



# MEMORANDUM

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**TO:** Mayor and City Councilors

**FROM:** Rich Olson, City Manager

**DATE:** August 5, 2015

**REF:** Consideration - Call for Public Hearing to Amend Chapter 14, Business Regulations, Article V Peddling and Solicitation of the City of Elizabeth City Code of Ordinances

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***BACKGROUND:***

Due to recent legislation enacted by the North Carolina General Assembly repealing the authority for municipalities to levy privilege license taxes, peddlers and itinerant merchants will now be issued "permits" rather than "licenses" by the City of Elizabeth City.

***ANALYSIS:***

The authority in state statutes for municipalities to permit peddlers and itinerant merchants operating within the City was not repealed; however, the terminology used in the City's Code of Ordinances should be changed from "license" to "permit." The attached proposed amendments to Article V Peddling and Solicitation changes any references made to license(d) to permit(ted). This section of the City's Code also contains procedures for the permitting of pushcarts in the Central Business District.

In addition, several other "housekeeping" revisions have been proposed, as noted throughout the ordinance.

***STAFF RECOMMENDATION:***

By motion, call for a Public Hearing to be held on August 24, 2015 at 7:30 p.m. in Council Chambers of the Municipal Administration Building to gather citizen input regarding the proposed amendments to Chapter 14, Article V Peddling and Solicitation, as presented herein.

RCO/vdw

ORDINANCE #2015-08-\_\_\_\_\_

TO AMEND CHAPTER 14 BUSINESS REGULATIONS,  
ARTICLE V. PEDDLING AND SOLICITATION  
IN THE CITY OF ELIZABETH CITY CODE OF ORDINANCES  
TO COMPLY WITH RECENT STATUTORY CHANGES BY THE  
NORTH CAROLINA GENERAL ASSEMBLY

*WHEREAS*, the City Council finds that recent legislation by the General Assembly of North Carolina repealed the authority for municipalities to levy privilege license taxes; and

*WHEREAS*, the category of legislation authorizing the issuance of permits for peddlers and itinerant merchants was not repealed; and

*WHEREAS*, this category of legislation should no longer be classified in the City of Elizabeth City Code of Ordinances as a “license” and shall be changed to the term “permit”; and

*WHEREAS*, the City Council hereby adopts revisions as noted by deletion and addition in the following Chapter 14 Business Regulations, Article V Peddling and Solicitation of the City of Elizabeth City Code of Ordinances:

**SECTION I. ARTICLE V. PEDDLING AND SOLICITATION\***

DIVISION 1. GENERALLY

**Sec. 14-126. Soliciting; permit required.**

Persons wishing to engage in door-to-door sales or solicitation, or on-the-street sales or solicitation, shall apply for a permit to perform such sales or solicitation.  
(Code 1976, § 16-2; Code 1993, § 5-112)

**Sec. 14-127. Application; fee; bond.**

Persons wishing to engage in door-to-door or on-the-street sales or solicitations shall file a timely application therefor with the city manager or his designee; pay such fee as may be established by the City Council, and pay a bond as may be required.  
(Code 1976, § 16-3; Code 1993, § 5-113)

**Sec. 14-128. Compliance with rules, regulations.**

Persons wishing to engage in door-to-door or on-the-street solicitation shall, upon the granting of a permit therefor, comply with all rules and regulations of the city.  
(Code 1976, § 16-4; Code 1993, § 5-114)

**Sec. 14-129. Door-to-door canvassing without invitation.**

(a) No peddler, hawker, itinerant merchant, transit vendor or solicitor for the sale of merchandise or periodicals, whether the same be delivered at the time of the soliciting or later delivered by mail or otherwise,

shall go in or upon private residences, offices or places of business, not having been requested or invited to do so by the owner, or occupant thereof, for the purpose of soliciting the sale of merchandise or periodicals.

(b) Each day's violation of this section shall constitute a separate offense; providing nothing in this section shall apply to the sale of one's own products as a farmer or a sale by the individual of the products of his own labor.

(Code 1976, § 16-10; Code 1993, § 5-115)

\*State law references—Soliciting on streets, G.S. 20- 175; charitable solicitation, G.S. ch. 131C; authority to regulate itinerant merchants and solicitation campaigns, G.S. 160A-178; authority to regulate begging, G.S. 160A-179.

#### **Secs. 14-130—14-158. Reserve.**

### DIVISION 2. PEDDLERS' AND ITINERANT MERCHANTS' ~~LICENSES-PERMITS~~\*

#### **Sec. 14-159. Required.**

(a) Pursuant to G.S. 160A-178, it shall be unlawful for any itinerant merchants, salesmen, promoters, drummers, peddlers or hawkers to engage in any business activities, as hereinafter defined, within the city unless ~~licensed-permitted~~ to do so as provided in this article.

