

# CHAPTER 5: BUSINESSES AND OCCUPATIONS

## REGULATING TRANSIENT MERCHANTS, ITINERANT MERCHANTS, .AND ITINERANT VENDORS

**Section 5-101.** License Required. It shall be unlawful for a transient merchant, itinerant merchant or itinerant vendor as defined in Section 5-102 of this ordinance to engage in such business within the Town of Tabor without first obtaining a license therefore in compliance with the provisions of this ordinance.

**Section 5-102.** Definitions. For the purpose of this ordinance a transient merchant, itinerant merchant or itinerant vendor is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the town or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within said town, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad box car, or boat, public room in hotels, lodging houses, apartments,, shops, or any street, alley, or other place within the town for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction provided that such definition shall not be construed to include any person, firm, or corporation who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person, firm, or corporation so engaged shall not be relieved from complying with the provisions of this ordinance merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

**Section 5-103.** Application. Applicants for license under this ordinance, whether a person, firm or corporation, shall file a written sworn application\* signed by the applicant, if an individual, by all partners if a partnership, and by the president if a corporation with the town clerk, showing:

- (1) The name or names of the person or persons having the management or supervision of applicant's business during the time that it is proposed that it will be carried on in the Town of Tabor; the local address or addresses of such person or persons while engaged in such business; the permanent address or addresses of such person or persons; the capacity in which such person or persons will act (that is, whether as proprietor, agent or otherwise); the name and address of the person, firm or corporation for whose account the business will be carried on, if any; and if a corporation, under the laws of what state the same is incorporated.
- (2) The place or places in the Town of Tabor where it is proposed to carry on applicant's business, and the length of time during which it is proposed that said business shall be conducted.
- (3) The place or places, other than the permanent place of business of the applicant where applicant within the six months next preceding the date of said application conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted.
- (4) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the. Town of Tabor, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or from stock in possession and by sample; at auction, by direct sale or by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time said application is filed.

(5) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and, if required by the town clerk, copies of all said advertising whether by handbills, circular, newspaper advertising, or otherwise, shall be attached to said application as exhibits thereto.

**Section 5-104.** Exhibition of License. The license issued under this ordinance shall be posted conspicuously in the place of business named therein. In the event that such person or persons applying for said license shall desire to do business in more than one place within the town, separate licenses may be issued for each place of business, and shall be posted conspicuously in each place of business.

**Section 5-106.** Transfer. No license shall be transferred without written consent from the board of trustees as evidenced by an endorsement on the face of the license by the town clerk showing to whom the license is transferred and the date of the transfer.

**Section 5-107.** Loud Noises and Speaking Devices. No license under this ordinance, nor anyone in his behalf shall shout, make any outcry, blow a horn, ring a bell or use any other sound device including any loud speaking radio or amplifying system upon any of the streets, alleys, parks or other public places of the said town or upon any private premises in the said town where sound of sufficient volume is emitted or produced there from capable of being plainly heard upon the streets, avenues, alleys or parks or other public places for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

**Section 5-108.** Revocation of License.

(1) The permits and licenses issued pursuant to this ordinance may be revoked by the town clerk of the Town of Tabor, after notice and hearing, for any of the following causes:

- (a) Any fraud, misrepresentation or false statement contained in the application for license;
- (b) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
- (c) Any violation of this ordinance;
- (d) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
- (e) Conducting the business licensed under this ordinance in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(2) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee, at his last known address, at least five (5) days prior to the date set for the hearing.

**Section 5-109.** Appeal. Any person aggrieved by the decision of the town clerk in regard to the denial of application for license as provided for in Section 5-104 of this ordinance or in connection with the revocation of a license as provided for in Section 5-108 of this ordinance shall have the right to appeal to the Board of Trustees of the Town of Tabor. Such appeal shall be taken by filing with the board within fourteen (14) days after notice of the decision by the clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The board shall set the time and place for a

hearing on such appeal and notice of such hearing shall be given to such person in the same manner as provided in Section 5- 108 of this ordinance for notice of hearing on revocation. The order of this board on such appeal shall be final.

**Section 5-110.** Expiration of License. All licenses issued under the provisions of this ordinance shall expire ninety (90) days after the date of issuance thereof unless a prior date is fixed therein.

**Section 5-111.** Penalty. Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine not to exceed One Hundred Dollars (\$100) or by imprisonment not to exceed 60 days or both such fine and imprisonment.

## **PEDDLERS**

**Section 5-201.** Permit and License Required. It shall be unlawful for any person to engage in the business of peddler as defined in Section 5-202 of this ordinance within the corporate limits of the Town of Tabor without first obtaining a permit and license therefore as provided herein.

**Section 5-202.** Definitions.

(1) The word "person" as used herein shall include the singular and the plural and shall also mean and include any person, firm, or corporation, association, club, copartnership or society, or any other organization.

(2) The word "peddler" as used herein shall include any person, whether a resident of the Town of Tabor or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car, or other vehicle or conveyance, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this ordinance shall be deemed a peddler subject to the provisions of this ordinance. The word "peddler" shall include the words "hawker", and "huckster".

**Section 5-203.** Application. Applicants for permit and license under this ordinance must file with the town clerk a sworn application in writing (in duplicate) on a form to be furnished by the town clerk, which shall give the following information:

(1) Name and description of the applicant;

(2) Address (legal and local);

(3) A brief description of the nature of the business and the goods to be sold and in the case of products of farm or orchard, whether produced or grown by the applicant;

(4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;

(5) The length of time for which the right to do business is desired;

(6) If a vehicle is to be used, a description of the same, together with license number or other means of identification.

**Section 5-204. Fees.** The fee for a license required under this chapter shall be as follows:

- (1) Each foot peddler, per day, \$25.
- (2) Each peddler operating with a motor vehicle, per day, \$75

**Section 5-205. Basis of Fees.** The annual fees herein provided for shall be assessed on a calendar year basis and on and after July first the amount of the fee for such annual license shall be one-half the amount stipulated for the remainder of the year.

**Section 5-206. Loud Noises and Speaking Devices.** No peddler, nor any person on his behalf, shall shout, make any cry out, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound amplifying system upon any of the streets, alleys, parks or other public places of said town or upon any private premises in the said town where sound of sufficient volume is emitted or produced there from to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

**Section 5-207. Use of Streets.** No peddler shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this ordinance, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

**Section 5-208. Exhibition of License.** Peddlers are required to exhibit their licenses at the request of any citizen.

**Section 5-209. Duty of Police to Enforce.** It shall be the duty of the town marshal of the Town of Tabor to require any person seen peddling, and who is not known by such officer to be duly licensed, to produce his peddler's license and to enforce the provisions of this ordinance against any person found to be violating the same.

**Section 5-210. Records.** The town marshal shall report to the town clerk all convictions for violation of this ordinance and the town clerk shall maintain a record for each license issued and record the reports of violation therein.

**Section 5-211. Revocation of License.**

- (1) Permits and licenses issued under the provisions of this ordinance may be revoked by the clerk of the Town of Tabor after notice and hearing for any of the following causes:
  - (a) Fraud, misrepresentation, or false statement contained in the application for license;
  - (b) Fraud, misrepresentation or false statement made in the course of carrying on his business as peddler;
  - (c) Any violation of this ordinance;
  - (d) Conviction of any crime or misdemeanor involving moral turpitude;

(e) Conducting the business of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(2) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for hearing.

**Section 5-212.** Appeal. Any person aggrieved by the action of the town clerk in the denial of an application for permit or license as provided in Section 5-203 of this ordinance, or in the decision with reference to the revocation of a license as provided in Section 5-211 of this ordinance, shall have the right of appeal to the Board of Trustees of the Town of Tabor. Such appeal shall be taken by filing with the Board of Trustees, within fourteen (14) 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 Board of Trustees shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5-211 of this ordinance for notice of hearing on revocation. The decision and order of the Board of Trustees on such appeal shall be final and conclusive.

**Section 5-213.** Expiration of License. All annual licenses issued under the provisions of this ordinance shall expire on the 31st day of December in the year when issued. Other than annual licenses shall expire on the date specified in the license.

**Section 5-214.** Penalty. Any person violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine not to exceed One Hundred Dollars (\$100) or by imprisonment not to exceed 60 days or both such fine and imprisonment.

## **SOLICITORS AND CANVASSERS**

**Section 5-301.** Permit and License Required. It shall be unlawful for any solicitor or canvasser as defined in Section 5-302 of this ordinance to engage in such business within the corporate limits of the Town of Tabor without first obtaining a permit and license therefore in compliance with the provisions of this ordinance.

**Section 5-302.** Definition. A canvasser or solicitor is defined as any individual, whether resident of the Town of Tabor or not, traveling either by foot, wagon, automobile, motor truck, or any type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself, or for another person, firm, or corporation, hires, leases, uses or occupies any building, structure, tent, railroad box car, boat, hotel room, lodging house, apartment, shop, or any other place within the town for the sole purpose of exhibiting samples and taking orders for future delivery.

**Section 5-303.** Application. Applicants for permit and license under this ordinance must file with the town clerk a sworn application in writing (in duplicate) on a form to be furnished by the town clerk; which shall give the following information:

(1) Name and description of the applicant;

- (2) Permanent, home address and full local address of the applicant;
- (3) A brief description of the nature of the business and the goods to be sold;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery.

**Section 5-304. Fees.**

- (1) The license fee which shall be charged by the town clerk for such license shall be \$1.00 per day, \$5.00 per week, \$10.00 per month, \$50.00 per year.
- (2) The annual fees herein provided shall be assessed on a calendar year basis and on or after July first the amount of such fee for annual license shall be one-half the amount stipulated above for the remainder of the year.

**Section 5-305.** Exhibition of License. Solicitors and Canvassers are required to exhibit their licenses at the request of any citizen.

