delivers articles to purchasers or who, without traveling from place to place, shall sell or offer the same for sale from a motor vehicle, railroad car, or other vehicle or conveyance or from a fixed location on foot, and further provided that one who solicits orders and as a separate transaction makes delivery to purchasers as a part of the scheme or design to evade the provisions of this Chapter shall be deemed a peddler subject to the provisions herein contained. (1475,1981)

SOLICITOR OR CANVASSER: Any individual, whether resident of the City or not, traveling either by foot, motor vehicle, or any other type of conveyance from place to place, from house to house, or from street to street taking or attempting to take orders for sale of goods, wares, and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop, or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

TRANSIENT MERCHANT, ITINERANT MERCHANT, ITINERANT VENDOR: Any person, whether owner or otherwise, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares, and merchandise within said City and who, in furtherance of such purpose, hires, leases, uses, or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat or public room in a hotel, lodging house, apartment, shop, or any street or other place within the City for the exhibition and sale of such goods, wares, and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm, or corporation who, while occupying such temporary location, does not sell from stock but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this Chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer or by conducting such transient business in connection with, as a part of, or in the name of any such local dealer, trader, merchant, or auctioneer. (1016)

5-8-4: APPLICATION AND APPLICATION FEE:

Applicants for a license under this Chapter must file with the Finance Director a sworn application in writing on a form to be furnished by the Finance Director which shall contain, but not necessarily be limited to, the following information:

- (A) Name and description of the applicant.
- (B) Address (legal and local).
- (C) A brief description of the nature of the business and the goods to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant.
- (D) If employed, the name and address of the employer, together with credentials establishing the exact relationship.
- (E) The length of time for which the right to do business is desired.
- (F) If a vehicle is to be used, a description of the same, together with license number or other means of identification.
- (G) A photograph of the applicant taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches (2" x 2") showing the head and shoulders of the applicant in a clear and distinguishing manner.

- (H) The fingerprints of the applicant and the names of at least two (2) reliable property owners of the City who will certify as to the applicant's good character and business responsibility or, in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility.
- (I) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal laws, the nature of the offense, and the punishment or penalty assessed therefor.
- (J) If the applicant is a minor, such applicant shall not be fingerprinted, but no license shall be issued unless the minor's parent(s) or guardian(s) appears personally before the Finance Director or the authorized designee of the Finance Director and provides the following:
 1. Satisfactory evidence that the person or persons are in fact the parent(s) or guardian(s) of the particular applicant;
 2. A written statement signed by the parent(s) or guardian(s) and witnessed by the Finance Director or the authorized designee of the Finance Director giving permission for the applicant to be licensed upon the meeting of provisions of this Chapter.
- (K) No license issued hereunder shall be transferable. At the time of filing the application, a fee of ten dollars (\$10.00) shall be paid to the Finance Director, no part of which shall be refunded.

5-8-5: INVESTIGATION OF APPLICANT; ISSUANCE OF LICENSE:

Upon receipt of such application, the Finance Director shall cause an investigation to be made to determine whether the applicant or any officer, director, trustee, partner, agent, employee, or other person associated with the applicant: (1016,1605,1815)

- (A) Has been convicted of a felony involving a transaction in securities or consumer fraud in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1016,1605,1815)
- (B) Has been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, or theft by false pretenses in any state or federal jurisdiction within the seven- (7-) year period immediately preceding the filing of the application; (1016,1605,1815)
- (C) Has been or is presently subject to an injunction, judgment, decree, or permanent order of any federal court entered within the seven- (7-) year period immediately preceding the filing of the application of such injunction, judgment, decree, or permanent order: (1016,1605,1815)
 1. Involving the violation of fraud or registration provisions of the securities laws of that jurisdiction or (1016,1605,1815)
 2. Involving the violation of the consumer fraud laws of that jurisdiction. (1016,1605,1815)

- (D) Has been convicted of a felony involving moral turpitude or burglary, robbery, or theft as defined in Arizona Revised Statutes or a crime of violence in any state or federal jurisdiction within the seven- (7) year period immediately preceding the filing of the application. (1844)

If, as a result of such investigation, it is determined that any of the items set forth above as A, B, C, and D are determined to exist, the application shall be denied. If not, and if a privilege license as set forth in Title 5, Chapter 10 of the Mesa City Code is required by the nature of the business the applicant desires to carry on and has been obtained by the applicant, a license shall be issued by the Finance Director upon payment of the required fee. (1016, 1605, 1815, 1844)

5-8-6: FEES:

The license fee for any peddler, solicitor, canvasser, or transient merchant shall be thirty dollars (\$30.00) per quarter if paid on a quarterly basis or one hundred dollars (\$100.00) per year if paid on an annual basis. All such fees shall be paid in advance. (1428)

5-8-7: BOND REQUIRED:

Before any license as provided herein shall be issued for engaging in the business of peddler, solicitor, canvasser, or transient merchant as defined in this Chapter, every applicant plying his trade as an individual shall file with the Finance Director a surety bond running to the City in the amount of one thousand dollars (\$1,000.00). Every business, firm, company, or corporation which has employees or agents acting in the capacity of peddler, solicitor, canvasser, or transient merchant shall file with the Finance Director a blanket surety bond covering all such employees or agents and running to the City in the amount of five thousand dollars (\$5,000.00).

Every bond for those engaging in a transient or an itinerant business or as a peddler as defined in this Chapter shall be executed by the applicant as principal and at least one (1) surety upon which service of process may be made in the State of Arizona, said bond to be approved by the City Attorney, conditioned that the said applicant and all of the applicant's agents and employees shall comply fully with all of the provisions of the laws of the City and the State statutes regulating and concerning sale of goods, wares, and merchandise and will pay all judgments rendered against said applicant for any violation, together with all judgments and costs that may be recovered against him by any person for damage arising out of any misrepresentation or deception practiced on any person transacting any such business with such applicant, whether said misrepresentations or deceptions were made or practiced by the applicant or its agents or employees either at the time of making a sale or through any advertising of any nature whatsoever printed or circulated with reference to the goods, wares, or merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person or directly by the aggrieved person.

