

CITY OF STANWOOD
Stanwood, Washington

ORDINANCE NO. 1313

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, RELATING TO THE REGULATION OF PEDDLERS, VENDORS AND TEMPORARY MERCHANTS AND STANWOOD MUNICIPAL CODE (SMC) TITLE 5 BUSINESS LICENSES AND REGULATIONS; AND AMENDING SMC CHAPTER 5.08 PEDDLERS, VENDORS AND TEMPORARY MERCHANTS.

WHEREAS, the City of Stanwood desires to provide updated regulations for peddlers, vendors and temporary merchants who do business in the city; and

WHEREAS, the City desires to provide for adequate fees to cover the cost of processing applications for temporary business licenses for temporary vendors of all types; and

WHEREAS, the City desires to continue the practice of allowing background review of temporary vendors and peddlers and of considering whether additional police services may be required to administer regulations for temporary vendors; and

WHEREAS, the Planning Commission held a pre-application meeting on special event related temporary merchants and peddlers amendments March 12, 2012; and

WHEREAS, the Community Development Department filed a zoning text amendment, Application LZCA 12-03, on March 16, 2012 which included a section on amendments to temporary merchants and peddlers regulations; and

WHEREAS, the City Council referred a work program for consideration of special event related municipal code and zoning regulations to the Planning Commission on March 22, 2012; and

WHEREAS, consistent with the State Environmental Policy Act, RCW Chapter 43.21C (SEPA), the Responsible Official issued a SEPA Determination of Non Significance on March 22, 2012; and

WHEREAS, the Planning Commission held a duly noticed public hearing on Application LZCA 12-03 on April 9, 2012.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF STANWOOD, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The Findings of Fact and Conclusions attached hereto as Exhibit A are hereby incorporated by this reference.

SECTION 2. SMC Chapter 5.08 Peddlers, Vendors and Temporary Merchants, of SMC Title 5 Business Licenses and Regulations is amended to read as follows:

Chapter 5.08

PEDDLERS, VENDORS AND TEMPORARY MERCHANTS

Sections:

5.08.010 Definitions.

5.08.020 Application process and exemptions.

5.08.030 License approval, appeals and exemptions.

5.08.040 Special conditions – Mobile unit vendors.

5.08.050 License fees, terms and exemptions.

5.08.060 License revocation/denial.

~~5.08.070~~ ~~Convention~~ ~~Festivals.~~

~~5.08.080~~ 5.08.070 Site requirements.

~~5.08.090~~ 5.08.080 Temporary merchant/vendor general requirements.

~~5.08.100~~ 5.08.090 Responsibilities.

~~5.08.110~~ 5.08.100 Penalty for violation.

5.08.010 Definitions.

In construing the provisions of this chapter, except when otherwise declared or clearly apparent from the context, the following definitions shall be applied:

(1) "Temporary merchant" or concessionaire includes any person who sells, or offers for sale no charge, any goods, wares, merchandise, food or anything of value, for a period in excess of two one days and no more than 15 days in any one location, except from within a permanent building they own or lease. The provisions of this chapter shall not apply to public officers selling property under authority of law and to persons selling property under court order.

(2) "Permanent building" means a structure constructed on a permanent foundation, and hooked up to city water, sewer, and drainage. Permanent structures must also have restrooms and washing areas.

(3) "Peddler" means any person, either as agent or principal, who carries goods, wares, merchandise or food of whatever nature or description from house to house, building to building or upon any street, highway or public place within the city for the purpose of selling such goods, wares or merchandise or soliciting orders for the same. Exempt from this definition are newspapers.

(4) "Vending of food from a mobile unit" means the vending of edible merchandise from a mobile unit traveling city streets for the purpose of selling edible merchandise. Exempt from the meaning of this definition shall be those mobile units used specifically for the delivering only of food

pursuant to orders taken at an established place of business. Also exempt from this definition are: meals on wheels and food basket or hot food delivery, by churches or other not-for-profit charitable organizations, to the elderly, sick or physically challenged.

(5) "Solicitor for profit" includes any person who goes or communicates from house to house, from place to place, or from street to street, soliciting or taking, or attempting to take orders for the sale of goods, including magazines, books, periodicals or personal property of any nature whatsoever for future delivery, or for service to be performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such order, or whether or not he is collecting advance payment on such order, or who in such matter, requests information which, to a reasonable person, appears calculated to ultimately result in the solicitation of orders for merchandise or services to be rendered of any nature.

(6) "Charitable" means any charitable, religious or nonprofit organization or corporation which has received tax exempt status under IRC 501(C)(3), 26 USCA 501(C)(3) as adopted or as hereafter amended. A copy of said tax exemption will be filed with the city clerk.

