

## SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

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**ITEM NO:** Consent C 3

**DATE:** March 25, 2010

**SUBJECT:** Ordinance 1073-10 - Update of SMC 9.12 Sultan's Peddler and Solicitor Ordinance

**CONTACT PERSON:** Jeff Brand, Police Chief and Laura Koenig, Clerk/Deputy Finance Director

**ISSUE:**

The issue is the adoption of Ordinance 1073-10 to amend SMC 9.12 Peddler and Solicitor regulations to bring the regulations into conformance with state and federal law. The ordinance was introduced for a first reading on March 11, 2010.

**RECOMMENDED ACTION:**

Adoption of Ordinance 1073-10.  
Staff further recommends that the Council Sub-committee review proposed application forms and determine a fee schedule for permits.

**SUMMARY:**

Staff was requested to research and include exemption for vendors that are invited to a home of business to provide a product or service. Section 9.12.020 (2)(b) – exemptions - reads:

- (b) Any person who is specifically requested to call upon others for the purpose of displaying goods, literature or giving information about any article, service or product;

This would provide the exemption for vendors that are specifically invited to a personal residence or business.

The City of Sultan Peddler and Solicitor Ordinance has been in place since 1979 and recent court rulings have rendered it no longer enforceable. A number of other cities have been faced with the same issue and have written updated, enforceable ordinances to protect their citizens.

In recent months we have seen an increase in citizens' complaints about aggressive peddlers that are unwilling to abandon their sales pitches and try to intimidate citizens into buying their wares.

Although recent court rulings have limited the regulation authority of cities, they have not totally restricted regulations and allow a permit process to register peddlers and solicitors. The City may collect fees to offset the administrative costs of a permit program.

A revised Peddler's and Solicitor's ordinance would update Sultan Code so it is enforceable, properly regulated and if the Council wishes, would provide fees to help offset the cost of the program.

**FISCAL IMPACT:**

It is difficult to determine the fiscal impact a Peddler's and Solicitor's program, as there are many unanswered questions right now. The city of Sultan could potentially realize limited revenue from permit fees or in the case of violators, could realize revenue from fines levied by the court.

A permit program would require staff to review and enter permit information into the computer. In the event of violators, there will be court and defense attorney costs, associated.

**RECOMMENDED ACTION:**

Adoption of Ordinance 1073-10.

Staff further recommends that the Council Sub-committee review proposed application forms and determine a fee schedule for permits.

ATTACHMENTS: A. Ordinance 1073-10 Peddlers, Solicitors and Transient Merchants

**CITY OF SULTAN  
WASHINGTON  
ORDINANCE NO. 1073-10**

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**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON,  
REPEALING CHAPTER 9.12 (PEDDLERS AND SOLICITORS)  
OF THE SULTAN MUNICIPAL CODE IN ITS ENTIRETY AND  
ENACTING A NEW CHAPTER 9.12 ENTITLED PEDDLERS,  
SOLICITORS AND TRANSIENT MERCHANTS TO PROVIDE  
FOR PERMITS FOR PEDDLERS, SOLICITORS AND  
TRANSIENT MERCHANTS; PROVIDING FOR SEVERABILITY;  
AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City Council has determined it is in the best interests of the community to provide for licensing of peddlers, solicitors and transient merchants;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Sultan Municipal Code (SMC) Chapter 9.12 Amended. SMC Title 9.12 (Peddlers and Solicitors) is hereby amended by repealing Chapter 9.12 in its entirety and enacting a new chapter 9.12 entitled, "Peddlers, Solicitors and Transient Merchants." The City Clerk is directed to codify the following provisions as SMC 9.12.

**Chapter 9.12  
PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS**

Sections:

- [9.12.010](#) Definitions.
- [9.12.020](#) Permit required – Exemptions.
- [9.12.030](#) Permit – Application.
- [9.12.040](#) Investigation of applicant – Issuance and denial of permit.
- [9.12.050](#) Permit – Exhibit.
- [9.12.060](#) Permit – Expiration.
- [9.12.070](#) Permit – Revocation.
- [9.12.080](#) Right of appeal.
- [9.12.090](#) Use of streets.
- [9.12.100](#) Hours and notice.
- [9.12.110](#) Records.
- [9.12.120](#) Violation – Penalty.

**9.12.010 Definitions**

For the purpose of this chapter, the terms defined in this section have the meaning ascribed to them:

A. "Peddler and/or Solicitor"

- (1) All persons, both principals and agents, as well as employers and employees, who shall sell, offer for or expose for sale, or who shall trade, deal or traffic in any personal property or services in the City by going from house to house or from place to place or by indiscriminately approaching individuals.

- (2) Sales by sample or for future delivery, and executory contracts of sale by solicitors or peddlers are embraced within the proceeding subsection; provided, however, that this chapter is not applicable to any sales person or canvasser who solicits trade from wholesale or retail dealers within the City.
- (3) Any person, both principals and agents, as well as employers and employees, who, while selling or offering for sale, any goods, wares, merchandise or anything of value, stands in a doorway or any unenclosed vacant lot, parcel of land or in any other place not used by such person as a permanent place of business.

B. "Transient merchant" means any person, firm or corporation who engages temporarily in the business of selling and delivering goods, wares or merchandise within the city, and who, in furtherance of such purposes, hires, leases, uses or occupies any building, structure or vacant lot, motor vehicle, trailer or railroad car.

### **9.12.020 Permit required – Exemptions.**

(1) In addition to the business license required by SMC 5.04.030, no person, corporation, partnership or other organization shall engage in the business of a peddler, solicitor, or transient merchant within the City limits without first obtaining a permit therefore as provided in this chapter.

If any individual is acting as an agent for or employed by an individual, corporation, partnership or other organization, both the individual and the employer or principal for whom the individual is peddling must obtain a permit as provided in this chapter:

- (a) provided, however, that said employer or principal for whom the individual is peddling or soliciting need not obtain a permit if written proof is submitted to the Mayor or designated appointee establishing that said employer and/or principal has transacted business within the State of Washington for a continuous period of at least three years immediately prior to the application's filing with the Mayor or designated appointee;
- (b) provided further, that if the City does not require a license of the employer pursuant to the above exemption, the City may still investigate the employer to see if the employer has in any manner violated any provision of SMC [9.12.040](#)(2) and may deny a permit to any individual employee if violations are found to exist.

(2) The following persons are exempt from the permit requirements and fee provisions of this chapter:

- (a) Farmers who peddle agricultural, horticultural, or farm products they have actually grown, harvested or produced;
- (b) Any person who is specifically requested to call upon others for the purpose of displaying goods, literature or giving information about any article, service or product;
- (c) Charitable, religious or nonprofit organizations or corporations which have received tax exempt status under 26 USC 501(c)(3) or other similar civic, charitable or nonprofit organizations;
- (d) Newspaper carriers;
- (e) Peddlers operating at any City-sponsored or authorized civic event for a time period not to exceed five consecutive days, so long as each peddler's name, address and telephone number is submitted to the City, in advance of the civic event, to be maintained in the City records; and
- (f) Vendors operating at a farmers' or public market or other City-sponsored or approved activity under the provisions of a temporary use permit; provided, that the

name, address and telephone number of each vendor is provided in advance to the City to be maintained in the City records.

(g) School or local youth groups.

### **9.12.030 Permit – Application.**

(1) Applicants for a permit under this chapter must file with the City a sworn application in writing on a form to be furnished by the City.

(2) All applications shall provide the following information on the application, with sufficient proof of identification:

- (a) Name, date of birth and description of the applicant;
- (b) Address and telephone number;
- (c) A brief description of the nature of the business and the goods or services to be sold;
- (d) If employed or acting as an agent, the name and address of the employer or principal, together with the description of the exact relationship with the principal or employer;
- (e) If a vehicle is to be used, a description of the same, including the license number;
- (f) A photograph of the applicant, taken within 60 days immediately prior to the date of filing the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (g) A statement as to whether or not the applicant has been convicted of any crime within the last 10 years, including misdemeanors, gross misdemeanors, or violations of any municipal ordinance, the nature of the offense, and the punishment or penalty assessed therefore; and
- (h) All sales to occur on a parcel of land must be upon property zoned HOD, UC or ED and the following must accompany the application:
  - (i) Signature of the property owner authorizing use of parcel;
  - (ii) A site plan showing the location of the sales area the nearest driveway and the nearest fire hydrant.
- (i) That the peddling is in compliance with the applicable provisions of Chapter Snohomish County Code (SCC) 30.43; and
- (j) Such other information as may be required by the City.

(3) Unless otherwise exempt under SMC [9.12.020](#), any individual, corporation, partnership or other organization which acts as the principal or employer for individual peddlers shall obtain a permit as provided herein and shall provide the following information on the application in addition to any information required as set forth above:

- (a) The applicant's name, address and telephone number and the names and addresses of all individuals who are employed by or acting as an agent for the applicant;
- (b) If a corporation, the names, addresses and telephone numbers of the corporation's board of directors, principal officers and registered agent; provided, however, that the Mayor or designated appointee may waive any portion of this requirement when disclosure would be unduly burdensome;
- (c) If a partnership, the names, addresses and telephone numbers of the partners;
- (d) A list of any criminal convictions during the past 10 years for the applicant, any owners of the business, and if a corporation, the board of directors and officers;

- (e) Name, address and telephone numbers (business and home) of the individual, if applicable, acting as the manager for the applicants;
- (f) A list of all other cities, towns and counties where the applicant has obtained a peddler's permit or similar permit within the past five years; and
- (g) Such other information as may be required by the City.

(4) At the time of filing the application, each applicant shall pay a nonrefundable fee as set forth in the current fee resolution to cover the City's cost of investigation and the issuance of a permit, including each peddler, principal and/or employer.

**9.12.040 Investigation of applicant – Issuance and denial of permit.**

(1) The Mayor or designated appointee shall refer the application to the Police Department which shall determine the accuracy of the information contained in the application and conduct a criminal history background investigation of the applicant. Upon completion, the Police Department shall forward the results of the investigation, together with a recommendation for approval or denial, to the Mayor or designated appointee.

(2) If, as a result of the investigation, the character and business responsibility of the applicant are found to be satisfactory, the Mayor or designated appointee shall issue the permit to the applicant. The Mayor or designated appointee shall deny the applicant the permit if the applicant has:

- (a) Committed any act consisting of fraud or misrepresentation;
- (b) Committed any act which, if committed by a permit holder, would be grounds for suspension or revocation of a permit;
- (c) Within the previous 10 years, been convicted of a misdemeanor or felony directly relating to the occupation of peddler, including, but not limited to, those misdemeanors and felonies involving moral turpitude, fraud or misrepresentation;
- (d) Been refused a permit under the provisions of this chapter; providing, however, that any applicant denied a permit under the provisions of this chapter may reapply if and when the reasons for denial no longer exist; or
- (e) Made any false or misleading statement in the application.

(3) The denial of a permit to an individual, corporation, partnership or other organization which serves as the employer or principal for individual peddlers shall be a sufficient basis to deny a permit to the individual applicants who are employed by or acting as an agent for the applicant.

**9.12.050 Permit – Exhibit.**

Peddlers, solicitors and transient merchants are required to exhibit their permit displayed on their person and fully visible while conducting any peddling activities.

**9.12.060 Permit – Expiration.**

All permits issued pursuant to this chapter are nontransferable and should be valid for the calendar year in which issued. License fees shall not be prorated for any portion of the year.

**9.12.070 Permit – Revocation.**

(1) Permits issued pursuant to this chapter may be revoked by the Mayor or designated appointee after notice and hearing for any of the following causes:

- (a) Fraud, misrepresentation or false statement contained in the application for permits;
- (b) Fraud, misrepresentation or false statements made in the course of carrying on the business as a peddler;
- (c) Any other violation of the Sultan Municipal Code;

- (d) Conviction after submission of the application for a peddler's permit of a felony or misdemeanor directly relating to the occupation of peddler, including, but not limited, those misdemeanors and felonies involving moral turpitude, fraud or misrepresentation;
- (e) Conducting the business of peddling in any unlawful manner or such manner as to constitute a breach of the peace or to constitute a menace to the health, safety and general welfare of the public; or
- (f) Violation of any part of this chapter by any employer of a permit holder, regardless of whether the employer is separately licensed under this chapter.

(2) The revocation of any permit held by an individual, corporation, partnership or other organization which serves as the employer or principal for individual peddlers shall constitute a basis for revoking the permit issued to individual applicants who are employed by or acting as agents for such individual, corporation, partnership or organization.

(3) The revocation of a permit for three or more persons who are employees or agents of an individual, corporation, partnership or organization shall constitute a basis for revoking the permit issued to the employer or principal, as well as the permits issued to all other employees or agents of that employer or principal.

(4) Notice of revocation of a permit shall be given by the Mayor or designated appointee in writing, setting forth specifically the grounds of the complaint and the time and place of hearing. The hearing shall be held by the Mayor or designated appointee. In addition, it shall state that the peddler's permit shall be suspended pending the outcome of such hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his or her last known address. The revocation shall become final if no appeal is requested as provided in SMC [9.12.080](#). If the permit holder is an individual, corporation, partnership or organization which employs or serves as the principal for individual permit holders, the notice shall also be mailed to the individual permit holders.

#### **9.12.080 Right of appeal.**

Any person aggrieved by the action of the Mayor or designated appointee in the denial of an application for permit or in the decision to revoke a permit as provided in this chapter shall have the right to appeal to the City Hearing Examiner. Such appeal shall be taken by filing with the City Clerk, within 10 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 the appeal. The Hearing Examiner shall set a time and place for a de novo hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided in this chapter for notice of hearing on revocation. The decision and order of the Hearing Examiner on such appeal shall be final and conclusive. Hearings shall be held within 21 days of the day the request is received by the City. The fee for the hearing examiner shall be set in the City's fee schedule.

#### **9.12.090 Use of streets.**

No peddler shall have any exclusive right to any location in the public streets, nor be permitted a stationary location, nor be permitted to operate in any congested area where operations might impede or inconvenience the public. For the purpose of this section, the judgment of a police officer, exercised in good faith, shall be conclusive as to whether the area is congested or the public impeded or inconvenienced.

#### **9.12.100 Hours and notice.**

No person shall engage the business of peddler between the hours of 8:00 p.m. and 8:00 a.m.

**9.12.110 Records.**

The Police Department shall report to the Mayor or designated appointee all convictions for violations of this chapter and the Mayor or designated appointee shall maintain a record for each permit issued and record the reports of violation therein.

**9.12.120 Violation – Penalty.**

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of up to \$1,000 and/or imprisonment for a term not to exceed 90 days.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

CITY OF SULTAN

\_\_\_\_\_  
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Laura Koenig, City Clerk

Approved as to form:

\_\_\_\_\_  
Margaret J. King, City Attorney

Passed by the City Council:

Date of Publication:

Effective Date: