

A BILL, WHICH UPON ADOPTION AND PASSAGE, SHALL BECOME ORDINANCE NUMBER 5594 AMENDING THE LICENSING REQUIREMENTS FOR ITINERANT MERCHANTS AND VENDORS AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIKESTON, MISSOURI, AS FOLLOWS:

SECTION I: This Ordinance shall be codified in Chapter 5.04.20 42 of the Sikeston Municipal Code.

SECTION II: Permit and License Required: It shall be unlawful for any peddler, solicitor, itinerant merchant, and vendor as defined in Section IV of this ordinance to engage in such business within the corporate limits of the City of Sikeston, Missouri, without first obtaining a permit and license therefore in compliance with the provisions of this ordinance.

SECTION III: Not for Profit Persons or Organizations: The provisions of this ordinance shall apply only to those persons or corporations actually engaged in the business of soliciting for profit and shall not apply to any tax exempt not for profit persons, associations or corporations (i.e. kiwanis, lions, elks, churches, boy and girl scouts and like organizations)

SECTION IV: Definition:

- A. A "solicitor" is defined as any individual, whether resident of the City of Sikeston, Missouri, or not, traveling either by foot, wagon, automobile, motor truck, or any other 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 not 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 City for the sole purpose of exhibiting samples and taking orders for future delivery.
- B. The word "peddler" as used herein shall include any person, whether a resident of the City of Sikeston, Missouri, or not, traveling by foot, wagon, automobile 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. The word "peddler" shall include the words "hawker" and "huckster".
- C. For the purpose of this ordinance an "itinerant vendor" is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within said City, and who, in furtherance of such purposes, hires, leases, uses occupies and 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 City of Sikeston, Missouri, for the exhibition and sale of such goods, wares and merchandise, 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 occupation 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.

- D. 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, co-partnership or society, or any other organization.

SECTION V: Application: Applicants for license under this ordinance, whether a person, firm or corporation, shall file a written sworn application signed by the applicant, in duplicate on a form supplied by the City Clerk, if an individual, by all partners if a partnership, and by the president if a corporation, with the City Clerk, showing:

- A. 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 the City of Sikeston, Missouri; the local address or addresses of such person or persons while engaged in such business; the permanent address or addresses of such person or person; 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 corporation, under the laws of what state the same is incorporated.
- B. The fingerprints of the person or persons having the management or supervision of applicant and applicant's business.
- C. The place or places in the City of Sikeston, Missouri, 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.
- D. 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.
- E. 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.
- F. If employed, the name and address of employer, together with credentials establishing the exact relationship.
- G. If a vehicle is to be used, a description of same, together with license number or other means of identification.
- H. 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.
- I. A photograph of the applicant, taken within 60 days immediately prior to the date of filing of the application, which picture shall be 2" by 2" showing the head and shoulders of the applicant in a clear and distinguishing manner.

- J. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore.
- K. With respect to the goods listed in Paragraph "E" 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 City of Sikeston, Missouri, 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 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.
- L. A brief statement of the nature and character of advertising done or proposed to be done in order to attract customers, and, if required by the City Clerk, copies of all said advertising whether by handbills, circular, newspaper advertising, or otherwise, shall be attached to said application as exhibits, thereto.
- M. Whether or not the person or persons having the management or supervision of the applicant's business have been convicted of a crime, misdemeanor, or the violation of any municipal ordinance, the nature of such offense and the punishment assessed therefore.
- N. Credentials for the person, firm or corporation for which the applicant proposes to do business, authorizing the applicant to act as such representative.
- O. Such other reasonable information as to the identity or character of the person or persons having the management or supervision of applicant's business or the method or plan of doing such business as the City Clerk may deem proper to fulfill the purpose of this ordinance in the protection of the public good.
- P. At the time of the filing of the application, a fee of thirty eight dollars (\$38.00) shall be paid to the City Clerk to cover the cost of investigation.
- Q. The application process will take fourteen (14) days to complete.

Section VI: Investigation and Issuance:

- A. Upon receipt of such application, the original shall be referred to the Director of Public Safety, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good.
- B. If a result of such investigation, the applicant character or business responsibility is found to be unsatisfactory, the Director of Public Safety shall endorse on such application his disapproval and his reasons for the same, and return the said application to the City Clerk, who shall notify the applicant that his application is disapproved and that no license will be issued.
- C. If as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Director of Public Safety shall endorse on the application his approval, and return said approval, along with the application to the City Clerk, who shall, upon payment of the prescribed license fee, issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in the business. The Clerk shall keep a permanent record of all licenses issued, the place where said business may be

carried on under said license, and the name or names of the person or persons authorized to carry on the same.

SECTION VII: Bond: Before any license, as provided by this ordinance, shall be issued for engaging in the businesses as defined in Section IV of this ordinance in the City of Sikeston, Missouri, such applicant shall file with the City Clerk a bond running to the City of Sikeston, Missouri, in the sum of \$1,000.00 executed by the applicant, as principal, and a surety bond upon which service of process may be made in the State of Missouri; said bond to be approved by the City Attorney, conditioned that the said applicant shall comply with all of the provisions of the ordinance of the City of Sikeston, Missouri, and the statutes of the State of Missouri, regulating and concerning the sale of goods, wares and merchandise, and will pay all judgments rendered against said applicant for any violation of said ordinances or statutes, or any of them, together with all judgments and costs that may be recovered against him by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting such business with said applicant, whether said misrepresentations or deceptions were made or practiced by the owners or by their servants, agents, or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof, and guaranteeing to any citizen of the City of Sikeston, Missouri, that property purchased will be delivered according to the representations of the said applicant. Action on the bond may be brought in the name of the City to the use of the aggrieved person. Such bond must be approved by the City Attorney, both as to form, and as the responsibility of the sureties thereon.

SECTION VIII: Fees:

- A. The license fee which shall be charged by the City of Sikeston for such license shall be two dollars per day, four dollars per three consecutive day period, eight dollars per month, or twenty five dollars per year. For each person defined as a solicitor, peddler, itinerant merchant or itinerant vendor, and two dollars per day, four dollars per three consecutive day period, eight dollars per month, or twenty five dollars per year. Thereof for each helper, or assistant to those using vehicles, which helpers must procure the permit and license as herein provided for itinerant merchants, or itinerant vendors. All solicitors and peddlers must obtain a separate license.
- B. None of the license fees provided for by this ordinance shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, he may apply to the Mayor for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at, or within six months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Mayor may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Mayor shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which he shall determine whether the fee fixed by this ordinance is unfair, unreasonable, or discriminatory as to the applicant's business and shall fix as the license fee for the applicant, an amount that is fair, reasonable and nondiscriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the Mayor shall have the power to base the fee upon a percentage of gross sales, or any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fees as prescribed by Section VIII (A) of this

ordinance. Should the Mayor determine the gross sales measure of the fee to be the fair basis, he may require the applicant's business in the City of Sikeston, Missouri, or at the end of each three-month period, a sworn statement of the gross sales and pay the amount or fee therefore, provided that no additional fee during any one calendar year shall be required after the licensee shall be required after the licenses shall have paid an amount equal to the annual license as prescribed in Section VIII (A) of this ordinance.

SECTION IX: Badges: Each applicant for peddler or solicitor shall be issued by the City Clerk at the time of delivery of his license a badge which shall contain the words "Licensed Peddler or Solicitor", the period for which the license is issued and the number of the license, in letters and figures easily discernible from a distance of ten feet. Such badge shall, during the time such licensee is engaged in peddling, be worn constantly by the licensee on the front of his outer garment in such a way as to be conspicuous. Each licensee shall deposit \$20.00 per badge which will be returned upon receipt of the badge by the City Clerk. Licensee shall have fourteen (14) days after license expires to claim deposit.

SECTION X: Service of Process: Before any license as herein provided shall be issued for engaging in the businesses defined in Section IV herein, in the City of Sikeston, Missouri, such applicant shall file with the City Clerk or the person performing the duties of such position, his true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of said applicant in respect to any matters connected with or arising out of the business transacted under said license and the bond given as required by Section VII of this ordinance, or for the performance of the conditions of said bond or for any breach thereof, which said instrument shall also contain recitals to the effect that said applicant for said license consents and agrees that service of a notice of process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served upon the person or persons applying for the said license under this ordinance, according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgement of service or manner of service. Immediately upon service of process upon the City Clerk, as herein provided, the City Clerk shall send to the licensee at his last known address, by registered mail, a copy of said process.