(7) "Solicit" and "solicitation" mean the request, directly or indirectly, for money, credit, property, financial assistance or other thing of value on the plea or representation that such will be used for a charitable purpose as hereafter defined. "Solicit" and "solicitation" shall include the following methods of requests, collections for receipts:

(a) Any oral or written request;

(b) The sale of, offer or attempt to sell any change, coupon, device, tag, emblem, ticket, book, card, magazine, membership, merchandise, subscription, advertising space or other thing in connection with which an appeal is made for a charitable purpose or any statement is made that the whole or any part of the proceeds from such sale will be donated to or will go to a charitable purpose. (Ord. 932, 1996).

5.08.020 Application process and exemptions.

License applications under this chapter shall be made to the city clerk on forms prescribed by that office. The application must be filed at least 30 days prior to the commencement of the activity proposed. All applications will be reviewed by the police, public works, and planning departments and such other department(s) as determined necessary by the city clerk. The information on the application shall include, but not be limited to the following:

(1) Name and physical description of the applicant;

(2) Local address where all notices may be mailed to the applicant;

(3) Phone number where the applicant may be reached;

(4) A brief description of the nature and method of the business, and goods to be sold, or services solicited or provided;

(5) If an agent or employee, the name and address of the principal or employer;

(6) If a vehicle is to be used, a description of the vehicle, the name of the person or company to whom the vehicle is registered, together with vehicle license number or other means of identification;

(7) A copy of a current valid driver's license;

(8) For any permit where handling of food is involved, applicant should supply:

(a) ~~A~~ a copy of the current foodhandlers permit from the Snohomish County health department;

(b) ~~A declaration that he/she is free of infectious, contagious or communicable disease. If applicant is not free of infectious, contagious or communicable disease, the license may be denied;~~

(9) License applications for ~~Stanwood Mayfest and other~~ special city events are exempt from this section and shall be ~~licensed~~ permitted as provided in Chapter 5.045.06 SMC.

5.08.030 License approval, appeals and exemptions.

(1) On the receipt of an application with appropriate license fee, the city clerk shall prepare and deliver to the applicant a license, which shall require the approval signature of the city clerk, and all other appropriate city department heads. The application must show:

(a) The name, address and telephone number of the applicant;

(b) The kind of goods to be sold or solicited to be sold;

(c) Amount of fee paid;

(d) Date of issuance;

(e) Duration of license;

(f) License number, registered ownership, identifying description of any vehicle to be used by the licensee;

(g) Current driver's license number and state of issuance of license, of any driver's license displayed by the licensee.

(2) The city may investigate the background of any temporary merchant, vendor, and /or peddler for the protection of the public health, safety and welfare.

(3) In the event the police chief determines that a police officer should be in attendance at any temporary sales event, the cost to cover the salary of the extra officer shall be paid by the sponsor/promoter.

~~(24)~~ The city clerk shall keep a permanent record of all licenses issued.

~~(35)~~ If the license is denied, for reasonable cause, any license fee previously paid shall be retained by the city to defray costs of investigation.

~~(46)~~ As a condition precedent to the issuance of a license to conduct business as a temporary merchant under this chapter, an applicant must obtain and retain a minimum of \$500,000 public liability and property damage insurance, which shall include product liability coverage, naming the city as an additional insured.

~~(57) Appeals~~ Any person aggrieved by the action of the city clerk, in the denial of an application, or revocation of his a license, may ~~apply for an appeal the decision to the hearing examiner through the mayor or his designated representative within 14 days after notice of the action complained of has been mailed to him.~~

~~(a) Such a Appeals shall be made by filing a written statement in writing and shall setting forth fully the grounds for the appeal.~~

~~(b) Appeals shall be delivered to the city clerk by 5:00 p.m. of the last day of the appeal period.~~

~~(c) The city shall give public notice of a public hearing as required by Chapter 1.08 SMC. ; the mayor shall evaluate the appeal proposal and set a time and place for hearing before the city council on such appeal, and notice shall be given to the appellant in the same manner as herein provided for notice of hearing on revocation. The decision and order of the council hearing examiner on such appeal shall be final and conclusive.~~

(68) It is lawful for any farmer, gardener or other person, without license, to sell, deliver or peddle any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any farm produce or edibles raised, caught, produced or manufactured by such person. Such persons are specifically exempt from payment of license fees under the provisions of this chapter. Claim for such exemption must be made by application and approved through the city clerk.

5.08.040 Special conditions – Mobile unit vendors.

(1) A vendor from a mobile unit shall not use radios or any other sound devices to attract public attention unless in accordance with Chapter 9.50 SMC.

(2) The vendor shall provide, for public use, a receptacle of adequate size on said unit for the deposit of refuse. Appropriate recycling containers shall also be provided.

