

ORDINANCE NO. 670

AN ORDINANCE OF THE CITY OF SALEM, SD, AMENDING THE COMPILED ORDINANCES OF SALEM BY REPLACING CHAPTER 4.02 – TRANSIENT MERCHANTS, PEDDLERS.

BE IT ORDAINED BY THE CITY OF SALEM SD:

SECTION 1: That Chapter 4.02 – Transient Merchants, Peddlers if here by amended to read as follows:

CHAPTER 4.02 – TRANSIENT MERCHANTS & MOBILE FOOD VENDORS

4.0201 - Definitions.

When used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

TEMPORARY OR PERMANENT BUSINESS: A business established for temporary operation only. A business operated more than six (6) months in one place by the same person shall be deemed a permanent business, but one commenced and discontinued within six (6) months thereafter shall prima facie be presumed a temporary business and its operator a transient merchant.

TRANSIENT MERCHANT: Any person, firm, corporation, or association and their agents transacting a temporary business where goods and merchandise are exposed for sale where business is established for temporary operation.

STAND: Any table, showcase, bench, rack, pushcart, wagon, or any other movable vehicle or device, which may be moved without the assistance of a motor; and which is not licensed and registered by the state department of commerce and regulation, used for the displaying, storing or transporting of articles offered for sale by a merchant.

TEMPORARY BUSINESS: The word "temporary business" shall not include bona fide garage or rummage sales which are not conducted at the same location more than four times per year; the duration of each sale shall not exceed four days.

4.0202 - Exceptions to chapter.

The provisions of this chapter shall not apply to the following:

- A. Solicitations, sales or distributions made by charitable, education, or religious organizations which have registered with the city clerk's office on forms provided by that office.
- B. Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.
- C. Persons selling jams, jellies, vegetables, fruits, or flowers grown or produced by them and not purchased by them for resale; and
- D. Bona fide garage, rummage, yard, or moving sales which do not occur at the same location more than four times per year for more than four days each time.

4.0203 - Refusing to leave.

- (a) It shall be unlawful for any transient merchant who enters upon premises owned or leased by another to refuse to leave the premises after having been notified by the owner or possessor of the premises, or his agent, to leave the premises.
- (b) It shall be unlawful for any peddler to enter any residence unless expressly invited by a competent adult in charge of the residence.

4.0204 - Entrance to premises restricted.

It shall be unlawful for any transient merchant to enter upon any private premises when the premises are posted with a sign stating "no peddlers or transient merchants allowed", "no soliciting" or words to that effect.

4.0205 - Misrepresentation.

It shall be unlawful for any transient merchant to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the goods, wares, merchandise or services.

4.0206 - Hours of operation.

It shall be unlawful for any transient merchant to engage in the business of peddling between the hours of 9:00 p.m. and 8:00 a.m. Monday through Saturday, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

Mobile food vendors are not allowed to operate in the public right-of-way between the hours of 12 a.m. and 6 a.m. from Monday to Thursday and between the hours of 2 a.m. and 6 a.m. from Friday to Sunday.

Hours of operation are not limited on private property.

4.0207 – License required; Nontransferable.

It shall be unlawful for any person engaged in business as a transient merchant as defined by this chapter to sell or offer for sale any food, beverage, merchandise, or service in a building, on any street or sidewalk within the city without first obtaining a vendor's license and paying the required permit fee (section 4.0217). The decision to grant a license is based on the discretion of the city council or finance office.

Any license issued under this chapter is nontransferable.

4.0208 – Application for city and sales tax licenses.

The application for licenses required by the provisions of this chapter shall contain:

- A. A statement regarding whether the applicant has been convicted of any crime, misdemeanor or violation of any state law, federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed if previously convicted and the place of conviction.
- B. Whether the applicant, upon any sale or order, shall demand, accept or receive payment, or deposit of money in advance of final delivery.

- C. The period of time and location(s) the applicant wishes to engage in business within the city.
- D. The local, and permanent, address and telephone number where the applicant may be reached while doing business within the city.
- E. The local, and permanent, address and the name of the person, if any, that the applicant represents.
- F. A description of the type of business in which the applicant wishes to engage to include the type of foods, goods, wares, merchandise, or services intended to be offered to the public.
- G. The last five cities or towns wherein the applicant has worked before coming to Salem.
- H. Such other relevant information as the McCook County Sheriff's Department may require for the investigation of the applicant.
- I. The sales tax license required by section 4.0209 shall be issued in accordance with section 4.0208 of this chapter and shall also include:
 - (i) The name, home and business address of the applicant and the name and address of the owner, if other than the applicant of the business, stand or motor vehicle to be used in the operation of the business.
 - (ii) A description and photograph of schematic drawing of the stand or motor vehicle to be used in the operation of the business, including a license and registration number of any motor vehicle used in the operation of the business.
 - (iii) Before commencement of operations, proof of an insurance policy, issued by an insurance company and licensed to do business in South Dakota, protecting the licensee and city from all claims or damages to property and bodily death and attorney's fees, which may arise from the operations under or in connection with the license. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advance written notice to the city finance office.

4.0209 – Sales tax license.

A transient merchant or mobile food vendor shall be required to show proof of their State of South Dakota Sales Tax License to the City Finance Officer upon procurement of a license.

4.0210 – ServSafe Certification

A transient merchant or mobile food vendor, in the business of selling food and/or drink products, shall be required to show proof of their ServSafe Certification to the City Finance Officer upon procurement of a license to ensure public safety.

4.0211 – Issuance of a License.

Upon filing of the application required by section 4.0208 of this chapter, approval of city council or finance office and payment of fee in advance, the finance officer shall issue a license to the applicant to do business at the place described in the application, in the city and for the time for which license fee has been paid in advance. No license shall be authority for operation by more than one transient merchant nor for more than one place.

4.0212 – License Renewals.

A license issued pursuant to section 4.0711 of this chapter may be renewed at or before its expiration by payment of additional license fee and filing an additional application if such additional application is demanded by the finance officer.

4.0213 – Adjustment of Fees.

The City of Salem may, from time to time, and by resolution of the city council for the benefit of the general fund of the city, establish new fees Transient Merchants.

4.0214 – Bond, Liability and Insurance.

Bond. Every transient merchant and mobile food vendor, before receiving a license, shall file in the office of the city finance officer a bond in the amount of \$1,000.00 as a condition for the faithful performance and payment of obligations of the merchant arising in connection with the business and for payment of all claims or damages for which the merchant may become liable through fraud, deceit or otherwise in the course of business as a merchant.

The city may, at the discretion of the City Council or City Finance Office, waive the required bond for a transient merchant or mobile food vendor.

Liability and Insurance.

- (a) Before any transient merchant or mobile food vendor permit is granted, the applicant shall sign a statement holding harmless the city and shall indemnify the city, its officers, and employees, for any claims for damages to property or injury to persons, which may occur in connection with any activity carried on pursuant to any activities associated with mobile food vending.
- (b) All applicants shall furnish and maintain a policy of insurance protecting the applicant and the city from all claims for damage to property or bodily injury, including death, which may arise from activities associated with mobile food vending. The insurance policy shall list or endorse the city as additional insured and carry minimum liability limits of at least \$1,000,000 per occurrence. The endorsement shall provide that the policy shall not be terminated or canceled prior to the termination of the mobile vending permit without 30 days' written notice to the city.
- (c) Any permit for mobile food vending shall be deemed void in the absence of a current insurance policy meeting the above criteria.
- (d) Every transient merchant and mobile vendor (e.g. boutiques) must provide to the city finance office proof of insurance.

4.0215 - False information.

It shall be unlawful for any person to give any false or misleading information in connection with his application for a license required by this chapter.

4.0216 - Fingerprints, photographs.

At the request of the city finance officer, the applicant for a license by this chapter may be required to submit to fingerprinting and photographing by the McCook County Sheriff's Department.

4.0217 - Permit fee.

Before any license shall be issued under the provisions of this chapter, the applicant shall pay a fee annually established by resolution of the City Council. This amount is in addition to the bond amount set forth above.

4.0218 - Issuance restricted.

No transient merchant license shall be issued to a corporation, partnership or other legal entity, but each individual person engaging in business within the city shall be required to have a license whether acting for himself or as an agent or representative of another.

4.0219 - Display of License.

Every transient merchant having a license issued under the provisions of this article and doing business within the city shall display his/her license upon the request of any person, and failure to do so shall be unlawful.

4.0220 - Prohibited conduct.