SECTION XI: Exhibition of License: Peddlers and solicitors are required to exhibit their licenses at the request of any citizen, and itinerant merchants or vendors shall post conspicuously in the place of business named their license, the original of their said license. In the event that such person or persons applying for said license shall desire to do business in more than one place within the City, separate licenses shall be issued for each place of business, and shall be posted conspicuously in each place of business.

SECTION XII: Transfer: No license or badge issued under the provisions of this ordinance shall be used or worn at any time by any person other than the one to whom it was issued.

SECTION XIII: Loud noises and speaking Devices: No Licensee 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 City of Sikeston, Missouri, or upon any private premises in the City where sound of sufficient volume heard upon the streets, avenues, alleys, or parks or other public places, for the purposes of attracting attention to any goods, wares or merchandise which such Licensee purposes to sell.

SECTION XIV: Use of Streets: No Licensee 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 purposes of this ordinance,

the judgment of the police office, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

SECTION XV: Duty of Police to Enforce: It shall be the duty of the public safety officers of the City of Sikeston, Missouri, to require any person seen soliciting or peddling who is not known to such officer as to be duly licensed, to produce his solicitor's license or peddler's license and to enforce the provisions of this ordinance against any person found to be violating same, and to determine all places of business and persons in their respective territories and to examine all places of business and persons in their respective territories subject to the provisions of this ordinance, to determine if this ordinance has been complied with.

SECTION XVI: Records: The Director of Public Safety shall report to the City Clerk all convictions for violation of this ordinance and the City Clerk shall maintain a record for each license issued and record the reports of violation therein.

SECTION XVII: Revocation of License:

- A. The permits and licenses issued pursuant to this ordinance may be revoked immediately by the City Manager of the City of Sikeston, Missouri, for any of the following causes:
1. Any fraud, misrepresentation or false statement contained in the application for license;
 2. Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
 3. Any violation of this ordinance;
 4. Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
 5. 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;
- B. The license of an itinerant vendor shall be suspended until such time as may be heard publicly and reinstated by the City Council.
- C. 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 XVIII: Appeal: Any person aggrieved by the decision of the City Manager in regard to the denial of application for license as provided for in Section V of this ordinance or in connection with the revocation of a license as provided for in Section XVII of this ordinance, shall have the right to appeal to the City Manager of the City of Sikeston, Missouri. Such appeal shall be taken by filing with the City Manager within fourteen (14) days after notice of the decision by the City Manager has been mailed to such person's last address, a written statement setting forth the grounds for the appeal. The City Manager 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 XVII of this ordinance for

notice of hearing on revocation. The order of the City Council on such appeal shall be final.

SECTION XIX: Expiration of License: All licenses issued under the provisions of this ordinance shall expire on the date of expiration displayed on license and badge.

SECTION XX: Exceptions to License Requirements: This excludes all license requirements as specified above if such vendor chooses to locate within an established farmers or flea market or sellers of fresh fruits and vegetables (only). The above referenced license fees will still apply.

SECTION XXI: Penalty: Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by the fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed 90 days or both such fine and imprisonment.

SECTION XXII: Hours of Operation: Notwithstanding other provisions of this chapter to the, contrary, solicitors and peddlers shall be limited to the hours of solicitation and peddling from 9:00 a.m. to one-half hour past sunset, central time zone.

SECTION XXIII: General Repealer Section: Any ordinance or parts thereof inconsistent herewith are hereby repealed.

SECTION XXIV: Severability: Should any part or parts of this ordinance be found or held to be invalid by any court of competent jurisdiction, then the remaining part or parts shall be severable and shall continue in full force and effect

SECTION XXV: Record of Passage:

A. Bill Number 5594 was introduced and read the first time this 29th day of March 2004.

B. Bill Number 5594 was read the second time and discussed this 5th day of April 2004, and voted as follows:

Boyer, _____, Harris, _____, Pullen, _____,

Rogers, _____, Teachout, _____, Terrell, _____,

Marshall, _____, thereby being

_____,

becoming ordinance 5594.

C. Ordinance 5594 shall be in full force and effect from and after Wednesday, May 5, 2004.

Approved as to form
Charles Leible, City Counselor

Michael G. Marshall, Mayor

Seal / Attest

Carroll Couch, City Clerk