\*State law reference—City may regulate activities of peddlers, solicitors, and itinerant merchants, G.S. 160A-178.

(b) A one-time only, up to three days ~~license-permit~~ shall be issued to the entity or body organizing a "special citywide festival" or event. Said ~~license-permit~~ shall authorize the participation of itinerant vendors engaging in business activities within the geographical area covered by the festival during the festival's operation. For the purpose of determining the licensing fee to be charged, the following scale shall be used:

(1) 1—10 vendors: \$100.00

(2) 11—20 vendors: \$200.00

(3) 21—30 vendors: \$300.00

(4) 31 vendors and up: \$400.00

(c) Only those merchants as described in section 14-160 shall be counted in determining the number of vendors.

(Code 1976, § 16-12(a); Code 1993, § 5-126; Ord. of 10-7-1996, § 1; Ord. No. 03041, § 1, 4-7-2003)

#### **Sec. 14-160. Applicability.**

(a) For purposes of this article, itinerant merchants, salesmen, promoters, drummers, peddlers or hawkers engaging in business activities within the city shall mean and include all persons, who engage in or conducts in the city either in one locality or in traveling from place to place, a temporary or transient business of selling or soliciting orders for the sale of goods, wares or merchandise with the intention of continuing in said business in the city for a period not to exceed 180 days; and who rent, lease, use or occupy, either in whole or in part, for the purpose of carrying on such business, any room, building, lot or parcel of land, or motor vehicle including trucks and semitrailers for the exhibition and sale of such goods, wares and merchandise.

(b) This definition and this section shall not apply to:

- (1) Charitable or eleemosynary activities;
  - (2) A farmers' market;
  - (3) Sales of food or agricultural produce where stock or anticipated sales are valued or anticipated at \$1,000.00 or less per day;
  - (4) Sales made to dealers by commercial travelers or selling agents in the usual course of business; or
  - (5) Bona fide sales of goods, wares or merchandise for future delivery in interstate commerce where no measurements or design specifications are made, or prepared in the city, or no payment or deposit is collected in the city for placement of orders, or where no ~~license-permit~~ may be required or collected under the United States Constitution or laws of the United States.
- (Code 1976, § 16-12(b); Code 1993, § 5-127)

**Sec. 14-161. Application.**

(a) Any person, as defined in section 14-160 who desires to engage in such business activities within the city must be ~~licensed-permitted~~ to do so by the city prior to commencement of such business activity in the city. Failure to secure a ~~license-permit~~ before commencing business as defined in section 14-160 is unlawful and in violation of this division. A ~~license-permit~~ may be granted to an applicant ~~for such license~~ by the city upon compliance with this section.

(b) Applicant shall submit a written and verified application to the city finance director or his designee at least 20 days prior to the scheduled date to commence business in the city. This application shall set forth:

- (1) The name and address of the applicant;
- (2) The name and address of the owner of the goods, wares or merchandise to be sold;
- (3) The location and dates of the proposed business activity or sale in the city;
- (4) The name and address of the owner of the property upon which the business activity or sale will be conducted;
- (5) Inventory of goods, wares or merchandise which applicant intends to offer for sale with quantity, wholesale cost and prices at which each item is proposed to be sold, if sales are not to be made from inventory then a copy of the catalogue or other sales materials will be furnished;
- (6) Statement of gross receipts for all sales in the city by applicant in the preceding five years and dates of each; and
- (7) Applicant's previous places of employment and names and addresses of previous employers during preceding ten years.

(Code 1976, § 16-12(c)(1); Code 1993, § 5-129)

**Sec. 14-162. Other requirements; bond.**

(a) At the time the ~~license-permit~~ application is made, the applicant shall further furnish to the finance director or his designee the following:

- (1) ~~License-Permit~~ processing fee ~~of \$200.00~~ in an amount as set forth and made a part of the Schedule of Fees and Charges adopted by the City Council, as amended from time to time ;
- (2) Written consent of the owner of the land upon which applicant proposes to conduct business from in the city;
- (3) A certified copy of the charter or articles of incorporation of applicant, if corporate and if a foreign corporation, certified copy of authority to do business in the state and proof of legal appointment of a process agent in the state; and
- (4) Duly executed bond.