No merchant or mobile food vendor shall:

- A. Store, park or leave any stand overnight on any street or sidewalk or park any motor vehicle other than in a lawful parking place, in conformance with city and state parking regulations.
- B. Sell food or beverages for immediate consumption unless he has available for public use his own or a public litter receptacle which is available for his patrons' use.
- C. Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by him.
- D. Use any device that is designed to amplify sound for the purpose of making verbal solicitations.
- E. Allow any items relating to the operation of the business to be placed anywhere other than in, on or under the stand or motor vehicle.
- F. Set up, maintain, or permit the use of any table, crate, carton, rack or any other device to increase the selling or display capacity of his stand or motor vehicle where such items have not been described in his application.
- G. Solicit or conduct business with persons in motor vehicles.
- H. Sell anything other than that which he is licensed to sell.
- I. Conduct business without the insurance coverage specified in subsection 4.0214.
- J. No transient merchant selling from a stand on the sidewalk in the central business district shall conduct business at any location which is not approved by the city council or allow the stand or any other item relating to the operation of the business to lean against or hang from any building or other structure lawfully placed on public property without the owner's permission.
- K. Vend on the public right-of-way within 50 feet of a licensed restaurant property line or 50 feet from a sidewalk patio, whichever is greater, unless the restaurant is closed for business.
- L. Operate in or abutting a city park without proper permissions.
- M. Place any object that blocks the pedestrian pathway.

- N. Utilize signage in addition to what is already permanently displayed on the mobile food truck.
- O. Conduct mobile food vending from an unhooked concession trailer in the public right-of-way.
- P. Operate without commercial license plates.

4.0221 - Special events.

A person in charge of a special event shall obtain a transient merchant's license prior to holding any special event. Such special event license shall be granted subject to compliance with any conditions or requirements placed on it by the finance officer.

The City may, at its discretion, waive the licensing requirements of this chapter on certain dates that are classified as special events by the City.

Recognized special events are as follows:

- A. Those special events presented to and approved by the city council and made public three months before the special event date. These events may include, but are not limited to, Farmer's Markets and Craft Fairs.
- B. Those special events that are conducted in the central business district by a bona fide nationally chartered veterans, religious, charitable, educational or fraternal organization, local civic or service club, political party or volunteer fire department or political committee on behalf of a candidate for a political office, which exists under the laws of the state.

4.0222 - Size requirements for vending stands.

All stands shall be inspected by the finance officer or one of his/her representatives to check that the stand's size shall match that of the licensed location.

4.0223 - Advertising.

No advertising, except the posting of prices, shall be permitted on any stand or motor vehicle, except to identify the name of the product or the name of the business.

4.0224 - Denial, suspension and revocation of license.

Any license required in this chapter may be denied, suspended or revoked for any of the following causes:

- A. Fraud, misrepresentation or false statements contained in the application of license.
- B. Fraud, misrepresentation of false statements made in the course of carrying on the business for which the license was issued.
- C. Conduct of the licensed business or its representatives in such a manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
- D. Conduct of the business or its representatives in violation of any city or state tax and licensing laws.
- E. Conducting the business licensed hereunder 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.

4.0225 - Penalties.

Any person violating any of the provisions of this chapter, shall, upon conviction thereof be punished by fine not to exceed \$500.00 or by imprisonment not to exceed 30 days or both, and such fine and imprisonment for each day of operation in violation of this chapter shall be deemed a separate offense.

4.0226 - Health and Sanitation Requirements.

- (a) Mobile food vendors shall comply with the minimum public health and safety requirements as made and enforced by the South Dakota Department of Health, pursuant to SDCL 34-18.
- (b) Mobile food vendors shall allow:
 - 1. The equipment used in vending be inspected upon application for a permit and shall be required to obtain a valid food service license and operating permit; and
 - 2. Each mobile vending truck may be inspected at a minimum of twice per year based on the discretion of the city council or finance office or similar agency so tasked with jurisdiction over this duty.

4.0227 - Noise.

Mobile food trucks must adhere to all noise ordinances.

4.0228 - Parking.

- (a) If operating from the public right-of-way, mobile food vendor shall only vend from legal parallel parking space in the public right-of-way;
- (b) No mobile food vendor shall operate with the serving window facing street traffic; and
- (c) Mobile food vendors must adhere to established parking rules as found in this Code.

4.0229 - ADA Access.

All vendors must ensure that individuals with disabilities have comparable access to services offered. If existing designs cannot be modified to be accessible, the method of providing service must be modified.

4.0230 - Fire Safety.

- (a) No mobile food vendor shall operate without proof of an annual third-party inspection or receipt of propane fill or gas-related capabilities;
- (b) No mobile food vendor shall vend from within parking garages, overhangs, or within 10' of any entrance to any property.

4.0231 - Litter Control.

Mobile food vendors shall be responsible for providing one private trash bin and one private recycling bin for public use with capacity of no less than 30 gallons each, and shall remove all litter within 50' of the mobile food truck. Litter shall be removed at mobile food vendor's expense and shall not be placed in an unauthorized private or city receptacle.

Section 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed insofar as the conflicting portions thereof are concerned.

Adopted this 7th day of March 2023.

Seal

Glenda Blindert
Mayor

ATTEST:

Lori Heumiller,
Finance Officer

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