

Chapter 4-3

SOLICITORS

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Section 4-3-1	Purpose

The purpose of this Chapter is to protect the safety and privacy of residents of the city of Storm Lake, Iowa and to protect those residents against fraud, by licensing and regulating Fund Raisers, Solicitors, and Transient Merchants.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-2 Definitions

As used in this Chapter,

(a) "Fund Raiser" means a person who solicits funds for any organization or putative organization unless the organization, for more than one (1) year preceding the commencement of the fund-raising activity, has had an established office within the City of Storm Lake, Iowa, and who initiates or attempts to initiate personal contact with another person or persons, without invitation by such other person or persons:

1) at or near a residence or residences, including any private driveway and parking area for any such residence, or

2) upon a public right-of-way, a public sidewalk, or any other public property,

in an effort or apparent effort to solicit funds for an organization or putative organization.

(b) "Person" includes a natural person, a firm, a legal entity, and an organization of any description, whether acting in person or through agents, employees, or other persons.

(c) "Solicitor" means any person who initiates or attempts to initiate personal contact with another person or persons, without invitation by such other person or persons:

1) at or near a residence or residences, including any private driveway and parking area for any such residence, or

2) upon a public right-of-way, a public sidewalk, or any other public property,

in an effort or apparent effort to solicit monies or orders for merchandise, goods, services, or subscriptions, to be delivered or fulfilled immediately or in the future.

(d) "Transient Merchant" means any person who engages in a temporary or itinerant business involving the sale or lease of goods, merchandise, subscriptions, or services, and in the course of such business hires, leases, or occupies any building, structure, motor vehicle or other vehicle, trailer, parking lot or lot whatsoever. A temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader, or auctioneer shall not exempt any person from being considered a transient merchant. Any person selling or leasing goods, merchandise, subscriptions, or services that operates out of a motor vehicle or other vehicle, trailer, parking lot or vacant lot shall be considered to be acting as a Transient Merchant whether or not such person otherwise satisfies the definition of Transient Merchant as set forth above. Any person engaged in business at a location in the city of Storm Lake, Iowa for a period of less than sixty (60) days shall be presumed to be engaging in a temporary business, but the person may overcome such presumption by demonstrating by a preponderance of the evidence that the person intended to remain continually in business at such location for more than sixty (60) days.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-3 License Required

Any person acting in this City as a Fund Raiser, Solicitor, or transient merchant without first obtaining a license as herein provided shall be in violation of this Chapter. A license so issued shall not exempt any person from regulations, restrictions, prohibitions, requirements or provisions of other local ordinances, or of any applicable federal or state laws or administrative rules and regulations.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-4 Exemptions

The provisions of this Chapter shall not apply to persons delivering newspapers; authorized representatives of the YMCA, YWCA, local Boy Scouts, Girl Scouts, Campfire Girls, Future Farmers of America, 4-H Clubs and students of Storm Lake Community School District, St. Mary's Parochial School system, Iowa Central Community College, or Buena Vista University conducting projects sponsored by their organizations; Storm Lake volunteer firemen; Storm Lake policemen; farmers who offer for sale products of their own raising; persons customarily calling on businesses or institutions for the purpose of selling products for resale or institutional use; authorized representatives of educational institutions, religious organizations, and charitable organizations that have been recognized by the Internal Revenue Service as exempt from taxation under Section 501 of the Internal Revenue Code who are soliciting money on behalf of the institution or organization they represent or distributing literature on behalf of

such institution or organization; and persons who, before engaging in any activity otherwise covered by the provisions of this Chapter, are authorized by specific action of the City Council of the City of Storm Lake, Iowa to engage in such activity or exempted from the provisions of this Chapter by specific action of the City Council of the City of Storm Lake, Iowa.

(Ord. 09-O-2013-2014, Amended, 05/05/2014; Ord. 12-O-2004-2005, Amended, 12/06/2004)

Section 4-3-5 Issuance Of License

A natural person who, on behalf of such person or on behalf of a firm, legal entity or organization, submits an application for the license required by Section 4-3-3 shall be eighteen years of age or older. A written application for the license required by Section 4-3-3 shall be filed in person with the City Clerk on a form approved by the City Clerk. The applicant shall provide the following:

1) the full name, permanent and local address, the business address, the business e-mail address, if any, the telephone number, and the federal identification number of the natural person, firm, legal entity or organization in whose name the activities to be covered by the license will be conducted and who will be the named licensee;

2) the first name, middle initial or name, and the last name of the person filing the application, such person's e-mail address, if any, and local phone number or cell phone number;

3) the name of the employer of the person submitting the application, if different from the proposed licensee, and the address, e-mail address, if any, and telephone number of such employer;

4) the length of time sought to be covered by the license;

5) the nature of the business of the proposed licensee;

6) the last three places of such business;

7) the first name, middle name or initial, and last name, and the date of birth of each natural person who may engage in any activity to be covered by the license on behalf of the proposed licensee, and for each such person, a government-issued photo identification card or, if none is available, an accurate physical description;