**Section 5-306.** Revocation of License.

- (1) Permits and licenses issued under the provisions of this ordinance may be revoked by the Board of Trustees of the Town of Tabor after notice and hearing, for any of the following causes:
  - (a) Fraud, misrepresentation, or false statement contained in the application for license;
  - (b) Fraud, misrepresentation or false statement made in the course of carrying on his business as solicitor or as canvasser;
  - (c) Any violation of this ordinance;
  - (d) Conviction of any crime or misdemeanor involving moral turpitude; or
  - (e) Conducting the business of soliciting, or of canvassing, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

- (2) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for hearing.

**Section 5.307.** Appeal. Any person aggrieved by the action of the town clerk in the denial of a permit or license as provided in Section 5-303 of this ordinance, shall have the right of appeal to the Board of Trustees. Such appeal shall be taken by filing with the Board within fourteen (14) 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 Board shall set a time and place for a hearing on such appeal

and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5-306 of this ordinance for notice of hearing on revocation. The decision and order of the Board on such appeal shall be final and conclusive.

**Section 5-308.** Expiration of License. All annual licenses issued under the provisions of this ordinance shall expire on the 31st day of December in the year when issued. Other than annual licenses shall expire on the date specified on the license.

**Section 5-309.** Penalty. Any person violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine not to exceed one hundred dollars (\$100.00) or by imprisonment not to exceed 60 days or both such fine and imprisonment.

## **ALCOHOLIC BEVERAGES**

**Section 5-401.** Definitions of Terms.

- (1) "Alcoholic Beverage", any distilled spirits, wine and malt beverages as defined in this chapter;
- (2) "Wine", any liquid either used or reasonably adapted to use for beverage purposes and obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar and less than twenty-four percent of alcohol by weight;
- (3) "Malt Beverage", a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops;
- (4) "Distilled Spirits", ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin and other distilled spirits, including all dilutions and mixtures thereof, for non industrial use;
- (5) "Off-sale", the sale of any alcoholic beverage for consumption off the premises where sold;
- (6) "On Sale", the sale of any alcoholic beverage for consumption only upon the premises where sold;
- (7) "Sale", the transfer of title to any alcoholic beverage, for a consideration, or by exchange or gift.

**Section 5-402.** License Requirement. No person shall sell, exchange, barter, distribute, or keep for sale any alcoholic beverage without a license obtained from the Board of Trustees of the Town of Tabor pursuant to Chapter 35 of the South Dakota Compiled Laws, Chapter 4 of the Revised Ordinances of the Town of Tabor, and this chapter.

**Section 5-403.** Classification and Fees. The following classification and fees are established for on-sale dealers in alcoholic beverages other than low-point beer:

- (1) On-Sale Dealer: Any person who sells, or keeps for sale, any alcoholic beverages other than low-point beer for consumption on the premises where sold \$450.
- (2) Off-Sale Dealer; Any person who sells, keeps for sale, any alcoholic beverages other than low-point beer for consumption off the premises where sold \$250.
- (3) On and off-sale in high-point beer only \$300.

(4) Special Sunday license issued under Section 5-5-7 (in addition to the fee in subparts (1), (2) and (3) of this section) \$200.

**Section 5-404.** Number of Licenses. Licenses issued pursuant to this chapter shall not exceed the number of three (3) on-sale, two (2) off-sale, and one high-point only license.

**Section 5-405.** Licenses Subject to South Dakota Law. All holders of licenses permitting the sale of alcoholic beverages issued pursuant to this chapter shall in all respects be regulated and must comply with SDCL Title 35.

**Section 5-406.** Hours of business for the sale of on and off sale malt beverages, on premises retail sale liquor and off sale package liquor license. No on-sale licensee and no package or off-sale licensee within the City shall sell, serve, or allow to be consumed on the premises covered by the license any alcoholic beverages between the hours of two o'clock (2:00) A.M. and seven o'clock (7:00) A.M. daily or at any time on Christmas Day. Pursuant to SDCL 34-4-81, the City hereby permits the sale of alcoholic beverages by holders of any On-premises Retail Sale Liquor License and any Off Sale Package Liquor License on Sundays and Memorial Day except between the hours of two o'clock (2:00) A.M. and seven o'clock (7:00) A.M. It shall be unlawful for any licensee, employee, agent, or servant of an on-sale liquor establishment whose principle business is the sale of alcoholic beverages to allow any patron or customer to remain on the premises after the above designated closing time.

**Section 5-407.** South Dakota Law Incorporated. All provisions of SDCL Title 35 which relate to license application, the operation of the business, and the restrictions on the general conduct of such business are hereby incorporated by reference and made a part of this chapter.

**Section 5-408.** Penalty. Any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100.00 nor more than \$300.00, or imprisonment not to exceed thirty (30) days, or both.

**Section 5-409.** Allowing licensed off-sale liquor stores to operate on Sunday. Any licensed off-sale liquor store may sell liquor, wine and malt beverages between the hours of 7:00 A.M. and 12:00 midnight on Sunday.