(b) The required bond shall be in the sum of \$5,000.00 or ten percent of anticipated sales, estimated from inventory furnished, whichever is greater. The surety of such bond shall be a surety company authorized to do business in this state. The bond shall be payable to the city to the extent any taxes, fees or fines as determined by the city's director of finance are not paid and upon judicial determination, to those authorized to file suit thereunder. Such bond shall be conditioned upon faithful observance of all the conditions of this section, and shall also indemnify any purchaser at such sale who suffers any loss by reason of defective merchandise or any misrepresentation in said sale. The terms of said bond shall allow any purchaser seeking such indemnification to maintain an action against applicant as the principal thereon and the surety thereon. The bond shall be effective for one year after the termination of the sale for which it is made and until all actions are concluded and any judgments satisfied, or until the amount of the bond is exhausted by payments on such claims.

(Code 1976, § 16-12(c)(2); Code 1993, § 5-130)

#### **Sec. 14-163. Zoning considerations.**

(a) The activity for which application is made according to the provisions of this division and any ~~license permit~~ issued, shall only be lawful in a commercial zoning district in the city as determined by the official zoning ordinance of the city and the official zoning map. Failure to so locate same is a basis for denying or revoking a business or ~~privilege license permit~~ to conduct such activity.

(b) Such activity for which application is made and any ~~license permit~~ issued must meet a minimum 30 foot setback from any public street or thoroughfare. Failure to so meet this setback is a basis for denying or revoking a ~~business or privilege license permit~~ to conduct such activity.

(Code 1976, § 16-12(c)(3), (4); Code 1993, § 5-131)

#### **Sec. 14-164. Issuance.**

If upon review of all the information and documents filed by applicant, the finance director or his designee shall be of the opinion that applicant is of good and reputable business character and has met all requirements of this section then the finance director or his designee shall issue applicant a ~~privilege and business license permit~~ for the sale or business activity applied for which shall be valid only for the sale or business activity applied for.

(Code 1976, § 16-12(c)(5); Code 1993, § 5-132)

#### **Sec. 14-165. Denial; appeal.**

If applicant fails to timely file all the information and documents required or if upon review the finance director or his designee determines same not to meet all requirements of this division or he fails to find the applicant to be of good and reputable business character, the finance director or his designee shall in writing

deny the application for ~~privilege and business license permit~~ with reasons stated for such denial. Appeal from a decision of ~~such denial by the city finance director~~ shall be to the ~~full city council~~ city manager or his designee. (Code 1976, § 16-12(c)(5); Code 1993, § 5-133)

#### **Sec. 14-166. Revocation.**

Any person who shall receive a ~~privilege and business license permit~~ as stated in section 14-161 may conduct the business activity or sale ~~licensed-permitted~~, but may not vary, exceed or in any way deviate from the activity or sale originally allowed by such ~~license permit~~. Any variance or activity beyond the express terms of the ~~license permit~~ shall be unlawful and shall be grounds for the city to revoke such ~~license permit~~. (Code 1976, § 16-12(d); Code 1993, § 5-134)

#### **Sec. 14-167. Expiration.**

Any ~~license permit~~ issued pursuant to this article shall not exceed or authorize such business activity for more than five days. If any person wishes to conduct such business activity for more than five days, he must submit a new application and the other fees and documents required by this article and receive a ~~license permit~~ for each time period up to five days from the expiration of any ~~license permit~~ issued or to be issued. If one day or more elapses between scheduled business activity during which time there is no business activity, a new and separate ~~license permit~~ must be obtained for each time segment of scheduled business activity. (Code 1976, § 16-12(e); Code 1993, § 5-135)

#### **Sec. 14-168. Penalty.**

Any person who shall be found to be in violation of any provisions of this article shall be guilty of a misdemeanor, and on conviction thereof shall be fined in an amount not exceeding \$500.00 for each violation or by imprisonment for not more than six months, or by both. Each day in which any such violation shall continue shall be deemed a separate offense. (Code 1976, § 16-12(f); Code 1993, § 5-136)

#### **Sec. 14-169. Operation of pushcarts within the central business district.**

(a) For the purposes of this section, the term "pushcart" shall be defined as a manually maneuvered cart or a self-propelled cart or a cart pulled by a vehicle. However powered, said pushcart shall meet the design requirements pursuant to subsection (j) of this section.

(b) The operator of a pushcart at outdoor locations on public property as described in this section shall first apply for and obtain a specialty peddler's ~~license permit~~ issued by the city manager under the provisions of this section.