8) if the activity to be covered by the license involves sales or any activity for which a sales tax permit may be required, an Iowa sales tax permit number issued to the proposed licensee or a letter from the Iowa Department of Revenue addressed to the proposed licensee confirming a sales tax permit is not required for such activity;

9) whether the person submitting the application or any natural person who may engage in any activity to be covered by the license has been listed on any sex offender registry within the five year period ending on the date of the written application, the name of each such person, and the jurisdiction of the sex offender registry, if known; and

10) whether the proposed licensee or any natural person who may engage in any activity to be covered by the license has had a solicitor's license, a peddler's license, a transient merchant license, a fund-raiser license, or any other license covering activities substantially similar to activities requiring a license under this Chapter suspended, revoked, or denied by this or any other city in the five year period ending on the date of the written application, the name and state of each city suspending, revoking or denying a license, and the reasons for the suspension, revocation, or denial of the license.

A fee, in an amount set by City Council Resolution, for each proposed licensee and each person who is identified in the license application as a person who may engage in any activity to be covered by the license shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-6 Issuance of License

(a) The City Clerk, upon review of the license application with the police department and any other appropriate department or agency, shall determine whether a license will be issued to the proposed licensee. A waiting period of not less than three (3) business days from the date on which the application is filed with the City Clerk shall be in effect to provide sufficient time for the City Clerk's fact gathering process to be completed. A license may issue if the City Clerk finds:

- 1) the information in the application is correct and accurate;
- 2) neither the person submitting the application nor any natural person who may engage in any activity to be covered by the license has been convicted of a felony, and offense involving sexual abuse or a crime requiring sex offender registration, or a misdemeanor involving theft, fraud, force, violence, deceit, soliciting or peddling;
- 3) neither the person submitting the application nor any natural person who may engage in any activity to be covered by the license has had a solicitor's license, a peddler's license, a transient merchant license, a fund-raiser license, or any other license covering activities substantially similar to activities requiring a license under this Chapter suspended, revoked, or denied by this or any other city in the five year period ending on the date of the written application; and
- 4) the proposed licensee has an Iowa sales tax permit, if required by law.

(b) If the City Clerk finds that the requirements for a license set out in (a) above have been satisfied, a license shall issue upon payment of the fees as required in Section 4-3-7 and the posting of the bond as required by Section 4-3-8. If the City Clerk finds that any of the requirements for a license set out in (a) above have not been satisfied, the City Clerk shall deny the issuance of a license to the proposed licensee. (Ord. 09-O-2013-2014, Amended, 05/05/2014; Ord. 12-O-2004-2005, Amended, 12/06/2004)

Section 4-3-7 Fees and Length of License

Every proposed licensee shall pay a fee, in an amount set by Council Resolution, in addition to the investigating fee, before a license shall be issued. The license may be issued for a period of one day, seven consecutive days, or twenty-eight consecutive days. No licensee shall be permitted more than 183 one-day licenses in a calendar year, more than 26 seven-day licenses in a calendar year, or more than 6 twenty-eight day licenses in a calendar year. In addition, no licensee shall be permitted licenses of any duration whose periods exceed 183 days in the aggregate each calendar year.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-8 Bond Required

Before a license under this Chapter shall be issued, each proposed licensee shall post with the City Clerk a bond issued by a surety company authorized to engage in the business of insuring the fidelity of others in Iowa, in the amount of one thousand dollars (\$1,000.00), to the effect that the licensee and the surety company shall consent to the forfeiture of the principal sum on the bond or such part thereof as may be necessary (1) to indemnify the City of Storm Lake for any penalties or costs occasioned by the enforcement of this Chapter, and (2) to make payment of any judgment rendered against the licensee as a result of a claim or litigation arising out of or in connection with any activities regulated or covered by this Chapter. Said bond shall not be retired until a lapse of one (1) year from the expiration of the license which it covers. Notwithstanding the foregoing requirement to post a bond, a licensee who has posted such a bond for a license previously issued under this Chapter that remains in effect at the time the new

such license is to be issued shall not be required to post a new bond provided that the bond that remains in effect, by its original terms or any amendment or extension thereof, will not expire until a lapse of one (1) year from the expiration of the new license. Before issuance of the new license, the City Clerk shall require written evidence from the surety company that the bond previously issued will not expire until a lapse of at least one (1) year from the expiration of the new license.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-9 Display of License

At all times while engaging in any activity for which a license has been issued under this chapter, each person acting under authority of such license shall keep in the person's possession the license provided for in Section 4-3-6 of this Chapter, or a true copy thereof, and shall, upon request of prospective customers, exhibit the license as evidence that the person has complied with all requirements of this Chapter. Each transient merchant shall display publicly the license in the transient merchant's place of business.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-10 License Not Transferable

Licenses issued under the provisions of this Chapter are not transferable and are applicable only to the named licensee and the persons identified in the license application as persons who may engage in the activity to be covered by the license on behalf of the licensee.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-11 Suspension and Revocation of License

(a) Grounds; Notice:

1. The City Clerk may suspend any license issued under this Chapter, pending the outcome of an administrative hearing, for any of the following reasons:

A. The licensee, the person making the license application on behalf of the licensee, or any person conducting business on behalf of the licensee pursuant to the license has made fraudulent statements in the application for the license or in the conduct of the licensee's business.