(3) The owner or operator of such mobile unit vending or peddling edible food shall fully comply with any and all federal, state, county and city laws regarding the purity of such food and the cleanliness of such unit.

(4) Mobile units must be 200 feet from ~~an~~ a similar existing and stationary like-business.

5) Insurance, as required by SMC 5.08.030(4) shall be required.

5.08.050 License fees, and terms and exemptions.

(1) Temporary Merchants. The fee for a temporary merchant's license shall be as listed in SMC 3.30.090. This license shall not exceed 15 days in duration. A temporary merchant's license will be issued only twice in a 12-month period, and the two permits shall not be issued consecutively. Approved vending carts that can be moved daily by hand and are co-located immediately adjacent with to a store are exempt from this requirement provided the temporary merchant vending cart is approved by the property owner or leaseholder of record and the which has store has

approved restrooms and sanitary facilities that are available to the customers of the vending cart. are exempt from this requirement.

(2) Peddlers and Solicitors. The fee for a peddler's license shall be as listed in SMC 3.30.090. The fee shall be per peddler, and shall not be prorated for any part of a license year.

(3) Mobile Unit Vending. The license fee for mobile unit vending shall be as listed in SMC 3.30.090.

(4) Charitable Solicitations. The license fee for charitable solicitations shall be as listed in SMC 3.30.090. A license for service clubs, churches, schools and other not-for-profit organizations will be issued for a one-year time period, which will begin on January 1st of each year and not be prorated. The organization sponsoring the solicitation shall secure the license.

(5) Temporary merchants, peddlers, mobile vendors and charitable solicitors shall post a copy of the issued license on the premise of sales, or for mobile sales or solicitors, upon their equipment or upon their person. In addition, each charitable solicitors Each solicitor shall carry proper credentials identifying him/herself and the sponsoring organization.

~~(6) Exemptions. A declaration of exemption, if exemption is claimed, in which case the license fee need not be paid unless the applicant shall be found not entitled to exemption, whereupon the license fee shall forthwith be paid if the applicant desires to transact business as a peddler, solicitor or canvasser.~~

5.08.060 License revocation/denial.

(1) License Revocation – ~~When licenses~~ Licenses issued under this chapter may be revoked by the city council administrator after notice and hearing for:

(a) Fraud, misrepresentation or false statement contained in the application or in the course of carrying out the licensee's business; or

(b) Any violation of this chapter; or

(c) Conducting business in any unlawful manner or in such a manner as constituting a breach of the peace or disorderly conduct, or in such manner to constitute a menace to the health, safety or general welfare of the public.

~~(2) License Revocation—Hearing Notice. Notice of a hearing for revocation of a license shall be given in writing setting forth the grounds for the revocation. Notice shall be mailed to the licensee, certified mail, return receipt requested, addressed to the address set forth on the license application. The time and place of the hearing shall be the next regular council meeting after the 10 day advance notice of the public hearing has been legally published.~~

(3) Denial. Applications for Peddlers, Vendors and Temporary Merchants may be denied based on the following findings.

(a) The application contains incomplete or false information;

(b) The applicant for a temporary merchant fails to provide proof of insurance;

(c) The applicant fails to obtain local, county, state and federal permits as required.

(d) The activity as proposed cannot reasonably be conducted in a way that promotes and protects the general public welfare or is determined to constitute a menace to the public health, safety or welfare.

~~5.08.070 Conventions – Festivals.~~

~~(1) The promoter, sponsor, or other person, firm, corporation or legal entity of whatever nature or kind organizing a convention, festival, show, bazaar, fair or flea market, which shall include transient or temporary dealers, merchants, peddlers, vendors, canvassers or solicitors, shall obtain a license under this chapter to cover all dealers involved in said event.~~

~~(2) Transient dealers, vendors or merchants participating in an event licensed herein shall not be required to have a separate license under this chapter.~~

~~(3) The promoter, sponsor or other person is responsible for payment of fees and required information on participants for said event. The following conditions apply:~~

~~(a) The application for a festival license must be filed with the city clerk on forms provided by the city at least 30 days before said event (this time limit may be reduced to 20 days at the discretion of the police chief), with an application fee as provided in SMC 3.30.080.~~

~~(b) The approximate number of participants expected to be included.~~

~~(c) Five days prior to the event, a complete list of persons operating booths shall be submitted to the city clerk, with payment of fees.~~

~~(e) The police chief reserves the right to investigate any participating vendor, at his discretion, for the protection of the public welfare.~~

~~(f) In the event the police chief determines that a police officer should be in attendance at said event, the cost to cover the salary of the extra officer shall be paid by the sponsor/promoter, in addition to the above fees.~~

5.08.070080 Site requirements.

(1) Private Property. No person shall conduct business under this chapter on private property without written permission from the property owner.