(c) The fee for a specialty peddler's ~~license permit~~ shall be ~~\$250.00 per year in an amount as set forth and made a part of the Schedule of Fees and Charges adopted by the City Council, as amended from time to time~~, to be paid by the permittee at the time of issuance and annually thereafter on September 1 of each year. The initial fee shall be pro-rated to coincide with the city's billing cycle. The permittee may allow persons authorized by the permittee to sell food and/or cut flowers from the pushcart. The permittee shall maintain records of sales activities of the persons authorized by the permittee to engage in such activity and the permittee shall collect and remit to the state department of revenue the appropriate local and state sales taxes from all sales made pursuant to this ~~license permit~~.

(d) The city manager is authorized to require, in accordance with the issuance of the ~~license-permit~~ under this article, evidence of adequate insurance for the protection of the general public in connection with the operation of the pushcart.

(e) The city manager is authorized to require a refundable deposit to guarantee payment for any damages and for clean-up expenses incurred in connection with the pushcart activities.

(f) Upon approval of the ~~license-permit~~ application and payment of the fee, the applicant shall be issued a ~~license-permit~~ which should be affixed to the pushcart in a conspicuous place at all times.

(g) ~~Licenses-Permits~~ issued under the authority of this article shall be nontransferable either as to individuals, location or item.

(h) It shall be unlawful to sell novelties, souvenirs or any merchandise other than food or cut flowers from a pushcart.

(i) It shall be unlawful for any permittee to place or install on any street, sidewalk or other public property any of the contents of his pushcart for the purpose of selling or displaying same.

(j) The director of parks and recreation or his designated representative shall have the authority to determine if the aesthetic value of the pushcart is in conformity with this regulation. The pushcart shall be easily maneuverable by one person and shall not exceed six feet in length, four feet in width or five feet in height. The bottom of the pushcart shall be at least six inches from the ground. There shall be an umbrella or canopy over the pushcart. The pushcart must have sides at least one foot high. The containers must remain inside the pushcart at all times and under no circumstances are to be placed on city streets or sidewalks. At no time shall cut flowers be sold from a stand, table or any other type vehicle than that described herein.

(k) The permittee shall have posted on the pushcart, on both sides, the prices of all food items or flowers being sold and no item may be sold for more than the posted price.

(l) No pushcart shall be left unattended for more than 30 minutes. If a pushcart is left unattended for more than 30 minutes, it will be subject to removal by the police department to a public warehouse. If permittee wishes to claim his pushcart, he will pay a towing and storage fee in an amount established by the city manager.

(m) Pushcarts will be allowed to operate on the parking lot area of Mariner's Wharf and Waterfront Park. At no time shall a pushcart be located on a public street, sidewalk or grassy area of the park. If at any time a pushcart is deemed by the police department to be interfering with either pedestrian or vehicular traffic or creating a disturbance, the pushcart shall be immediately removed upon request of the police department.

(n) The city manager is authorized to designate the number of pushcarts and the location of same within the allowed geographical area.

(o) The permittee of a pushcart shall be responsible for the removal of all garbage generated by the operation of the pushcart.

(p) Noise-making devices such as, but not limited to, bells, whistles and gongs may not be used to advertise or announce sales.

(q) Every person propelling a pushcart shall be subject to the provisions of a driver of any vehicle, except those, by which of their very nature, can have no application.

(r) In the event of a citywide festival taking place in either Mariner's Wharf or Waterfront Park, the operator of a pushcart under this division will be disallowed from operating during the time of the festival unless authorized to do so by the organizers of the event.

(s) The city manager is authorized to impose additional conditions and limitations on the issuance of such **license-permit** as may be necessary to protect the safety and well-being of the citizens of the city.

(t) Any **license-permit** issued hereunder shall be revoked by the city manager for any violation by the holder, of any provision of this Code or any other ordinance of the city or whenever there is a violation by the holder of any condition, provision or qualification set forth in this section.  
(Code 1993, § 5-137; Ord. No. 03082, 8-18-2003)

**SECTION II. EFFECTIVE DATE:** This Ordinance, as revised herein shall take effect immediately upon adoption.

**SECTION III. FEE:** The fee for a permit issued under section 14-162(1) of this ordinance shall be in the amount of \$200.00.

**SECTION IV. FEE:** The fee for a permit issued under section 14-169(c) of this ordinance shall be in the amount of \$250.00.

**SECTION V. CODIFICATION.** The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

**SECTION VI. SEVERABILITY CLAUSE.** If any section, or part of provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**SECTION VII.** All ordinances and sections of the Elizabeth City Code, and parts thereof, inconsistent herewith be and the same hereby are repealed to the extent of such inconsistencies.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the \_\_\_\_\_ day of August, 2015.

\_\_\_\_\_  
Joseph W. Peel  
Mayor

*Attest:*

\_\_\_\_\_  
Vivian D. White, CMC/NCCMC  
City Clerk