B. The licensee or an agent of the licensee has violated a provision or provisions of this Chapter or another Chapter of the City's Code of Ordinances or has otherwise conducted the licensee's business or activities in an unlawful manner.

C. The licensee or an agent of the licensee has conducted the licensee's business or activities in such a manner as to endanger the public welfare, safety, order, or morals.

D. The City Clerk has received and investigated a founded complaint or complaints during the licensed period from residents of the City who were reasonably dissatisfied with the manner in which the licensee is conducting business.

2. The City Clerk shall have the licensee served with notice either in person or by regular mail to the licensee's local address of the license suspension, the specific reason or reasons for such action, and the date and time of hearing with the City Clerk to review the particulars of the suspension.

(b) Hearing: An informal hearing shall be conducted by the City Clerk not more than five business days after the City Clerk has suspended the license. The licensee and any complainants may be present

at the hearing and offer relevant evidence. The City Clerk shall determine the accuracy of the facts supporting the grounds for the suspension. Should the licensee or the licensee's authorized representative fail to appear without good cause, the City Clerk may proceed with the hearing, find the facts and make a determination as to the accuracy of the facts supporting the grounds for the suspension.

(c) Revocation: After the City Clerk has reviewed the facts, the City Clerk shall revoke the license if the City Clerk finds by a preponderance of the evidence that the facts support one or more of the reasons given for the suspension of the license. The revocation shall be effective immediately.

(d) Appeal: If the City Clerk revokes or denies the issuance of a license, the licensee or proposed licensee shall have a right to a hearing before the City Council who may reverse, modify, or affirm the decision of the City Clerk. If the licensee or proposed licensee wishes to appeal, the licensee or proposed licensee shall mail or personally deliver to the City Clerk written notice of such appeal within twenty days of the revocation or denial.

(e) Effect of Revocation: Revocation of any license shall bar the licensee from being eligible for any license under this Chapter for a period of five years from the date of the revocation. There shall be no refund of any fees in the event of a revocation of license.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-12 Expiration of License

All licenses granted under this Chapter shall expire at 10:00 p.m. Central Time on the last day for which the license is issued.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-13 Sale from Vacant Lots

No person, corporation or other entity shall offer for sale from any vacant lot within the City not owned by the seller, any merchandise of any type, specifically including motor vehicles and boats, at retail, wholesale or casual sales, unless the seller shall have a written lease with the owner of the property or, alternatively, a written letter of authorization from the owner permitting the seller to use the property for display of the seller's merchandise, and which lease or letter of authorization must be available for inspection upon the premises where the merchandise is being offered for sale at all times when the merchandise is displayed for sale. As used herein, a vacant lot shall mean a lot with no improvements or a lot with improvements which are not occupied by the owner, the owner's agent or the owner's tenant. A vacant lot shall specifically not include the parking lot of any business currently in operation or any apartment complex or residence which is currently occupied.

(Ord. 09-O-2013-2014, Amended, 05/05/2014)

Section 4-3-14 Other Prohibited Acts

(a) No person shall engage in any activity of a fund Raiser or Solicitor with any person situated in a motor vehicle upon any public street, alley, driveway access, or public way.

(b) No person shall act as a Fund Raiser or Solicitor except between the hours of 9:00 a.m. Central Time and 8:00 p.m. Central Time Monday through Saturday and between the hours of 1:00 p.m. Central Time and 5:00 p.m. Central Time Sunday.

(c) No Transient Merchant shall conduct business at any time except between the hours of 7:00 a.m. and

10:00 p.m. each day.

(d) No Fund Raiser, Solicitor or Transient Merchant shall conduct any activities requiring a license under this Chapter on any property which has a posted notice prohibiting peddling or soliciting.

(e) No Fund Raiser, Solicitor or Transient Merchant shall harass, intimidate, coerce or threaten any individual, or fraudulently misrepresent facts to induce a sale, gift, or contribution.

(f) No Solicitor or Transient Merchant shall falsely or fraudulently misrepresent the quality, character or quantity of any article, item or commodity offered for sale, or sell any unwholesome or tainted food or foodstuffs.

(g) No Fund Raiser, Solicitor or Transient Merchant shall conduct its business or activities in such a manner as to endanger the public health, welfare, or safety of the public.

(Ord. 09-O-2013-2014, Add, 05/05/2014)

Section 4-3-15 Municipal Infraction

A violation of any of the provisions of this Chapter shall constitute a Municipal Infraction subject to the penalties and alternative relief authorized by Title 1, Chapter 20 of this Code and by Section 364.22 of the Code of Iowa.

(Ord. 09-O-2013-2014, Add, 05/05/2014)