

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: Action A 1 B

DATE: May 13, 2010

SUBJECT: Ordinance 1078-10 Business License

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

ISSUE:

The issue before the Council is the introduction of Ordinance 1078-10 to revise Chapter 5.04, Business License to include regulation of peddlers and solicitors.

STAFF RECOMMENDATION:

Staff recommends the Council introduce Ordinance 1078-10 to revise Chapter 5.04 Business License to address the issue of regulating peddlers and solicitors.

SUMMARY:

On February 25, 2010, SMC 9.12, Peddlers and Solicitor regulations were discussed by the Council. The current code needs to be brought into compliance with current state and federal law as recent court rulings have rendered it unenforceable. The Council had first reading of Ordinance 1073-10 on March 11, 2010 to revise SMC 9.12

Councilmember Pinson expressed concerns over the requirement for a special permit in addition to a business license.

At the April 22, 2010 meeting, the Council determined it could amend Chapter 5.04 Business License, to include peddlers and solicitors in lieu of the proposed Ordinance 1073-10 amending Chapter 9.12. Staff was directed to prepare an ordinance to amend Chapter 5.04.

RECOMMENDATION:

Introduction of Ordinance 1078-10 amending SMC 5.04 Business License for a first reading and passing it on to a second reading.

Attachment: A. Ordinance 1078-10, Business License

**CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1078-10**

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON,
AMENDING CHAPTER 5.04 OF THE SULTAN MUNICIPAL
CODE 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) 5.04 Amended. SMC Title 5.04 (Business License) is hereby amended by repealing Chapter 5.04 its entirety and enacting a new chapter 5.04 entitled, "Business License." The City Clerk is directed to codify the following provisions as SMC 5.04.

**Chapter 5.04
BUSINESS LICENSES**

Sections:

- [5.04.010](#) Purpose.
- [5.04.020](#) Definitions.**
- [5.04.030](#) Business license required.
- [5.04.040](#) Separate licenses required.
- [5.04.050](#) Change in nature or location of business.
- [5.04.060](#) Exemptions.
- [5.04.070](#) Issuance of license.
- [5.04.080](#) License to be posted.
- [5.04.085](#) Permit – Exhibit**
- [5.04.090](#) Licenses not transferable.
- [5.04.100](#) Fraudulent use of business license.
- [5.04.110](#) Approval of business license.
- [5.04.120](#) Inspections – Right of entry.
- ~~**[5.04.122](#) Permit – Exhibit.**~~
- [5.04.125](#) Use of streets**
- [5.04.127](#) Hours and notice**
- [5.04.130](#) Terms of license.
- [5.04.140](#) Renewal.
- [5.04.150](#) Penalty for late renewal.
- [5.04.160](#) Denial, revocation or suspension of license.
- [5.04.170](#) Appeal process – Request for hearing.
- [5.04.180](#) Appeal to the superior court.
- [5.04.190](#) License fees.

[5.04.200](#) Violation.

[5.04.210](#) General business license application – Public record.

5.04.010 Purpose.

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue and to regulate and ensure the legal conduct of businesses and to assist in the effective administration of health, fire, building, zoning and other codes of the city.

5.04.020 Definitions.

The following words, terms and phrases when used in this chapter shall have the following meanings, except where the content clearly indicates a different meaning:

A. “Business” includes all activities, occupations, trade, pursuits, or professions located and/or engaged in within the city with the object of gain, benefit or advantage to the person engaging in the same, or to any other person or class, directly or indirectly. It also includes but is not limited to general contractors, subcontractors, home occupations, multifamily dwelling units, mobile home parks and businesses temporarily conducted within the city including but not limited to traveling salespersons.

B. “Business enterprise” means each location at which a person engages in business within the city.

C. “City” means the city of Sultan, Washington.

D. “Employee” means any person employed at any business and/or business enterprise who performs any part of his/her duties within the city, except casual laborers not employed in the usual course of business. All officers, agents, dealers, franchisees, etc., of a corporation or business trust, and partners of a partnership, are “employees” within this definition.

E. “Engaging in business” means commencing, conducting or continuing in any business or carrying on of any form of activity for gain, profit or advantage, whether direct or indirect, within the city whether or not an office or physical location for the business lies with the city.

F. “Licensee” means any business granted a business license.

G. “Person” includes one or more persons of either sex; corporations, including not-for-profit corporations and municipal corporations, partnerships, including limited partnerships; associations, joint ventures or any other entity capable of having an action at law brought against such entity, but excluding employees.

H. “Premises” shall mean and include all lands, structures and places, and any personal property, which either is affixed to, or is used in connection with any such business conducted on such premises.

I. 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.

J. "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.

5.04.030 Business license required.

It is unlawful for any person to conduct, operate, engage in or practice any business in the city without having first obtained a business license for the current calendar year or unexpired portion thereof, and paying the fees prescribed herein, unless such activity is exempt as provided in SMC [5.04.060](#).

5.04.040 Separate licenses required.

A separate business license shall be obtained for each separate location within the city at which the business is conducted. A separate business license shall be obtained for each different and discrete business conducted within the city by any person, whether at the same location as another licensed business.

5.04.050 Change in nature or location of business.

Each business license shall authorize a particular type of business at the designated location. Any change in the nature of the business shall necessitate a new application for a business license. A change of location shall be reported in writing to the city clerk within 10 days of the change and, if in compliance with zoning and business regulatory ordinances, the existing business license shall be transferred to the new location.

