

## **ORDINANCE NO. 238**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF OKOBOJI, IOWA, BY REPLACING CHAPTER 122 – “PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS” WITH NEW CHAPTER 122-“MOBILE MERCHANTS”

BE IT ENACTED by the City Council of the City of Okoboji, Iowa

**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 mobile merchants: categorized as- peddlers, solicitors or temporary merchants.

**122.02 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. Peddlers are prohibited from parking in one space for a period of longer than 10 minutes.
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.
3. “Temporary Merchant” is any merchant engaging in selling or offering for sale food, beverages, goods, wares or other merchandise from a stand, tent, truck, cart, trailer, mobile home or office, recreational vehicle, wagon, vehicle, or other temporary structure on private property not considered a building constructed on a foundation.

**122.03 LICENSE REQUIRED.**

1. No person shall engage in mobile merchant business in the City without first obtaining a license with the exception of those individuals and organizations identified in section 122.20. Only one natural person may engage in such activity under one license.
2. Each mobile merchant shall also obtain necessary licenses and or permits as may be required by City, county, state and federal governing bodies. All mobile merchants shall at all times comply with all applicable City, county, state, and federal laws, rules, and regulations.

**122.04. APPLICATION FOR LICENSE.**

1. All applicants for a license under this Chapter shall complete and submit to the Clerk for review a mobile merchant business license application along with a \$25.00 application fee and the following application information and materials:
  - a. The full name, permanent address and phone number of the applicant, along with at least one form of identification that includes a photograph of the applicant.

- b. If operating a motor vehicle as part of the mobile merchant business, proof of a current operator's license.
  - c. A detailed description of the items to be offered for sale.
  - d. Proof of valid food service license(s) and compliance documentation from the state and/or county health departments if selling/handling/preparing food and/or beverages for human consumption.
  - e. Iowa sales tax permit.
  - f. Insurance certificate as required in section 122.10.
  - g. If operating from a vehicle, the make, model, year, state of registration and license number of the vehicle.
  - h. Plans for disposal of liquid and solid refuse, waste, garbage, trash, and other material used in connection with the mobile merchant business.
2. In addition to those requirements listed in 122.04 (1), temporary merchants who are engaged in business on private property may only do so in the (C-1) General Commercial zoning district, upon receipt of all application materials and receipt of a conditional use permit in accordance with the procedures set forth in Article XVIII. One conditional use permit per calendar year per private property shall be allowed for the purposes of a temporary merchant license. Applicants shall be limited to one temporary merchant license per calendar year. Conditional use permit must be presented as part of application materials. In addition to a valid permit the following information must be supplied:
- a. Date of permit requested (temporary merchant permits shall be valid for 5 consecutive days per calendar year).
  - b. The single address of proposed location of temporary merchant.
  - c. A detailed diagram and/or photograph of proposed site plan. Site plan should show temporary business location, setbacks, parking location, location of restroom if required.
  - d. A detailed diagram and/or photograph of any signage to be used on the mobile stand, cart, motor vehicle or other temporary structure to be used for the mobile merchant business. Such signage shall comply with Article XIII Sign Regulations.
  - e. Written permission for use of the property from the owner if operating on private property.
3. The following factors shall be taken into consideration in determining whether or not any license under this Chapter shall be granted:
- a. Compliance with this Chapter and all other provisions of the Code of Ordinances, including Zoning Ordinances, as well as local, state and federal laws, rules and regulations.
  - b. Zoning district of proposed location.
  - c. Availability of parking, pedestrian and vehicle access, utilities access, handicapped access and emergency vehicle access.
  - d. Likelihood of undue congestion of a public area.
  - e. Likelihood of excessive noise and other adverse impacts on surrounding areas.

**122.05. FEES.** The following license fees shall be paid to the Clerk prior to the issuance of any license.

- 1. \$500.00 for the year (Expires December 31st)

**122.06. LOCATION RESTRICTIONS.**

1. No mobile merchant shall conduct business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant; create or become a public nuisance; increase traffic, congestion or delay; constitute a hazard to life, health or property; or obstruct adequate access for fire, police, sanitation or emergency vehicles.
2. No mobile merchant may sell or attempt to sell to or from the travelled portion of a public street.
3. No mobile merchant shall enter upon any residential premises in the City where the owner or lawful occupant has posted, at the entry to the premises or at the entry to the principal building on the premises, a sign bearing the words "No Peddlers", "No Solicitors" or other words of similar import.

**122.07. DISPLAY OF LICENSE.** Each mobile merchant shall carry and display the current mobile merchant license applicable to the mobile merchant at the location and during all times when engaged in the particular activity for which the license was issued.

**122.08. LICENSE NOT TRANSFERABLE.** Licenses issued under the provisions of this Chapter are not assignable or transferable in any situation and are to be applicable only to the person filing the application.

**122.09. TIME RESTRICTION.** All mobile merchant licenses shall provide that said licenses are in force and effect only between the hours of 8:00 a.m. and 6:00 p.m.

**122.10. INSURANCE.** All mobile merchants shall provide proof of and maintain commercial general liability insurance having a minimum combined single limit of \$1,000,000.00. A certificate of insurance shall be delivered to the Clerk prior to the issuance of a license. The City of Okoboji and its elected and appointed officials, officers, employees, and agents shall be named as additional insureds against any liabilities that may arise in connection with the operation of the mobile merchant business.

**122.11. LIGHTS AND NOISEMAKERS.** No mobile merchant, or anyone acting on the mobile merchant's behalf, shall shout, make any outcry, blow a horn, or use any other sound making device, including loud speakers or amplifiers, or use bright or flashing lights for the purpose of attracting attention to any goods, wares or merchandise that the mobile merchant offers for sale.

**122.12. LITTER.** All garbage, trash, litter and other debris in the immediate vicinity of a temporary merchant's stationary location shall be picked up and collected on a daily basis and adequate receptacles shall be maintained for the same purpose.

**122.13. SALES PROHIBITED ON PUBLIC PROPERTY.** No person, firm, corporation, or other entity shall sell, display, or otherwise offer for sale any merchandise or other materials on any sidewalk, public right-of-way, or public property.

**122.14. REVOCATION OF MOBILE MERCHANT LICENSE.**

1. A mobile merchant license granted under this Chapter shall be revoked if the mobile merchant does or allows to be done any of the following:
  - a. Fails to maintain all necessary licenses and permits required for the operation of the mobile merchant business.
  - b. Fails to comply with all of the provisions of this Chapter, with all other Code of Ordinances, including Zoning Ordinances, and with county, state, and federal laws, rules and regulations.
  - c. Fails to furnish proof of or maintain insurance required by this Chapter.
  - d. Creates or allows to exist a safety hazard or public nuisance under state law or City ordinance, in connection with the mobile merchant business.
  - e. Refuses to allow or resists an inspection of the mobile merchant business by any authorized agent of the City.
  - f. Furnishes any false information on the license application or other documents required under this Chapter.
  - g. Makes a false or misleading statement or representation regarding any article sold or offered for sale as to the source, condition, quality, weight, measure, original cost, or cost of any item sold or offered for sale.
  - h. Operates the mobile merchant business in a manner which, in the reasonable determination of the City, does not adequately protect and preserve the peace, safety, health, welfare, comfort and convenience of the City's residents.

**122.15. NOTICE.** The 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.

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

**122.17. RECORD AND DETERMINATION.** The 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 Clerk finds clear and convincing evidence of substantial violation of this Chapter or State law.

**122.18. APPEAL.** If the Clerk revokes or refuses to issue a license, the 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. The Council may reverse, modify or affirm the decision of the Clerk by a majority vote of the Council members present and the Clerk shall carry out the decision of the Council.