Every bond for those engaging in the business of solicitor or canvasser as defined in this Chapter shall be executed by the applicant as principal and at least one (1) surety upon which service of process may be made in the State of Arizona, said bond to be approved by the City Attorney, conditioned that the said applicant and all of the applicant's agents and employees shall comply fully with all of the provisions of the laws of the City and the State statutes regulating and concerning the business of solicitor or canvasser and guaranteeing to any citizen of the City that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor or canvasser and further guaranteeing any citizen of the City doing business with said solicitor or canvasser that the property purchased will be delivered according to the representations of said solicitor or canvasser.

Regardless of the number of claimants and the number of years any bond required to be filed pursuant to this Section has been in force, the total liability of the surety shall in no event exceed the total sum of the penalty of such bond. (1428, 1605)

5-8-8: LICENSE TO BE POSTED:

The license issued to the licensee hereunder by the Finance Director shall be posted in a conspicuous place if the licensee is using a vehicle or building in his business and otherwise must be kept by the person and exhibited at any time upon request. (1043,1605)

5-8-9: LOCATION RESTRICTIONS:

No licensee hereunder shall have any exclusive right to any location in a public street, nor shall any be permitted a stationary location thereon or within three hundred feet (300') of a public school ground, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this Chapter, 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. No business activity shall be carried on in any area of the City by any licensee who is licensed pursuant to this Chapter where such business activity is prohibited by the City of Mesa Zoning Ordinance. (1043)

5-8-10: UNDUE NOISES PROHIBITED; HOURS OF OPERATION:

Licensees, agents, and employees of licensees and persons acting on behalf of licensees shall not yell, shout, cry out, blow a horn, ring a bell, or use any sound-amplifying devices such as loudspeakers, microphones, radios, sound-amplifying systems, or any other similar devices for the purpose of attracting attention to any goods, wares, or merchandise if the sound emitted or produced is of sufficient volume that it can be plainly heard upon the public thoroughfares. Licensees, agents, and employees of licensees shall not conduct any business activities between the hour of eight (8:00) P.M. of any day and the hour of eight (8:00) A.M. of the following day. (1629)

5-8-11: UNLAWFUL ACTS:

It shall be unlawful for any peddler, solicitor, canvasser, or transient merchant in the course of business to ring the doorbell or knock at any building whereon a sign bearing the words "No Peddlers or Solicitors" or similar wording is exposed to public view. (1043)

5-8-12: DUTY OF POLICE OFFICERS TO ENFORCE:

It shall be the duty of any police officer of the City to enforce this Chapter. The Chief of Police shall report to the Finance Director all violations of this Chapter. (1043,1605)

5-8-13: RENEWALS:

Licenses which are continually renewed shall pay only the applicable fees prescribed in Section 5-8-6. Licenses which are not continuously renewed, upon application for renewal, shall be treated as an original application. (1428)

5-8-14: SUSPENSION AND REVOCATION:

Whenever the Finance Director has reason to believe that any licensee is guilty of any of the following acts:

- (A) Fraud, misrepresentation, or false statement contained in the application for license;
- (B) Fraud, misrepresentation, or false statement made in the course of carrying on his business;

- (C) Violation of any of the provisions of this Chapter;
- (D) Conviction of any crime or misdemeanor involving moral turpitude;
- (E) Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; and
- (F) Failure to file an additional surety bond as required by Section 5-8-7 hereof within ten (10) days after the liability of the surety on the previous bond has been exhausted, the Finance Director shall immediately suspend the license and give the licensee notice by registered mail of the suspension and of a hearing to be held within ten (10) days to determine whether or not the permit should be revoked. The notice shall contain a statement of the purported reason for the suspension. At the hearing the licensee shall have the right to be represented by counsel, to introduce witnesses on his behalf and at his own expense, and to have the testimony given at the hearing transcribed. Within the next three (3) days after the hearing, if the Finance Director determines that there is a good and sufficient reason for revocation of the licensee's license, the Finance Director shall enter an order revoking the license effective immediately and notify the licensee by registered mail. (1428,1605)

5-8-15: APPEAL:

Within five (5) days, excluding weekends and legal holidays, an applicant for license or a licensee may appeal to the City Manager from either the refusal of the Finance Director to issue a license under this Chapter or from the revocation of any license granted in accordance with this Chapter. The City Manager may appoint a Hearing Officer to hear the appeal. (2383)

5-8-15.01: RESTRICTIONS OF ISSUING A LICENSE; ADDITIONAL UNLAWFUL ACTS:

- (A) If the license of the licensee has been revoked pursuant to provisions of Section 5-8-14 of this Code, the Finance Director shall designate a period of time not exceeding three (3) years, during which time a renewal or a new license may not be issued to the same licensee or to a corporation controlled by that licensee. Unless otherwise specified by the Finance Director, the period of disqualification shall be the maximum three- (3-) year period.
- (B) No licensee shall knowingly permit a person whose license is under suspension or has been revoked to be employed in any capacity by the licensee during the period of suspension or the period of time that a renewal or new license may not be issued to such person pursuant to provisions of Subsection (A) of this Section.
- (C) Every licensee whose license has been revoked may be disqualified from obtaining or retaining a privilege tax license for a period of up to one (1) year from the date of such revocation. (1428,1605)

5-8-16: SEVERABILITY:

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portions. (1016)