~~(2) City Property. No person shall conduct business at the same location for more than two days, under this chapter, without obtaining a lease of city right-of-way, as provided in Chapter 14.60 SMC.~~

(3) (2) Site Plans. Any person applying for a license under this chapter to conduct business for more than two one days at any one location shall provide a site plan of the business location and such other plans or drawings as the city may require for approval. All site plans must be

reviewed and approved by the community development director or designee, public works director and the planning director.

5.08.09080 Temporary merchant/vendor general requirements.

Any person seeking a vendor's license as defined in SMC 5.08.010 and 5.08.020 shall comply with the following requirements:

(1) All advertising shall be on the unit and will not be allowed on the street or sidewalk, ~~except as provided under Chapter 14.32 SMC.~~

(2) The site must be kept clean and orderly at all times and the vendor must provide a refuse container if their merchandise generates refuse.

(3) The city reserves the right to limit the number of sites allowed in any given area.

(4) If located on a sidewalk, a minimum usable and unimpaired sidewalk clearance of five feet shall be maintained by any street vendor.

(5) If a temporary merchant vendor is located on a street, the operation shall be oriented to the pedestrians on the sidewalk and not the vehicular traffic, if such exposure would interfere with the traffic flow.

(6) Vendors are prohibited in parks unless approved as part of a special event permit ~~prior written approval is obtained from the public works department.~~

(7) Vendors are prohibited within the SR532 right-of-way.

(8) Vendors shall comply with all parking requirements as listed in Chapter 17.105 SMC.

~~(8) Vendors shall not obstruct the passage along any sidewalk, street, alley or parking lot by causing a congregation of people.~~

~~(9) Vendors shall not sell within 500 feet of any school grounds during school session or events, except if vendor possesses written permission from the city and the school district.~~

(910) Vendors shall comply with all city, county, state and federal regulations regarding food handling.

(104) Temporary merchants and vendors shall comply with all applicable requirements of SMC Title 17 Zoning.

5.08.400 90 Responsibilities.

The issuance of a license herein provided for shall not relieve the licensee from securing any other license(s) required by state, federal, county or city law.

5.08.440100 Penalty for violation.

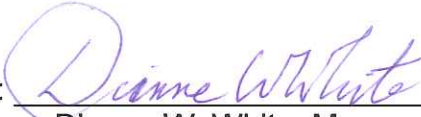
Violation of this chapter shall constitute a Class B infraction as defined in SMC 13.01.045(1) and subject the violator to enforcement as set forth therein.

SECTION 3. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.


SECTION 4. This Ordinance shall take effect and be in force five (5) days after its passage, approval and publication as provided by law.


PASSED by the City Council and signed by the Mayor this 24th day of May, 2012.

By: 
Dianne W. White, Mayor

Attest:

Approved as to form:

By: 
Melissa A. Collins, City Clerk

By: 
Grant K. Weed, City Attorney

FINDINGS OF FACT AND CONCLUSIONS

Findings of Fact:

1. The Planning Commission held a pre-application meeting on Special Event Related Temporary Merchants and Peddlers licensing, and related housekeeping amendments on March 12, 2012.
2. The Community Development Department filed a text amendment, Application LZCA 12-03, on March 16, 2012.
3. Consistent with RCW 43.21C, the Responsible Official issued a Determination of Non Significance March 22, 2012.
4. The Planning Commission held a duly noticed public hearing on Application LZCA 12-02 on April 9, 2012.
5. On May 24, 2012 at its regularly scheduled City Council meeting, which was open to the public, after review of the applications, staff reports, and Planning Commission recommendations and after consideration of the public testimony submitted at or as part of the public hearing, the City Council held first and second reading of Ordinance No. 1313 adopting amendments to SMC Chapter 5 Business Licenses and regulations relating to temporary merchants.

Conclusions/Decision:

Based upon the entire record in this matter, which shall be incorporated by this reference, the Stanwood City Council adopts the following conclusions and decisions.

1. All temporary merchants and peddlers for one day without a business license requirement
2. Amend temporary business license fees to allow cost recovery for background checks and to allow cost recovery for emergency services personnel if needed.
3. Amend appeal procedures and findings for permit denial.
4. Clarify where vendors may operate
 - o Provide for co-location with existing stores with owner and lesser permission and with provision of bathroom facilities
 - o Clarify that location on SR 532 is not allowed
 - o Repeal allowance for use of and lease of city property
 - o Clarify that vendors are prohibited within parks unless approved as part of a special events permit.
5. Repeal requirement for vendors within 500 feet of school grounds to receive permission from the school district and City.
6. Provide housekeeping amendments and updates to the definition of temporary merchants adding the word "concessionaire", clarifying that goods offered for no charge are included within the definition.
7. Repealing a requirement for a declaration the applicant is free of disease.