**122.19. 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.

**122.20. LICENSE EXEMPTIONS.** The following are excluded from the application of this Chapter.

1. Newspapers. Persons delivering, collecting for or selling subscriptions to newspapers.
2. Charities, Nonprofit, Clubs and Lodges. Solicitations and sales by charitable and nonprofit organizations defined and authorized by Iowa Code Chapters 504 and 504(A), or are authorized and organized under statutes or regulations of the United States Government, or approved by the Internal Revenue Service; and nonprofit clubs and lodges that are not ordinarily conducted as a business that do not meet the requirements of Iowa Code Chapter 504 or 504(A).
3. Local Residents and Farmers. Local residents and farmers who offer for sale or distribution of whole fresh fruits, flowers or vegetables.
4. Students. Students representing the Okoboji Community School District and the Spirit Lake Community School District, conducting projects sponsored by organizations recognized by the schools.
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. Auctioneers. Auctions conducted by auctioneers licensed by the State of Iowa.

**122.21. CHARITABLE AND NONPROFIT ORGANIZATIONS.** Authorized representatives of charitable or nonprofit organizations operating under the provisions of Chapter 504 of the Code of Iowa desiring to solicit money or to distribute literature are exempt from the operation of Sections 122.04 and 122.05. All such organizations are required to submit in writing to the Clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, 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 Clerk finds that the organization is a bona fide charity or nonprofit organization, the Clerk shall issue, free of charge, a license containing the above information to the applicant. In the event the Clerk denies the exemption, the authorized representatives of the organization may appeal the decision to the Council, as provided in Section 122.18 of this Chapter.

REPEALER. All Ordinances or part of Ordinances in conflict with the provision of this Ordinance are hereby repealed

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.

PUBLICATION. The City Clerk/Administrator is hereby authorized and directed to publish this Ordinance in a newspaper of general circulation in Dickinson County, Iowa in conformance with the Iowa law.

WHEREAS, a motion was made by Councilmember Hentges and seconded by Councilmember Mendenhall to consider approval of this Ordinance (first consideration) and upon roll call the following vote was recorded: AYES: Julie Andres, Jim Delperdang, Jim Hentges, Walter Mendenhall, Jerry Robinson; NAYS: None. Said motion to consider approval of this Ordinance (first consideration) was approved by the City Council;

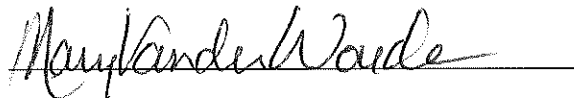
WHEREAS, a motion was made by Councilmember Hentges and seconded by Councilmember Andres to waive the second and third considerations of this Ordinance and upon roll call the following vote was recorded: AYES: Julie Andres, Jim Delperdang, Jim Hentges, Walter Mendenhall, Jerry Robinson; NAYS: None. Said motion to waive the second and third considerations of this Ordinance was approved by the City Council, and therefore, the second and third considerations of this Ordinance were waived;

WHEREAS, a motion was made by Councilmember Mendenhall and seconded by Andres to adopt this Ordinance and upon roll call the following vote was recorded: AYES: Julie Andres, Jim Delperdang, Jim Hentges, Walter Mendenhall, Jerry Robinson; NAYS: None. Said motion to adopt this Ordinance was approved by the City Council. Thereupon, the Mayor declared this Ordinance, passed and approved on the date shown below.


NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Okoboji,

Iowa:

Passed and approved this 27<sup>th</sup> day of July, 2017.


  
Mary Vander Woude, Mayor

ATTEST:

  
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Jason Peters, City Clerk/Administrator

I, the undersigned, hereby certify that I am the duly appointed, qualified and acting City Administrator/Clerk for the City of Okoboji, Iowa, and the foregoing Ordinance was duly adopted by the City Council of the City of Okoboji, on the 27<sup>th</sup> day of July, 2017 and thereafter on the 2nd day of August, 2017, the same was published in the Dickinson County News, a weekly newspaper published in Dickinson County, Iowa.

Dated this 3-1 day of August, 2017.

  
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Jason Peters, City Clerk/Administrator