5.04.060 Exemptions.

The following shall be exempt from the provisions of this chapter:

- A. Minors engaged in business or operating a business concern where no other person is employed by the minor.
- B. The United States or instrumentality thereof and the state of Washington or any municipal subdivision thereof, with respect to any exercise of government functions.
- C. All special events sponsored by the city, but not to include participating commercial peddlers.
- D. Nonprofit organizations carried on by religious, civic, charitable, benevolent, nonprofit, cultural or youth organizations.
- E. Business where the sale or contract for services occurs on business premises outside of the city and the only event occurring within the city is the mere delivery of the goods and services to the customer or client.
- F. Any farmer, gardener, or other person who sells, delivers or peddles any fruits, vegetables, berries or any farm produce or edibles raised, gathered, or produced by such person within the state.

G. 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

H. 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.

5.04.070 Issuance of license.

Applications for a business license shall be made either with the city of Sultan or with the State of Washington Department of Licensing giving such information as is deemed reasonably necessary to enable the enforcement of this chapter. Said application shall be accompanied by payment of the application fee.

5.04.080 License to be posted.

All licenses issued pursuant to this chapter authorizing the operation or conducting of any occupation, business, trade or entertainment at a specified location shall be posted in a conspicuous place at such location. The licensee at the request of any interested person shall display such license.

5.04.085 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.

5.04.090 Licenses not transferable.

No license issued under the provisions of this chapter shall be transferable or assignable unless otherwise specifically provided for; except that a license may be transferred when a business changes its structure of ownership; provided, however, that a new business license shall be required upon a substantial change of ownership, whereby those primarily accountable for the business have changed.

5.04.100 Fraudulent use of business license.

No person holding a city business license shall suffer or allow any other person for whom a separate license is required to operate under or display such person's license and no person may maintain a business license obtained through false or fraudulent application or return of any false statement or representation in or in connection with any such application or return for such business license.

5.04.110 Approval of business license.

All licenses approved for issuance by the city clerk shall be conditioned upon compliance at all times with all applicable ordinances, regulations and statutes of the city and the state of Washington.

5.04.120 Inspections – Right of entry.

The city clerk, or designee, or authorized representative of the planning and building department are authorized to make such inspections of licensed premises and take such action as may be required to enforce the provisions of any business license or regulation ordinance.

5.04.125 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.

5.04.127 Hours and notice.

No person shall engage in the business of peddler or solicitor between the hours of 8:00 p.m. and 9:00 a.m.

5.04.130 Terms of license.

All business licenses shall have a term as determined by the State of Washington Department of Licensing in cooperation with the city. The city license term or expiration date will be coordinated with the terms or expiration date of all other licenses or permits required by the state for each business.

5.04.140 Renewal.

Renewals shall be handled by the State of Washington Department of Licensing in coordination with the city finance director. (Ord. 916-06 § 1; Ord. 843-04 § 1)

5.04.150 Penalty for late renewal.

If any license issued under this chapter is not obtained in a timely manner or renewed by the date of expiration of the existing license, then the new application must be accompanied by a fee of 150 percent of the regular fee payable upon application under this chapter.

5.04.160 Denial, revocation or suspension of license.

A business license issued under this chapter may be revoked, suspended or denied for any one or more of the following reasons:

- A. Failure to comply with any federal, state or local laws or regulations.
- B. Failure to comply with any of the terms and conditions imposed by the city on the issuance of the business license.
- C. Conduct of the business or activity in a manner which endangers the public health, welfare, or safety.
- D. When the license was procured by fraud, false representation or evasions or suppression of material fact.

5.04.170 Appeal process – Request for hearing.

Upon denial, suspension or revocation of a license, the city clerk shall, by certified mail, give written notice of such action to the applicant, which notice shall include a written report summarizing the complaints, objections and information received and considered by the city clerk and further stating the basis for such action. The applicant must appeal the decision for denial, suspension or revocation within 10 calendar days of receipt of the notice by filing a written notice of appeal and request for hearing with the city clerk. Upon receipt by the city clerk of the appeal notice, a hearing shall be set before the city council. Notice of the hearing shall be given to the appellant at least 10 days prior to the hearing. At such hearing, the appellant shall be entitled to be heard and introduce evidence on his behalf.

5.04.180 Appeal to the superior court.

The decision of the city council is final unless an appeal of the decision is filed with the Snohomish County superior court within 30 calendar days from the date the city council decision was served upon or was mailed to the appellant. The decision for suspension or revocation of a license under this chapter shall be stayed during administrative and judicial review, but refusal to issue an initial license shall be not be stayed.

5.04.190 License fees.

The fee for the business license required by this chapter shall be as established by resolution of the city council. The fee may be prorated as necessary to conform to SMC [5.04.130](#).

5.04.200 Violation.

A. Any violation of this chapter shall be deemed a misdemeanor and shall be punished by a fine not to exceed \$500.00 and any person who engages in or carries on any business subject to the provisions of this chapter without obtaining a business license, or who carries on such activities in violation of this chapter shall be guilty of a separate violation of this chapter for each day during which the business is so engaged in or carried on, and any owner who fails or refuses to pay the business license fee or any part thereof on or before the due date shall be deemed to be operating a business without having a proper license to do so.

B. Collection. Any license fee or tax due and unpaid and delinquent under this chapter, and all penalties thereon may be collected by civil action, which remedy shall be in addition to any and all other existing remedies and penalties.

5.04.210 General business license application – Public record.

General business license applications made to the city clerk pursuant to this chapter shall be public information subject to inspection by all persons except to the extent those records may be deemed to be private or would result in unfair competitive disadvantage to such business enterprise if disclosed, all as more particularly described in Chapter 42.17 RCW.

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: