

TITLE 12 PEDDLERS AND SOLICITORS

CHAPTER 12.01 PEDDLERS AND SOLICITORS

12.0101 Purpose and Intent. Authorized by SDCL 9-34-18, this Ordinance is enacted for the purpose of licensing transient businesses.

12.0102 Definitions. A person, firm, or corporation, whether as owner, agent, consignee or employee, engaged in the selling of personal property or personal services to include, but not limited to spraying, trimming or pruning of trees and shrubs of all species, painting or repairing buildings or structures, and pest or rodent control by going about from place to place, highway or street parking, or house to house either in person or by telephone to sell the same and who carries with him such property for delivery at time of sale or immediately thereafter is a peddler. A person, firm, or corporation, whether as owner, agent, consignee or employee engaged in going from place to place, highway or street parking, or house to house either in person or by telephone to solicit orders for, or to offer to sell, personal property for future delivery is a solicitor. The person, firm or corporation 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 or as part of or in the name of any local dealer, trader, merchant or auctioneer.

12.0103 Peddling or Soliciting Exempt from Chapter. This chapter shall not apply to persons soliciting newspaper subscriptions, nor to magazine, book, or periodical subscription solicitations sponsored by any nonprofit organization, nor to traveling salesmen doing business exclusively with retail merchants, manufacturers, jobbers, or with public officials, whether they carry samples or not, nor to co-operative corporations or associations, nor to the peddling or soliciting of orders for any agricultural product produced or processed within the State of South Dakota, stock foods, veterinary medicines and biologicals, or such petroleum products as are subject to state inspection under the provisions of SDCL 37-2; nor to any solicitor who does not demand or accept payment of money or any deposits in advance not to any solicitor whose terms do not require payment of any money or deposit on delivery without the privilege of examination.

12.0104 Equipment Sales and Service by Permanent Dealer Exempt from Chapter. This chapter shall not apply to the sale, lease or repair of motor vehicles, farm machinery or implements, or mobile homes, by a dealer having a fixed permanent location and place of business in South Dakota where such goods and services are offered on a continuing basis.

12.0105 Enforcement. It shall be the duty of any officer of the county to require any person seen peddling, soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his Peddler's license and to enforce the provisions of this article against any person found to be violating same.

12.0106 Fees. The fees for a peddler's or solicitor's license shall consist of the basic registration fee of fifteen dollars (\$15.00) to defray the cost of the county processing the license and investigatory expense; and, in addition, a license fee of twenty-five dollars (\$25.00) per day, fifty dollars (\$50.00) per week or one hundred dollars (\$100.00) per month shall be paid by the applicant; and in addition, the sum of fifteen dollars (\$15.00) for each additional solicitor or peddler employed or under the direction of said applicant.

12.0107 Application. After payment of the requisite license fees to the county auditor, any person desiring to obtain a license under the provisions of this chapter shall make and file with the County Auditor a sworn application in writing in duplicate on a form furnished by the County Auditor, which shall give the following information:

- (a) Name and description of applicant.
- (b) Address (legal and local).
- (c) A brief description of the nature of the business and how the business will be operated.
- (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 the license number or other means of identification.
- (g) Names of other towns or cities in the state where the applicant has had a similar license in the past year.
- (h) A statement as to whether or not the applicant has been convicted of any federal, state, or municipal law, the nature of the offense, the punishment or penalty assessed, the name of the court and the town or city.

12.0108 Service of Process. Before any license shall be issued, there shall be filed with the County Auditor an instrument in writing, signed by the applicant under oath, nominating and appointing the County Auditor his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on behalf of the applicant, and service of summons in any action brought upon by the bond shall be deemed made when served upon the County Auditor. Immediately upon service of process upon the County Auditor as provided herein, the County Auditor shall send to the licensee at his last known address by registered mail a copy of said process.

12.0109 Bond. Before any license shall be issued under this chapter, every applicant not a resident of this county, who represents a firm whose principal place of business is located outside the state shall file with the County Auditor a surety bond, running to the county the amount of one thousand dollars (\$1,000) with surety acceptable to and approved by the county commissioners, conditioned that the applicant shall comply fully with all the provisions of the ordinances of the county and all the statutes of the state regulating and concerning the business of a transient merchant, itinerant merchant, nonresident auctioneer, solicitor or canvasser and guaranteeing to any citizen of Brown County that all money paid as a down payment will be accounted for and applied according to the representations made, and further, guaranteeing to any citizen of the city doing business with such licensee that the property purchased will be delivered according to the representation of the licensee, that all merchandise sold and delivered shall be as represented and that he will refund any money or deposit on any merchandise which is not as represented. Action on such bond may be brought in the name of the county to the use or benefit of the aggrieved person.

12.0110Investigation. Before issuing a license under this article to any person applying, the County Auditor shall refer the application to the County Sheriff, who shall make such investigation of the applicant's moral character and business responsibility as he deems necessary for the protection of the public good, including the inquiry of the Federal Bureau of Investigation and the investigation division of the Office of Attorney General of the State of South Dakota; except in the event the applicant has received a like license from the county within one year past, the licensing authority may waive this requirement. The County Sheriff shall make the investigation within a reasonable time and shall certify to the licensing authority whether or not the moral character and business responsibility of the applicant are satisfactory. The expense of this investigation shall be paid out of the registration fee for such license as provided for in this chapter.

12.0111Issuance. The Board of County Commissioners shall issue any license issued under the provisions of this chapter, and shall have discretion whether or not to grant the license after considering the showing on applicant's behalf and after making the investigation it deems necessary.

12.0112Exhibition. Any person licensed under this article is required to exhibit his license at the request of any person who may deal with the licensee.

12.0113Suspension. Upon complaint being made to the Board of County Commissioners of any of the grounds for revocation set forth in section 12.0114, and upon its determination that the health, welfare, and safety of the citizens of the county requires it; the commission may order immediate suspension of the license and the licensee shall not engage in the business authorized by the license, pending a hearing and decision by the Board of County Commissioners as provided in section 12.0114.

12.0114Cause for Revocation. License issued under the provisions of this article may be revoked by the County Board of Commissioners after notice and hearing for any of the following causes:

- (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 the business under the license.
- (c) Any violation of this chapter.
- (d) Conviction of any felony or of a misdemeanor involving moral turpitude.
- (e) Conducting the 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.

12.0115Notice of Hearing. Notice of the hearing for revocation of a license under this chapter shall be given in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.

12.0116Expiration. Licenses shall expire on the date specified in such license.

12.0117Renewal. In the event any licensee under this chapter desires to continue the business authorized under the license after the expiration date of such license, a new application shall be filed and the same procedure followed as for the initial license.

12.0118Appeal or Review. Any person aggrieved by the action of the Board of County Commissioners in the denial of an application for permit or license as provided in section 12.0111, or in the decision with reference to the revocation of a license as provided by section 12.0114 of this chapter, shall have the right of having the commission review their decision by filing with the County Auditor, within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for such review. Service of such notice shall be made on the County Auditor. The Board of County Commissioners shall set a time and place for a full and complete hearing in the same manner as provided in section 12.0115 for notice of hearing on revocation, and the decision and order of the board on such matter shall be final and conclusive.

12.0119Regulation.

(a) It shall be unlawful for any person who sells personal services as defined in 12.0102 to engage in any business within the county without having first registered with the County Auditor in compliance with the provisions of this chapter and without having received a license from the county commissioners.

(b) Any peddler or solicitor who has a license from a city or town with the county must still register with the County Auditor and receive a license from the Board of County Commissioners before commencing business outside the city limits in the county. All other provisions of this chapter shall apply.

(c) Any peddler or solicitor conducting business in a city or town within this county that does not require a license for peddlers or solicitors must apply to the County Auditor and obtain a license from the County Commissioners before commencing business in this county.

12.0120Penalty. Any person who shall violate any of the provisions of this Ordinance shall be guilty of a Class II Misdemeanor.