

**CITY OF ORTING**  
**WASHINGTON**  
**ORDINANCE NO. 939**

---

**AN ORDINANCE OF THE CITY OF ORTING, WASHINGTON, RELATING TO THE AUTHORITY OF THE CITY TO LICENSE FOR REVENUE AND REGULATION; REPEALING AND RE-ENACTING THE BUSINESS REVENUE TAX PROVISIONS OF CHAPTER 3-2 OF THE ORTING MUNICIPAL CODE; REPEALING CHAPTERS 4-1, 4-3, 4-4, 4-6, 4-7 AND 4-8 OF THE ORTING MUNICIPAL CODE; ESTABLISHING GENERAL AND SPECIAL BUSINESS LICENSE REQUIREMENTS; ESTABLISHING LICENSE REQUIREMENTS FOR ITINERANT VENDORS; PROVIDING FOR DENIAL, SUSPENSION AND REVOCATION OF A BUSINESS LICENSE; PROVIDING FOR THE RIGHT OF APPEAL TO A HEARING EXAMINER AND CITY COUNCIL; PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

---

**WHEREAS**, the City of Orting is classified as a non-charter code city under Title 35A RCW; and

**WHEREAS**, RCW 35A.21.160 provides that a code city shall have all of the powers which any city of any class may have including cities of the first class; and

**WHEREAS**, RCW 35A.11.020 provides that code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state; and

**WHEREAS**, RCW 35.22.280(32) authorizes any city of the first class to grant licenses for any lawful purpose, to fix by ordinance the amount to be paid therefore, and to provide for revocation of such licenses; and

**WHEREAS**, the Washington Supreme Court in *Fleetwood v. Read*, 21 Wash. 547, 552-553 (1899) and subsequent decisions have interpreted this language as authorizing licenses for revenue purposes as well as regulation; and

**WHEREAS**, the City of Orting has adopted general business license requirements which have been codified at Chapter 3-2 of the Orting Municipal Code (“OMC”) and more specific business license requirements at Title 4 of the OMC; and

**WHEREAS** Chapter 3-2 and Title 4 of the OMC have not been substantively updated since 1973 and lack certain substantive and procedural requirements; and

**WHEREAS**, the City Council finds that codifications of business license regulations and application requirements in two separate sections of the OMC can lead to confusion and that the public and business license applicants would be better served by revising, updating and re-codifying the business license provisions within a single chapter of the OMC; and

**WHEREAS**, the City Council further finds that there is an increased public interest and demand for access to itinerant vendors engaged in the business of selling food; and

**WHEREAS**, the City desires to increase access to affordable and gourmet foods, encourage budding food entrepreneurs, and support local small business and economic development; and

**WHEREAS**, the City Council further desires to provide a business friendly environment and balance the unmet demands that itinerant vendors can provide within the existing business climate against the negative impacts that activities of itinerant vendors and their customers can have upon the community and neighboring property; and

**WHEREAS**, the City Council also finds that activities of itinerant vendors can have a detrimental impact to the public health, safety and welfare, including increased concerns over health and proper sanitation, obstruction of the free flow of passage upon public streets and sidewalks, and increased risk of traffic congestion, vehicle accidents and personal injuries; and

**WHEREAS**, despite concerns about the potential negative impacts, the City Council finds that such goals can be accomplished by providing itinerant vendors the opportunity to conduct business on private property and within the public right of way while protecting the public health, safety and welfare through establishment of business license requirements and regulations; and

**WHEREAS**, RCW 35A.47.040 authorizes code cities to permit and regulate use of the public rights of way under such restrictions and conditions as it may set by charter or ordinance; and

**WHEREAS**, the City Council has considered, among other things, the recommendations of the City Planning Commission, the experiences of other cities regulating activities through business license requirements, applicable appellate decisions, including *Hispanic Taco Vendors of Washington v. City of Pasco*, 790 F.Supp. 1023 (1991), *City of New Orleans v. Dukes*, 427 U.S. 297, 303–06, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976) (per curiam), *Chalmers v. City of Los Angeles*, 762 F.2d 753 (9th Cir.1985), *Blue Sky Bar, Inc. v. Town of Stratford*, 203 Conn. 14, 523 A.2d 467, (1987), *Standow v Spokane*, 88 Wn.2d 624, 564 P.2d 1145 (1977), *Town of Green River, Wyoming v. Fuller Brush Co.*, 65 F.2d 112 (10th Cir. 1933), and *Watchtower Bible & Tract Soc. v Village of Stratton*, 536 U.S. 150 (2002); and

**WHEREAS**, the City Council finds that the proposed consolidation of OMC Chapter 3-2 and parts of Title 4 OMC, the related amendments to OMC Chapter 3-2, in particular the application requirements, the right to deny, revoke and suspend a business license, and the right to appeal, and the additional regulation and licensing of itinerant vendors, all as set forth in this Ordinance, are in the best interests of the public health, safety, and welfare;

**NOW, THEREFORE**, the City Council of the City of Orting, Washington, do ordain as follows:

**Section 1. Repeal and Re-enactment of OMC Chapter 3-2 (Business Revenue Tax).** Chapter 3-2 of the Orting Municipal Code is hereby repealed in its entirety and re-enacted to be known and referred to as the Business License Code. The re-enacted Business License Code shall read as follows:

**3-2-1 Title.** This Chapter shall constitute the “Business License Code” of the City and may be cited as such.

**3-2-2 Purpose.** The provisions of this Chapter shall be deemed an exercise of the power of the City to license for revenue for the privilege of engaging in business in the City and to regulate such businesses to protect the public health, safety and welfare. The provisions of this Chapter shall also be liberally construed for the accomplishment of such purposes.

**3-2-3 Conflict.** In the event of a conflict between a requirement of this Chapter and a requirement of state or federal law, such requirement of state or federal law shall control to the extent of the conflict.

**3-2-4 Definitions.** For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given in this Section.

“Amusement device” shall mean those devices and machines which, through the insertion of a coin, token, slug, paper currency or through an electronic transaction (e.g., bank card, credit card, etc.) will permit a person to play a game. It includes pinball machines, video games, electromechanical games, claw machines, cranes, pool tables, bowling machines, and all other devices of like kind, nature, or purpose; provided that, it does not include gambling devices. A vending machine is not an amusement device.

“Authorized special event vendor” shall mean a vendor operating under authority of a special event business license.

“Business” includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

“Carnival” shall mean a business activity typically featuring a variety of mechanical rides and amusement devices for the enjoyment of customers thereof

and that usually, but not necessarily, also offers food and beverage services, as well as games involving throwing, pitching or shooting skills, and sideshows.

“Cart” means a mobile, non-motorized conveyance capable of moving or being moved, which is intended to be pushed, pulled or otherwise similarly transported by an itinerant vendor during the normal course of business operation.

“Circus” shall mean a business activity typically featuring a variety of performances and exhibitions involving wild animals, feats of horsemanship, stunts, acrobatics, aquatic sports, and clowns for the enjoyment of the customers thereof, and to which a fee is charged for admission.

“City” shall mean the City of Orting.

“City Administrator” shall mean the City Administrator for the City of Orting, or the City Administrator’s designee. The Mayor shall possess the same authority to act pursuant to the provisions of this Title as is granted herein to the City Administrator.

“City sponsored event” means a special event which benefits the community and is open for participation to the general community at-large, and is conducted in whole or in part on public property or public rights of way, and the City, solely or in partnership with another entity, produces, manages and/or coordinates the event, or has agreed to provide in-kind services and/or other financing in support of the special event, or has agreed to lend its name in support of the special event, after determining that the special event either:

1. Provides a local commemoration of a national holiday;
2. Provides cultural or recreational experiences to City residents that are not otherwise routinely available in the community; or
3. Significantly enhances tourism or other forms of economic development to the City.

“Employee” means any person employed at any business enterprise performing any part of their duties within the City. All officers, agents, dealers, franchisees, etc., of a corporation or business trust, and partners of a partnership, except limited partners, are employees within this definition.

“Engage in business” or “engaging in business” means commencing, carrying on, conducting or continuing in business within the corporate limits of the city, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

This definition sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de-minimis business activities in the City without having to register and obtain a business license. The activities listed in this definition are illustrative only and are not intended to narrow this definition of “engaging in business”. If an activity is not listed, the City shall determine whether it constitutes “engaging in business” by considering all the facts and circumstances and applicable law. The City expressly intends that “engaging in business” includes any activity sufficient to establish nexus for purposes of applying tax under the law and the constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

A. Without being all-inclusive, any one of the following activities that meets the definition of “business”, is not exempt from the business license requirements, and is conducted within the corporate limits of the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, constitutes “engaging in business” and requires a person to obtain a business license:

1. Owning, renting, leasing, maintaining or having the right to use, or using, tangible personal property, intangible personal property or real property permanently or temporarily located in the City;
2. Owning, renting, leasing, using or maintaining an office, place of business or other establishment in the City;
3. Soliciting sales;
4. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;
5. Providing technical assistance or service, including quality control, product inspections, warranty work or similar services on or in connection with tangible personal property sold by the person or on its behalf;
6. Installing, constructing or supervising installation or construction of real or tangible personal property;
7. Soliciting, negotiating or approving franchise, license or other similar agreements;
8. Collecting current or delinquent accounts;
9. Picking up and transporting tangible personal property, solid waste, construction debris or excavated materials;

10. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraisal services, landscape architectural services, security system services, and surveying and real estate services, including the listing of homes and managing of real property;

11. Rendering professional services, including but not limited to such services as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, and veterinarians;

12. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on their behalf or for customers or potential customers;

13. Investigating, resolving or otherwise assisting in resolving customer complaints;

14. In-store stocking or manipulating products or goods sold to and owned by a customer, regardless of where sale and delivery of the goods took place;

15. Delivering goods in vehicles owned, rented, leased, used or maintained by the person or by acting on behalf of such person; or

16. Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.

"Event organizer" means any person who conducts, manages, promotes or organizes a commercial or noncommercial special event.

"Food" has its usual and ordinary meaning and includes all items designed for human consumption, including, but not limited to, candy, coffee, gum, popcorn, hot dogs, sandwiches, peanuts, soft drinks and dairy products.

"Food vending" or "food vending services" shall mean engaging in the business of vending food of any kind or description.

"Itinerant vendor" shall mean any person, whether as owner, agent, consignee, or employee, whether a resident of the City or not, who engages in the business of providing vending services and who conducts such a business either in or about a stationary vendor unit, or from a mobile vendor unit by traveling from place to place, or customer to customer. A person, firm or corporation so engaged shall not be relieved from complying with the provisions of this Chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or

by conducting such temporary business in connection with, as part of, or in the name of any local dealer, trader, merchant or auctioneer.

“License” or “business license” as used generally in this Chapter shall mean a written authorization to engage in business in the City issued by the City pursuant to the requirements of this Chapter. A business license is categorized either as a general business license or a special business license. Unless otherwise provided herein, a reference to license or business license shall mean and refer to both a general and special business license.

“Licensee” means any person issued a business license pursuant to the provisions of this Chapter.

“Life and safety codes” mean building codes, fire codes, electrical codes and other codes of the City relating to health, safety and related requirements for use and occupancy of buildings.

“Mobile ice cream vendor” means a mobile vendor, either as a principal or agent, who engages in the vending of ice cream and/or frozen novelty items for immediate human consumption.

“Mobile vendor” means an itinerant vendor providing vending services from a mobile vending unit.

“Mobile food vendor” means an itinerant vendor providing food vending services from a mobile vending unit.

“Mobile vendor unit” means a vehicle, cart or other conveyance capable of moving or being moved and being used, or intended for use, by a person or persons to provide vending services while located within or upon the public rights of way.

“Non-commercial door-to-door advocate” shall mean a person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purpose of this Chapter, the term door-to-door advocate shall fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

“Nonprofit” means any business enterprise registered as a nonprofit corporation within the state of Washington or granted nonprofit status through the code of the Internal Revenue Service of the United States.

“OMC” shall mean the Orting Municipal Code.

“Peddler” shall mean an individual who, on his or her own behalf or on behalf of, or as an agent, contractor or employee of another person, goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of offering for sale, displaying or

exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property that the person is carrying or otherwise transporting. For purpose of this Chapter, the term peddler shall have the same common meaning as the term “hawker”.

“Person” means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

“Physical presence” means an address where the business is located. A post office box with an address in the City of Orting for a business is considered a physical presence.

“Place of business” means the physical location of the business.

“Promoter” or “organizer” means any person engaged in the business of providing to any vendor, directly, or indirectly, sales areas within a farmers market, public market, or special event location for the purpose of using such location during the term of a farmers market, public market or special event.

“Residence” means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

“Sales area” means any stall, booth, stand, space, section, unit, or specified floor area within any farmer’s or public market or special event location where vending services will be provided.

“Solicitor” shall mean an individual, on his or her own behalf or on behalf of, or as an agent, contractor or employee of another person, who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person’s activity is to obtain or attempt to obtain orders as discussed above. For purposes of this Chapter, the term “solicitor” shall have the same meaning as the term “canvasser”. The following are examples of activities of a solicitor:

1. Seeking to obtain orders for, or the sale of, goods, wares, merchandise, foodstuffs, or services of any kind, character, or description, for any kind of consideration whatsoever; or

2. Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or

3. Seeking to obtain subscriptions to books, magazines, periodicals, newspapers, and every other type or kind of publication; or

4. Seeking to obtain gifts or contributions of money, clothing, or other valuable things for the support or benefit of any charitable or nonprofit organization, association, or corporation.

“Special business license” shall mean a business license issued pursuant to this Chapter and subject to special license requirements as set forth in this Chapter and denominated as a special business license.

“Special event” means an outside or outdoor thematic entertainment, amusement, athletic or political event, that is advertised or promoted inside or outside the City, on private property or in the exclusionary use of public property, and that is reasonably foreseeable to involve a large assemblage of vehicles and persons, and that may cause traffic congestion, impact required parking, involve sanitation and security concerns, the erection of structures or operation of rides, games or machines that may affect the City residents’ or invitees’ health, safety, or welfare, or that may require excessive public safety cost in responding to and/or managing the event to preserve the public peace. A special event has a specific start and stop date, and has no intervening dates of event inactivity, except for legislative or City sponsored events. A series of similar events is not considered a single event, unless conducted on consecutive days. The outdoor display or sale of merchandise or placement of vending on private property in connection with the sale of merchandise is not considered a special event. A special event can include, but is not limited to:

1. Any organized formation, parade, procession or assembly consisting of persons, and which may include animals, vehicles or any combination thereof, which is to assemble or travel in unison on any street which does not comply with normal or usual traffic regulations or controls; or,

2. Any organized assemblage, not meeting the criteria for a facilities use permit, of persons at any public beach or public park which is to gather for a common purpose under the direction and control of a person; or,

3. Any other organized activity conducted by a person or group for a common or collective use, purpose or benefit which involves the use of, or has an impact on, other public property or facilities and the provision of City public safety services in response thereto.

Examples of special events include filming, concerts, parades, circuses, fairs, festivals, block parties, automobile or motorcycle rallies, community events, sporting competition such as, marathons and running events, bicycle races or tours, or spectator sports such as, football, basketball and baseball games, golf tournaments or hydroplane or boat races.

“Special event vendor” means an itinerant vendor providing vending services at a farmer’s or public market or special event under authority of a special event business license.

“Stationary vendor” means an itinerant vendor who provides vending services from a stationary vendor unit.

“Stationary food vendor” means an itinerant vendor who provides food vending services from a stationary vendor unit.

“Stationary vendor unit” shall mean (1) a vehicle, cart or other conveyance capable of moving or being moved, or (2) a structure that is not permanently affixed to real property, and which is used, or intended to be used, at a fixed location to provide vending services.

“Stationary food vendor unit” shall mean a stationary vendor unit used, or intended to be used, to provide food vending services.

“Vending” or “vending services” shall mean exhibiting goods or services for sale for the purpose of selling, bartering, trading, exchanging, or advertising such goods or services.

“Vending machine” means a machine which, through the insertion of a coin, token, slug, paper currency or through an electronic transaction (e.g., bank card, credit card, etc.), will return to the person a predetermined specific article of merchandise or which will install, repair, clean, alter, imprint, or improve tangible personal property of or for consumers. It includes machines which vend photographs, toilet articles, cigarettes and confections as well as machines which provide laundry and cleaning services.

“Vendor” means any person who exhibits goods or services for sale for the purpose of selling, bartering, trading, exchanging, or advertising such goods or services.

### **3-2-5 License Required.**

A. Except as otherwise provided herein, no person shall engage in business in the City without first having obtained, and keeping in full force and effect, a valid business license authorizing such person to engage in the business authorized therein.

B. It shall be unlawful for a person to engage in a business in the City for which a business license has previously been issued but has expired until such time as that business license has been renewed or a new business license has been issued.

C. It shall be unlawful for a person to engage in a business in the City for which a business license has been suspended until such time as the period of suspension has ended.

D. It shall be unlawful for a person to engage in a business in the City for which a business license has been revoked until such person is qualified for, and obtains, and keeps in full force and effect, a valid business license authorizing such person to engage in the business authorized therein.

E. All business licenses approved for issuance by the City Administrator shall be and are conditioned upon compliance at all times with all ordinances, regulations and laws of the City and the state applicable to the operation of such business or which otherwise bears a direct relationship to the conduct of the business licensed.

F. Upon issuance, unless revoked or suspended or relinquished by the licensee, a business license shall be valid until its expiration date, which will be December 31st of any given year, provided that licensee continues in business and pays the license fee due pursuant to the provisions of this Chapter. No business license may be issued for a period longer than twelve months. No business license may be issued for multiple years or more than 180 days in advance of the effective date of said business license.

G. Issuance of a business license does not imply compliance with other City codes, regulations or laws, and does not permit business operation unless the business is properly zoned and/or in compliance with all applicable laws/rules.

H. Applicants for a special business license shall be required to comply with the additional special business license requirements set forth in this Chapter. Upon issuance of a special business license, licensees shall be subject to both the general business license requirements and the applicable special business license requirements of this Chapter. In the event of a conflict between the general license provisions and the special business license provisions of this Chapter, the special business license provisions shall control to the extent of the conflict.

**3-2-6 Exemptions.** The requirement set forth in this Chapter to have and maintain a valid business license (either a general or a special business license) as a condition of engaging in business in the City shall not apply to:

A. Minors doing business or operating a business concern where no other person is employed by the minor;

B. The United States or any instrumentality thereof and the state of Washington or any municipal subdivision thereof;

C. Persons whose sole activity is the rental of real property;

D. Fraternal benefit associations or societies as defined in RCW 48.36A.010;

E. Nonprofit religious organizations;

F. Nonprofit associations, clubs, or corporations maintained for the purpose of organized sports, charity, public school-related activities or municipal corporation-related activities, including police and fire department reserve organizations;

G. Any farmer, gardener, or other person selling, delivering, or peddling any fruits, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced, or manufactured by such person;

H. A vendor not otherwise exempt pursuant to Subsection “G” above, participating in a farmer’s or public market or special event for which a special event business license has been issued; provided that, complete information for such vendor has been provided by the event organizer to the City in compliance with the provisions of OMC 3-2-26(B) and the vendor is otherwise qualified to engage in business in the City;

I. A person participating in a collective garden within the meaning of RCW Ch.69.51A; and

J. A person, employee, agent, representative, independent contractor, broker or a person acting on behalf of another person, whose activities within the City are limited to the following:

1. Meeting with suppliers of goods and services as a customer;
2. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions;
3. Attending meetings, such as board meetings, retreats, seminars, and conferences or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf;
4. Renting tangible or intangible property as a customer when the property is not used in the City;
5. Attending, but not participating in, a trade show or multiple vendor events;
6. Conducting advertising through the mail;

**Commented [A1]:** If a person engages only in the listed activities, then that person does not need a business license

7. Soliciting sales by phone from a location outside of the City;
8. Selling products to businesses within the City by wholesale distributors, unless said distributor has an office, warehouse or other business establishment located within the City;
9. Delivering goods by a seller located outside of the City into the City by means of common carrier; provided, that the seller engages in no other business activities in the City;
10. Meeting with customers or potential customers when no sales or orders are solicited at the meeting; or
11. Collecting current or delinquent accounts by phone from a location outside of the City.

**3-2-7 Application and Issuance.** Any person desiring to obtain a general business license under this Chapter shall apply to the City Administrator for such license upon such forms as the City prepares and provides, and shall give such information as the City Administrator deems reasonably necessary to administer and enforce this Chapter. Such person shall pay the City Administrator the sum or sums required to be paid therefore pursuant to OMC Section 3-2-9. Any person desiring to obtain a special business license under this Chapter shall be subject to the application requirements as set forth herein for a general business license and any additional application requirements set forth in this Chapter for such special business license.

**3-2-8 Licensee; Applicant.** When a license is applied for on behalf of a person other than an individual or sole proprietorship, the licensee shall be such person on whose behalf the license is applied for (e.g., the corporation, limited liability company, etc.). When a license is applied for on behalf of an individual or sole proprietorship, the licensee shall be such individual or sole proprietor on whose behalf for which the license is applied. When the licensee will be an individual or sole proprietorship, the “applicant” shall be the licensee. When the licensee is a corporation, the “applicant” shall be a principal officer authorized by requisite board action to file a business license application on behalf of the licensee, or a representative of licensee if the application is accompanied by a power of attorney designating the representative as attorney-in-fact for the applicant with full power and authority to complete and submit the application on behalf of the licensee. When the licensee is a limited liability company, “applicant” shall include the members, or if the certificate of formation vests management of the limited liability company in a manager or managers, the term “applicant” shall include such manager or managers. When the licensee is a partnership, the “applicant” shall include principal partners. Applicant shall provide, at a minimum, the business name, business address, and telephone number of the proposed business, a listing and explanation of all services to be provided, a description of any other business

activity to be conducted on the premises or adjoining premises owned and controlled by the applicant, and the principal enterprise of the business if different from the activity being licensed.

In addition to such other information deemed necessary by City Administrator, the application shall require the disclosure of the number of employees at each location and state whether the owner, or owners, work in the business at each specific location. If an applicant claims an exemption or deduction under the terms of this Chapter, the application shall also include a full disclosure of those facts pertinent to the exemption or deduction.

The City Administrator, upon receipt of such application, the required information and the required sum or sums, shall issue to each person a receipt stating therein the date, amount paid and the kind of trade, profession or business for which such license is required. Every business license issued under this Chapter shall recite the amount paid therefore, the date of issue, the date of expiration, to whom it is issued, and the kind of business licensed. The business license shall also be signed by the City Administrator. Upon filing such application with the City Administrator, the person shall be entitled to be issued and to receive a business license or special event business license, in accordance with the provisions of this Chapter.

**3-2-9 Fees.** Except as otherwise provided in this Chapter, a business license fee shall be collected from every person engaging in business in the City. Unless a flat fee is established for a particular type of business by resolution of the City Council, the license fee shall be based on the business's number of employees as set forth in the current fee schedule as adopted by resolution of the City Council. The fee for a special event business license shall be set by resolution of the City Council and shall be a flat fee; provided that, the special event business license fee shall be waived for City sponsored events.

**3-2-10 Determination of employees.** For purposes of determining the number of employees for calculating the license fee, the following rules shall govern:

A. Only those individuals working in the City shall be considered in the total number of employees. However, the fact an individual also works outside the City shall not exclude him or her from the total sum of employees for purposes of this Chapter.

B. The owner or officers of a business shall be included in the total number of employees.

C. Individuals working less than 20 hours per week for a business shall be considered a fraction of an employee in such amount as their average weekly hours worked bear to 40 hours.

**Commented [A2]:** There are a variety of ways to count employees. Large businesses will likely just pay the maximum fee and not worry about counting how many employees might perform work in the City.

**Commented [A3]:** Bev asked why we only count the employees coming into the City rather than all employees of the company as the City has done in the past. I chose this language because part of the basis for asking for a higher license fee is the greater impact upon the community based upon the number of employees coming into the city. If you don't use the number of employees entering into the City, it is not clear to me what the rational basis would be for charging fees based upon the total number of employees. The City could be subject to challenge on this issue.

D. The annual license fee shall be determined by the greatest number of employees employed by the business between January 1st and December 31st of the preceding year in which the license is payable. The number of employees shall be determined by the employer's highest numerical count and most recent employer's unemployment compensation quarterly report filed with the Washington State Employment Security Department.

E. A new business that has not yet established or reported employee information to the state shall determine their initial license fee by the maximum number of employees estimated to be employed during that calendar year.

F. Businesses doing business in the City that have no employees physically working within the City shall pay the minimum license fee required under this Chapter.

G. Real estate and insurance agents or salespeople shall be considered employees of the agency/entity from which they work, and shall not be required to obtain a separate license, but shall be included in the calculation of total employees if the license fee is based upon the number of employees.

**3-2-11 License Nontransferable.** A license issued pursuant to this Chapter is personal and nontransferable. Any unauthorized transfer or attempt to transfer a license shall automatically void such license.

**3-2-12 License Term and Renewal.**

A. In General. A license issued pursuant to this Chapter shall expire at 11:59 p.m. on December 31 of each year and shall be renewed annually upon application and payment of the annual business license fee prior to January 1 of each year. It is the obligation of the licensee to be aware of the time period for renewal. No person may apply for renewal of a business license more than 60 days prior to expiration. Application for renewal shall be submitted upon such forms and in such manner as may be established from time to time by the City Administrator. No application for renewal shall be deemed complete unless it is accompanied by payment the applicable fees. License fees will not be pro-rated.

B. Non-Renewal; Expiration of License. Failure to renew the required business license prior to its expiration shall result in the expiration of the license and the inability to engage in business within the City.

C. Renewal after Expiration. Submittal of an application for a new business license is not required to apply for renewal of an expired business license, provided that the business activities for which the initial license was issued have not materially changed and applicant submits a completed application for renewal of the expired business license within 60 days following expiration. Nothing herein

**Commented [A4]:** Bev indicates that the City cannot accept payment in December for a permit issued for the following year because the City operates on a cash basis. It is not clear to me why the City cannot accept payment in December. The fees are due at the time of application. Since the business license expires at the end of December, it as to be renewed before the new year, otherwise the business will be operating without a license. My understanding is that the revenues must be booked at the time of receipt, which would be December. It is not clear to me why that would not be allowed since the new license will ordinarily be issued at the same time.

**Commented [A5]:** Changed to 60 days per discussion with M. Bethune.

is intended, or shall be construed, to authorize a person to engage in business in the City without having in place a valid business license as required in this Chapter.

**3-2-13 Display.** Every license issued under this Chapter shall be displayed for inspection, by the owner or holder thereof, on demand by any City officer. Unless so displayed upon demand, it shall be conclusively presumed that such person has not obtained a valid business license.

**3-2-14 Separate License; When Required.** A separate business license shall be obtained for each branch, establishment, or location at which the business related activity is engaged in, and each license shall authorize the licensee to engage only in that business or business enterprise at that location. A separate business license shall not be required for a business activity determined by the City Administrator to be an accessory activity to a branch, establishment or location for which a business license is issued. A separate business license shall not be required for the renting and/or leasing of real property in multiple locations which shall be considered a single business encompassing all rental or leased units in the City by a single owner or property manager. A separate business license is not required for each location at which a mobile vendor engages in business in the City.

**3-2-15 Change of Location.** When the physical location of a business located in the City is moved to another location in the City, the licensee shall return the business license to the City Administrator and a new license shall be issued for the new place of business and shall be valid for the unexpired term. The fee for a new license shall be set by resolution of the City Council. This requirement shall not apply to mobile vendors.

**3-2-16 Multiple Businesses.** When more than one business is operated at the same location, each business shall be required to obtain a separate business license.

**3-2-17 No Liability of City.** Issuance of a license pursuant to this Chapter does not constitute the creation of a duty by the City to indemnify the licensee for any wrongful acts against the public, or to guarantee the quality of goods, services or expertise of a licensee, or lawfulness of the business activities engaged in. The issuance of a such license does not shift responsibility from the licensee to the City for proper training, conduct, or equipment of the licensee or its agents, employees or representatives, even if specific regulations require standards of training, conduct or inspection.

**3-2-18 Qualifications of licensees – Permit requirements – Conditional licenses.**

A. No general or special business license shall be issued, nor shall any license be renewed pursuant to the provisions of this Chapter, to:

1. An individual who is not 18 years of age at the time of application;

**Commented [A6]:** Bev has commented that the City has always required an application for a new business license at the time of renewal. Subsection C eliminates this requirement.

The intent here is that anyone with an existing business license is not required to go through the application process for a new business license. For example, the process for applying for an itinerant food vendor license requires a background check and a very detailed application process. My assumption was that the City did not want to require such a thorough review for each renewal. Thus, Subsection C is intended to require only that the applicant for renewal fill out a renewal application form rather than having to go through the licensing process all over again. Please note that Subsection "A" above requires an applicant for renewal to fill out a renewal application. Thus, a form must still be submitted; it will just be a renewal form rather than a new business license application form.

I hope that makes sense.

2. A licensee/applicant who has had a similar license revoked or suspended pursuant to applicable City codes or other similar code provisions of any jurisdiction, within two years prior to the license application;

3. A licensee/applicant whose business activities, or proposed business activities, are unlawful under state, federal or local laws;

4. A licensee/applicant whose business activities, or proposed business activities, constitute a public nuisance; or

5. A licensee/applicant for a special business license who does not meet the qualifications under the business license code for issuance of such special business license.

B. A licensee/applicant may be denied a license by reason of the prior conviction for a felony, gross misdemeanor or misdemeanor, if the crime for which he or she was convicted directly relates to the business for which the license is sought, and the time elapsed since the conviction is less than ten years for a felony or less than five years for a misdemeanor or gross misdemeanor.

C. No person or business may reapply for a denied or revoked business license merely by renaming the business. The denial or revocation of a license applies to any business entity, regardless of its name, that is operating under the same ownership and/or management and engages substantially in the same type of business as that of a business that has been previously denied a license or has had its license revoked under this Chapter within two years of such application for a license.

D. In the event an applicant seeks a business license for a business to be located in a building or structure for which a building permit is required, whether as a newly constructed building or structure, or a remodeled building or structure, the building permit process, including final inspections/issuance of occupancy permits, shall be completed prior to issuance of a business license.

E. In the event an applicant seeks a business license for a business to be located in a building or structure for which no building permit is required, the applicant shall be entitled to receive a “conditional” business license, assuming that all other applicable licensing requirements of this Chapter have been met. Such conditional license shall be conditioned on the business premises being inspected for compliance with applicable life and safety codes, and subject to the following:

1. The applicant shall arrange for such inspection(s) within 60 days of commencing business at the premises by contacting the City; provided, however, that the applicant may request from the City Administrator an extension of the 60-day time period, which request may be granted upon a good cause showing of why the inspection could not be timely completed; and

**Commented [A7]:** The subsection below covers public nuisance so its makes sense to take this out. It could be considered overbroad as pointed out by Councilmember Fritz.

**Commented [A8]:** This provision could operate to prohibit businesses that constitute a public nuisance. However, the City would have the burden of establishing that the business activities constituted a public nuisance.

2. Failure of the applicant to arrange for and complete the life and safety code compliance inspection within the 60-day time period shall cause the conditional business license to be automatically cancelled. Such cancellation shall not require compliance with the provisions for denial, revocation or suspension of business licenses set forth in this Chapter. Thereafter, until all licensing and inspection requirements have been fully complied with, any continued operation of the business shall constitute a violation of this Chapter.

**3-2-19 Denial, revocation or suspension of license.**

Any business license application submitted under the provisions of this Chapter may be denied, and any business license issued under the provisions of this Chapter may be revoked, or suspended at any time, as provided for in this Chapter. No person may engage in business or continue to engage in business for which a business license has been denied, revoked or suspended; provided that, this prohibition shall not apply to the extent that such suspension or revocation has been stayed pursuant to the provisions of this Chapter or lawful order of a court of competent jurisdiction.

**3-2-20 Grounds for denial, suspension or revocation.**

The grounds for denial, suspension or revocation of a business license shall include any one or more of the following:

A. The license or application therefor was procured or submitted by fraud or misrepresentation of fact;

B. The licensee/applicant has failed to comply with any of the provisions of this Chapter or other applicable state, federal or local law, or has failed to meet the qualifications set forth in this Chapter;

C. The licensee/applicant, or licensee's/applicant's employees or agents, have been convicted of a crime, or suffered civil judgment or consent decree which bears a direct relationship to the conduct of the business licensed pursuant to this Chapter; provided that, such conviction, if for a felony is less than ten (10) years old, and if for a misdemeanor or gross misdemeanor is less than five (5) years old;

D. The licensee/applicant, or licensee's/applicant's employees or agents, have violated any law or ordinance relating to the regulation of the business licensed issued pursuant to this Chapter, or any health or safety ordinance which bears a direct relationship to the conduct of the business licensed pursuant to this Chapter;

E. The licensee/applicant has caused or permitted a public nuisance to exist;

F. The licensee/applicant has failed to pay a civil penalty or to comply with any lawful notice and order of the City Administrator which bears a direct relationship to the conduct of the business licensed pursuant to this Chapter;

G. The licensee's/applicant's continued conduct of the business will, for any other reason, result in a danger to the public health, safety or welfare;

H. The licensee is delinquent in the payment of taxes to the City that are due and owing for the licensed business, and has failed to pay, or enter into agreement with the City for payment of, such amounts due and owing within thirty (30) days of written notice of such delinquency; and

I. The licensee/applicant, or licensee's/applicant's employees or agents, have engaged in, have permitted or have acquiesced in unlawful drug activity on the business premises. For purposes of this Section, the term "permitted" shall mean, in addition to its ordinary meaning, that licensee/applicant has actual or constructive knowledge of the circumstances which would foreseeably lead to the unlawful drug activity. "Unlawful drug activity" means, manufacturing, delivering, selling, storing, or giving away any controlled substance, as defined in the Washington Uniform Controlled Substances Act (RCW Ch. 69.50) or the Federal Controlled Substances Act (21 U.S.C. § 801 et. seq.), in violation of state, federal or local law.

**3-2-21 Denial – Suspension – Revocation procedure.**

A. Upon determination by the City Administrator that a license application is to be denied or that a license is to be suspended or revoked pursuant to the provisions of this Chapter, the City Administrator shall give a written notice and order of such action to the licensee/applicant by certified mail. The notice and order shall set forth the facts and grounds for the denial, revocation or suspension and shall include a statement advising that the applicant/licensee may appeal from the notice and order or from any action of the City Administrator to the City hearing examiner, provided that the appeal is made in writing as provided in this Chapter and filed with the City Administrator within 14 days after the date of receipt of the notice and order, and that failure to appeal shall constitute a waiver of all right to an administrative hearing and determination of the matter.

B. The notice and order, and any amended or supplemental notice and order, shall be served upon the applicant/licensee either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested to such applicant/licensee at the address which appears on the application/business license.

C. Service by mail shall mean sending the document by regular, first class mail, postage prepaid and properly addressed, to the applicant's/licensee's address as provided by the applicant/licensee. Service shall be deemed complete upon the third day following the day upon which the notice is placed in the mail, unless the

third day falls on a Saturday, Sunday, or federal legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day. Personal service shall mean handing the document to the applicant/licensee or leaving it at the applicant's/licensee's place of business in the City with a person in charge thereof.

**3-2-22 Appeal from denial or from notice or order.**

A. The City hearing examiner appointed pursuant to OMC Ch. 1-12 is designated to hear appeals by applicants or licensees aggrieved by actions of the City Administrator pertaining to any denial, suspension, or revocation of business licenses. The hearing examiner may adopt reasonable rules and regulations for conducting such appeals. Copies of all rules and regulations so adopted shall be filed with the City Clerk, who shall make them freely accessible to the public.

B. Any licensee/applicant may, within 14 days after receipt of a notice and order of denial, suspension or revocation, file with the City clerk a written notice of appeal containing the following:

1. A heading with the words: "Before the Hearing Examiner of the City of Orting";

2. A caption reading: "Appeal of \_\_\_\_\_" giving the names of all appellants participating in the appeal;

3. A brief statement setting forth the legal interest of each of the appellants in the business involved in the notice and order;

4. A brief statement, in concise language, of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant or appellants;

5. A brief statement, in concise language, of the relief sought, and the reasons why it is claimed that the protested action or notice and order should be reversed, modified, or otherwise set aside. Appellant shall specify the errors of law and/or errors of fact upon which the appeal is based;

6. The signatures of all persons named as appellants, and their official mailing addresses; and

7. The verification (by declaration under penalty of perjury) of each appellant as to the truth of the matters stated in the appeal.

C. As soon as practicable after receiving a written appeal, the City Administrator shall fix a date, time, and place for the hearing of the appeal by the hearing examiner. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing by the City Administrator, by mailing

a copy thereof, postage prepaid, by certified mail with return receipt requested, addressed to each appellant at his or her address shown on the notice of appeal.

D. At the hearing, the appellant(s) shall be entitled to appear in person, and to be represented by counsel and to offer such evidence as may be pertinent and material to the notice and order. Technical rules of evidence need not be followed.

E. Only those errors of law and fact specifically raised by the appellant(s) in the written notice of appeal shall be considered in the hearing of the appeal. Appellant(s) shall bear the burden of proof by a preponderance of the evidence that the City Administrator erred in issuing the denial, suspension, or revocation.

F. Within 14 days following conclusion of the hearing, the hearing examiner shall make written findings of fact and conclusions of law, supported by the record, and issue a decision which may affirm, modify, or overrule the denial, suspension, or revocation of the City Administrator. The hearing examiner may also impose terms as conditions to issuance or continuation of a business license; provided that, when deemed necessary by the hearing examiner, at the conclusion of the hearing or within the 10 business days following conclusion of the hearing, the hearing examiner may announce the need for a longer time-period, not to exceed 15 days, within which the written findings of fact and conclusions of law and decision shall be made.

G. Any party aggrieved by the decision of the hearing examiner may appeal that decision to the City Council by filing a written notice of appeal, within 10 days after receipt of the decision of the hearing examiner, with the City Clerk. The City Administrator shall transmit a complete copy of the hearing examiner's record, findings and conclusions, and decision, and all exhibits, to the City Council and shall cause the appeal to be placed upon the agenda of the City Council within 30 days after receipt of the notice of appeal. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing by the business license clerk, by mailing a copy thereof, postage prepaid, by certified mail with return receipt requested, addressed to each appellant at his or her address shown on the notice of appeal.

H. Any appeal of the decision of the City Council must be filed within 14 days of issuance of the decision.

I. Enforcement of any suspension or revocation of any business license, or other order of or by the City Administrator, shall be stayed during the pendency of an appeal therefrom which is properly and timely filed. The City Administrator shall have the authority to issue a temporary business license in the event that such issuance is necessary to protect appellant's constitutionally protected rights.

J. Failure of any aggrieved party to file an appeal in accordance with the provisions of this Chapter shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order of denial, revocation or suspension.

**3-2-23 Inspections – Right of entry.**

The City Administrator is authorized to make such inspections of the premises and facilities of establishments licensed or required to be licensed under this Chapter of the OMC, and to take such action as may be required to enforce the provisions of business license ordinances or other applicable codes. The Mayor or City Administrator may designate any appropriate city employees, including, but not limited to, code enforcement officers, building inspectors and commissioned police officers, to undertake such inspections. Inspections shall, to the extent possible, comply with the following:

A. The person(s) designated to make such inspection(s) may enter any licensed business location, at any reasonable time, to inspect the same and/or perform any duty imposed by law;

B. If the place of business is occupied, said inspector(s) shall first present proper credentials and demand entry and right to inspect;

C. If the place of business is unoccupied, said inspector(s) shall first make a reasonable effort to locate the licensee or other person having charge or control of the premises and shall then present proper credentials and demand entry and right to inspect;

D. No licensee, or its employees or agents, shall fail or neglect, after proper demand, to admit said inspector(s), acting within the scope of the inspector's employment, to any location licensed for business, or to interfere with an inspector while in the performance of the inspector's duty; and

E. Nothing herein shall prevent or prohibit undercover investigations or inspections by appropriate officers in appropriate circumstances.

**3-2-24 Regulations.** The City Administrator may establish administrative rules and regulations as deemed appropriate, consistent with this Chapter, for the purpose of enforcing and carrying out its provisions.

**3-2-25 Special Business License Requirements – Itinerant Vendors.** In addition to the general business license requirements, the following additional requirements and regulations shall apply to itinerant vendors:

A. Purpose. The general purpose of this Section is to promote the health, safety, comfort, convenience, prosperity and general welfare of the citizens, businesses and visitors of Orting by limiting business activities of itinerant vendors within the City and requiring that new and existing stationary and mobile food vendors provide the community and customers with a minimum level of cleanliness, quality, safety and security. It is the purpose and intent of the City Council in enacting this Chapter, to provide stationary and mobile food vendors

with clear and concise regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community. It is further the purpose of this Chapter to authorize and permit mobile food vendors to use the public rights of way to provide food vending services in conformance with the requirements of this Chapter. The City does not intend this Section to otherwise authorize or allow itinerant vendors, other than mobile food vendors, to use the public rights of way to provide vending services, and further, does not intend this Section to authorize or allow stationary vendors to provide vending services other than in locations zoned for such uses or otherwise allowed pursuant to a special events permit.

B. Findings. The City Council hereby finds and declares that itinerant vending activity occurring on public streets and sidewalks and private property creates or may create the following negative impacts:

1. An increase in the amount of litter and an increased risk of public health and safety violations due to lack of connections to power and water, especially when in connection with on-site food preparation;
2. Increased concerns over health and proper sanitation because itinerant vendors do not provide bathroom facilities for vendor operators or customers;
3. Difficulty in enforcing health and other regulations applicable to itinerant vendors due to the itinerant and mobile nature of the business;
4. Trampling down lawns when itinerant vendors and their customers trespass upon or walk across private property;
5. Invasion of personal privacy when itinerant vendors remain parked for long periods of time in front of a person's home or business;
6. Heightened intensity of use to surrounding areas;
7. Impediments to vehicular and pedestrian traffic on public right-of-ways;
8. Increased risk of traffic congestion, vehicle accidents and personal injuries when vending from mobile vendor units;
9. Hazards to motorists, pedestrians, and itinerant vendors and their customers when operating on public and private streets and sidewalks and public rights-of-way;
10. Traffic hazards, including disruption of traffic flow and distracted drivers, when other vehicles stop to make purchases from such itinerant vendors;

11. Impediments to the clear path of travel for pedestrians and diminished space on sidewalks, which could force pedestrians onto streets and create particular difficulties for residents with disabilities;

12. Safety hazards from street geometry, traffic circulation patterns, and from differences between motor vehicle and mobile vendor unit travel speeds;

13. A heightened degree of accident vulnerability, particularly near intersections and driveways or on streets with higher speeds and traffic volumes, when itinerant vendors operate and conduct business on the shoulders of streets and public rights-of-way;

14. Decreased on and off-street parking availability; and

15. Substantial public health, safety and welfare concerns requiring a higher level of compliance monitoring and applicant screening than for other businesses operating in the City, thereby substantially increasing City costs.

The City Council hereby also finds and declares that:

16. There is an increased public interest and demand for access to itinerant vendors engaged in the business of selling food;

17. It is in the public interest to: increase access to affordable and gourmet foods; encourage budding food entrepreneurs; and support local small business and economic development;

18. It is in the public interest to provide a business friendly environment and balance the unmet demands that itinerant vendors can provide within the existing business climate against the negative impacts that activities of itinerant vendors and their customers can have upon the community; and

19. These public interests can be served by providing itinerant vendors with the opportunity to conduct business on private property and within public rights-of-way while protecting the public health, safety and welfare through establishment of business license requirements and regulations.

Based upon the foregoing Findings, the City Council has determined that the adoption of reasonable time, place and manner restrictions on itinerant food vending activities are necessary in order to protect the public health, safety and welfare.

C. Itinerant Vendor License Required.

1. Prohibition. It is unlawful for a stationary or mobile vendor, not otherwise exempt from the provisions of this Chapter, to engage in vending services within the City except as provided and authorized in this Chapter.

**Commented [A9]:** This provision means that stationary or mobile vendors may not engage in business in the City unless that activity is specifically authorized or is exempt.

Subsection (C)(2) below authorizes stationary or mobile vendors to provide food vending services if they have a license. I have added new subsection (C)(8) below to allow incidental sales of goods by food vendors.

Itinerant vendors of food and goods may engage in business at a farmer's market or special event and don't need a business license as long as they comply with the requirements for the special events business license. See exemptions, OMC 3-2-6(H).

Peddlers and solicitors that go door to door are required to obtain a peddler or solicitor's license pursuant to the provisions of OMC 3-2-29.

2. Itinerant Food Vending Authorized. A stationary or mobile vendor is authorized to provide food vending services upon having first obtained, and thereafter keeping in full force and effect, a valid itinerant food vendor license issued by the City in compliance with the provisions of this Chapter.

3. Separate License Required. A separate itinerant food vendor license is required for each stationary or mobile food vendor unit operating within the City.

4. Compliance with Laws. All itinerant food vendor licenses approved for issuance pursuant to this Chapter shall be and are conditioned upon compliance at all times with all ordinances and regulations of the City and the laws of the state applicable to the operation of such business or which otherwise bear a direct relationship to the conduct of the business licensed, including but not limited to, compliance with the Tacoma-Pierce County Health Department regulations. Issuance of a business license does not imply compliance with applicable laws, ordinances or regulations.

5. Special License; Endorsement. An itinerant food vendor license is a special and limited license and authorizes the holder only to engage in business in the City either as a mobile food vendor or as a stationary food vendor. An itinerant food vendor license endorsed for the holder to operate as a mobile food vendor does not authorize the holder to operate as a stationary food vendor. An itinerant food vendor license endorsed for the holder to operate as stationary food vendor does not authorize the holder to operate as a mobile food vendor.

6. Nuisance. Any stationary or mobile food vending unit being operated by a person without a valid itinerant food vendor license with the proper endorsement shall be deemed a public safety hazard and public nuisance.

7. Change of Location – Stationary Vendor Unit. An itinerant food vendor license endorsed for a stationary food vendor shall be issued only for the location identified on the license. When the place of business of a stationary food vendor unit is changed, the stationary food vendor license shall become void.

8. Incidental Sale of Goods. A licensed itinerant food vendor may engage in exhibiting and selling goods that are incidental to the food vending services being provided.

D. Licensee; Applicant. Where the license is applied for on behalf of a person other than an individual or sole proprietorship, the licensee shall be such person on whose behalf the license is applied (e.g., the corporation, limited liability company, etc.). Where the license is applied for on behalf of an individual or sole proprietorship, the licensee shall be such individual or sole proprietor on whose behalf for which the license is applied. Where the licensee will be an individual or sole proprietorship, the applicant shall be the licensee. Where the licensee is a corporation, the “applicant” shall be the principal officers of the corporation.

Where the licensee is a limited liability company, “applicant” shall include all of the members, or if the certificate of formation vests management of the limited liability company in a manager or managers, the term “applicant” shall include such manager or managers. Where the licensee is a partnership, the “applicant” shall include principal partners.

E. Application and Issuance. Any person desiring to obtain an itinerant food vendor license under this Chapter shall apply to the City for such license upon such forms as the City prepares and provides, give such information as required herein and any such additional information that the City Administrator deems reasonably necessary to administer and enforce this Chapter, and pay the City the sum or sums required to be paid pursuant to OMC Section 3-2-9. An application not including the required information and license fee shall not be deemed complete and will not be processed by the City.\*

Applicant shall provide the following information, which shall be included with and made a part of the application:

1. The business name;
2. A business address at which licensee will receive notices from the City;
3. A telephone number at which the licensee can be contacted;
4. Each applicant’s name, prior name(s) and aliases; address; present place of residence and the length of residence at such address; and business address if other than above identified address;
5. Address or place of residence of each applicant during the two years prior to the date of the application;
6. In the event the name or address of an applicant has changed within the two years prior to the date of application, each name and address used for the preceding two-year period;
7. Each applicant’s physical description, date of birth and social security number(s);
8. Whether the applicant(s) has ever been, within the ten-year period prior to the date of the application, convicted of a violation of a felony under the laws of this state or any other state or federal law of the United States;
9. Whether the applicant(s) has ever been, within the five-year period prior to the date of the application, convicted of a violation of a misdemeanor or gross misdemeanor under the laws of this state or any other state or federal law of the United States;

10. A description of the item(s) or services being sold and/or a description sufficient for identification of the subject matter of the business in which the applicant will engage;

11. A description of the stationary or mobile food vending unit, including unique identifying serial numbers or vehicle identification numbers;

12. If the application is for a stationary food vendor license, the location upon which the stationary food vending unit will be operated and proof of compliance with the applicable architectural design review requirements of OMC Chapters 13-6 and 13-7;

13. If the application is for a mobile food vendor license, proof of insurance required pursuant to this Chapter;

14. The uniform business identifier number issued by the state of Washington or a federal tax identification number; and,

15. A letter, or equivalent, issued no greater than 90 days prior to the date of application, from the Tacoma-Pierce County health department certifying, or otherwise evidencing, that the stationary or mobile food vendor unit is in compliance with required health department regulations.

\*Note: When applicant is a corporation, partnership or limited liability company, the application shall include the required information for each of the partners, managers or members identified as applicants in Section OMC 3-2-25(D).

F. Authorization for Background Check. Applicants shall complete an authorization form to release information allowing the City police department to conduct a local criminal history background check and allowing the Washington State Patrol to conduct a state and national criminal history check in accordance with the provisions of RCW 35A.21.370 and RCW 10.97.050. Applicants may be required to submit to fingerprinting or palm scanning by the police department, in connection with an application for an itinerant food vendor license. Applicants shall be required to provide a copy of a valid driver's license or picture I.D. for identification purposes.

G. Attestation. Each applicant shall sign the application either in the presence of the City Clerk, or designee, or the City Administrator, and shall provide proof of applicant's identity, or each such applicant's signature shall be notarized. Each applicant shall attest as to the truth and accuracy of the contents of the application provided by the applicant.

H. Receipt. Upon receipt of a complete application and the required sum or sums, the City Administrator shall issue to applicant a receipt stating therein the date, amount paid and for which type of license was applied.

**Commented [A10]:** The ADR provisions of the code require written findings and approval; thus, the applicant should be able to produce that document.

I. Content of Itinerant Vendor License. Every itinerant vendor license issued under this Chapter shall recite the date of issue, date of expiration, and the name of the licensee, shall include an endorsement for either a mobile vendor license or stationary vendor license, and shall be signed by the City Administrator.

J. Investigation of Applicants. It shall be the duty of the chief of police, or his or her designee, to investigate each application. The chief of police shall endeavor to complete such investigation within a reasonable time period after receipt of a complete application. In his/her investigation, the chief of police shall determine to the best of his/her ability:

1. The genuineness of all credentials presented by the applicant(s);
2. The truth of the facts set forth in the application; and

3. If the applicant(s) has been convicted of a crime, which bears a direct relationship to the conduct of the business licensed pursuant to this Chapter; provided that, such conviction, if for a felony is less than ten (10) years old, and if for a misdemeanor or gross misdemeanor, is less than five (5) years old. In considering whether or not the conduct in question relates to the applicant or licensee's ability to operate as an itinerant vendor, the City may consider, whether the conduct indicates that the applicant or licensee is unfit to operate as an itinerant vendor. The City will presume that any one of the following categories of crimes that constitute a felony or misdemeanor under Washington state law, or under the laws of the state or district in which the crime was committed and for which a conviction is less than ten (10) years old for a felony and less than five (5) years old for a misdemeanor, has a direct relationship to the fitness of such person to engage in business as itinerant vendor:

- a. Homicide;
- b. Assault;
- c. Crimes of dishonesty;
- d. Sex crimes;
- e. Drug-related crimes;
- f. Crimes against children and/or vulnerable adults;
- g. Burglary and/or trespass; or
- h. Kidnapping and/or unlawful imprisonment.

K. Limitation on Activities Permitted by Itinerant Vendor License. Itinerant food vendors shall be subject to the following requirements:

1. Mobile food vendors shall not operate the mobile food vendor unit in such a manner as to impede the normal usage of arterial streets;
2. Mobile food vendors shall not stop on the traveled portion of any street or within 50 feet from a corner to provide vending services;

**Commented [A11]:** This provision is in the code to ensure that line of sight for moving vehicles is not blocked at street corners. The state traffic laws prohibit any parking within 20 feet of a crosswalk. We could shrink the 50 feet to 20 feet.

3. No mobile food vendor shall locate his or her mobile food vendor unit in such a manner as to cause a traffic hazard, such as on streets with inadequate shoulders or restricted sight distance, and mobile food vendor unit displays of merchandise, seating, signage, or temporary shelters shall not obscure traffic;

4. The retail sale of any non-food products is prohibited except for the exhibition and sale of goods incidental to the food vending services being provided;

5. No itinerant food vendor shall conduct business so as to violate any ordinances of the City, including those regulating traffic and rights-of-way and zoning, as now in effect or hereafter amended;

6. All itinerant food vendors shall operate in compliance with applicable health and sanitation laws, rules and regulations of the City, the State and the Tacoma-Pierce County Health Department regarding food handling, and all mobile food vendor units and related equipment and devices used for the handling, storage, transportation and/or sale of food shall comply with all laws, rules and regulations respecting such mobile food vendor units and related equipment and devices as may be established by the City, the State and the Tacoma-Pierce County health department;

7. No customer shall be served on the street side of a mobile food vendor unit. All service must be on the curb side when the mobile food vendor unit is on or abutting a public street;

8. All itinerant food vendors shall provide garbage receptacles for customer use and shall maintain the area around the mobile food vendor unit, clean and free from litter, garbage, and debris;

9. At the conclusion of business activities at a given location, the mobile food vendor shall clean all the public way surrounding his or her mobile food vendor unit of all debris, trash and litter generated by the food vendor's business activities;

10. At the conclusion of daily business activities, the stationary food vendor shall clean all the area surrounding his or her stationary food vendor unit of all debris, trash and litter generated by the food vendor's business activities;

11. All itinerant food vendors preparing food by cooking, frying or other means shall be equipped with at least one 2A-40-BC fire extinguisher;

12. Stationary food vendor units shall comply with applicable Architectural Design Review (ADR) standards as set forth at OMC 13-6-7, as now or may hereafter be amended;

13. Stationary food vendors may have outside seating for not more than six (6) persons;

**Commented [A12]:** If the City Council wants to allow sale of other products, this will allow non-food vendors to operate on the city streets and allow stationary vendors to do the same. For example, a business owner could theoretically park a mobile vendor unit on its property to extend the sales floor and avoid having to expand its sales area through a remodel.

**Commented [A13]:** I have revised this section and added a new section 3-2-25(C)(8) to reflect that food vendors may sell other goods incidental to the sale of food. The intent is to allow the vendor to sell t-shirts, hats, sweatshirts, etc that advertise their products or are otherwise related to the food vending services.

14. Any exterior signage for stationary food vendor units shall be in compliance with the applicable ADR requirements as set forth at OMC Chapter 13-7;

15. Stationary food vendor units may only operate in locations as allowed by the City Zoning Code or special event permit;

16. The connection of a stationary food vendor unit to a source of electricity, water, and/or sewer at a stationary food vendor site is prohibited unless a permit has been obtained from the City for each connection and the connection has been inspected and found to comply with applicable City codes; and

17. Mobile food vendors shall at all times while engaging in business in the City have and maintain insurance in compliance with the requirements of this Chapter.

L. Insurance Required. No itinerant food vendor business license shall be issued to a mobile food vendor, or renewed, unless a certificate is furnished to the City showing that the mobile food vendor is carrying the following minimum amounts of insurance: (1) general comprehensive liability insurance in an amount of not less than \$500,000 for injuries, including those resulting in death, resulting from any one occurrence, and on account of any one accident; and (2) property damage insurance in an amount of not less than \$25,000 for damages on account of any one accident or occurrence.

**3-2-26: Special Business License Requirement – Farmer’s or Public Market; Special Event.**

A. The event organizer of a farmer’s or public market or other special event may apply for a special event business license. The special event business license will, upon issuance, operate in lieu of the requirement for individual general and special business licenses for vendors operating at the farmer’s or public market or special event, to the extent a business license would otherwise be required under the provisions of this Chapter. The special event business license shall be of limited duration commensurate with the term of the farmer’s or public market or special event for which the special event business license is issued. The fee for a special event business license shall be as set forth in OMC 3-2-9. Notwithstanding the foregoing, no vendor, not otherwise qualified to obtain a business license from the City, may engage in vending services pursuant to a special event business license.

B. The event organizer of the farmer’s or public market or special event shall, at least five (5) business days prior to the first day of the farmer’s or public market or special event, submit to the City Administrator a complete list of all vendors operating under authority of the special event business license at the event. The event organizer may supplement the list prior to the first day of the special event

**Commented [A14]:** I took this phrase out and re-wrote it below because it made this sentence difficult to understand.

upon the City Administrator's determination of good cause for delay. The vendor list shall not be deemed complete unless it includes the following for each vendor:

1. The name, contact phone number, and address of the vendor operating under the special events business license and the type of business engaged in\*;
2. The name and address of the persons authorized to act, and provide vending services, on behalf of the vendor;
3. The Department of Revenue unified business identifier number issued to the vendor; and
4. A depiction of the approximate location of the sales area for each vendor.

\*Except with regard to vendors described at OMC 3-2-6(H), vendors exempt from the business license requirements of this Chapter are not required to be identified.

C. Each vendor must display on-site a copy of the special event license issued to the event organizer of the farmer's or public market or special event. A vendor that has not been identified on the vendor list, or supplemental vendor list, submitted to the City, and not otherwise exempt from the business license requirements, is not authorized to operate at the special event under such special event business license.

D. The special event business license shall not replace, and shall be in addition to, a special event permit that may be required for the special event. No non-exempt vendor may operate under a special event business license that would not otherwise be qualified to obtain a valid business license from the City.

E. Identification of a vendor on the vendor list does not imply compliance with applicable laws, ordinances or regulations and does not relieve the vendor from compliance at all times with all ordinances and regulations of the City and the laws and regulations of the of the state and other regulatory agencies, applicable to the operation of such business or which otherwise bears a direct relationship to the conduct of the business licensed, including but not limited to, compliance with the Tacoma-Pierce County Health Department regulations.

**3-2-27 Special Business License Requirements – Carnival; Circus.** In addition to the general business license requirements, the following additional requirements and regulations shall apply to carnivals and circuses.

A. License - Fee – Regulations - Terms. No person may operate, or aid in the operation of, a carnival and/or circus in the City without first obtaining, and having in full force and effect, a special business license for the operation of such carnival or circus. All fees required for a circus or carnival special license shall be in accordance with OMC 3-2-9, the fee schedule. The term of the license shall be

limited to the days that the licensee will be in operation in the City as specified in the license application.

B. Hours of Business. All carnivals and/or circuses shall be discontinued and no part thereof shall be open to the public after the hour of ~~11:00 PM~~ ~~4:00 AM.~~, and shall remain closed until 10 a.m. of the same day unless for good cause, the hours of operation are extended by the City Administrator at the time of application for the special business license.

C. Sanitary Conditions and Lighting. Every carnival and circus and any building in which any carnival or circus is held shall at all times be kept in a clean, healthy and sanitary condition and in compliance with the health and sanitation regulations of the Tacoma-Pierce County Health Department. All stairways, halls, passages, and rooms which are open to the public shall be kept open and well lighted during the time that said carnival or circus is in operation. Every carnival and circus shall maintain adequate sanitary facilities, including toilets, at all times during installation, operation, and removal of all carnival or circus structures and equipment, unless such facilities are otherwise provided on site.

D. Duty of Preserving Order. The burden of preserving order is upon the licensee of the carnival and/or circus, and if any carnival or circus in the City is not deemed operated in accordance with the rules and regulations prescribed in this Chapter and as set forth in the state law, the licensee shall be subject to revocation of the business license, and the licensee or other individual responsible shall be subject to such other punishment as the law and this Chapter provide.

E. Employment of Law Enforcement Officers. In the event it becomes necessary to secure the services of one or more law enforcement officers to properly enforce these rules and regulations and to maintain order at a carnival and/or circus, all expense for such services shall be borne by the licensee and it is the duty of the licensee to secure the service of such officer or officers as are necessary to preserve order and enforce the rules and regulations prescribed by this Chapter and state law.

F. Smoking Prohibited. No person shall be permitted to smoke or carry in his or her hand a lighted cigar, cigarette or pipe inside of any tent, building, or other structure during the hours when said carnival and/or circus is open to the public.

G. Fire Code. All carnivals and circuses must comply with the provisions of the City of Orting Fire Code as enacted or thereafter amended.

H. Location of Site. No carnival and/or circus shall be operated in a location which is closer than 1,000 yards from any school or church, or 100 yards from any house, residence or other human habitation, except in such instances where the City Administrator determines that there exists good cause to waive such requirements, based upon a review of the facts and circumstances pertaining to said carnival and/or circus.

I. Inspections. The Chief of Police or any police officer or code enforcement officer of the City shall at all times have full and free access to any carnival or circus without fee, compensation or reward, for the purpose of maintaining order, inspecting such entertainment or exhibition or enforcing laws and ordinances of the City. It shall be a misdemeanor offense for any person willfully refusing such officer or officers admission.

No license shall be issued until inspections and approval shall have been made as follows:

1. The Fire District shall be responsible for inspections of all carnival and circus premises and equipment for compliance with all applicable Fire Code requirements. The license applicant shall be responsible for payment to the Fire District of the costs for such required inspection.

2. The Tacoma-Pierce County Health Department, or its equivalent, shall be responsible for inspection of all carnival and circus premises and all applicable equipment for compliance with all applicable health regulations. The license applicant shall be responsible for payment to the Tacoma-Pierce County Health Department of the costs for such required inspection.

3. The City Administrator may review all carnivals and circuses to ensure that they have adequate liability insurance covering installation and operation of their equipment, including amusement rides.

J. Duty to Comply With All State and Federal Laws and Regulations - License Revocation. All persons licensed pursuant to this Section are responsible for ensuring that all equipment and devices used in the carnival or circus comply with all applicable state and federal regulations. Violation of this Section shall constitute grounds for revocation of the special business license.

K. Liability Insurance. No special business license shall be issued until inspections and approval shall have been made as follows:

1. Any carnival or circus operating amusement rides shall, prior to operation, provide a Certificate of Insurance showing evidence of Comprehensive General Public Liability and Property Damage Liability Insurance with limits of not less than \$1,000,000 per occurrence.

2. Each carnival and circus operating amusement rides shall provide to the City Administrator certification that all rides have been inspected for safety by a recognized safety inspection program approved by the current liability insurance carrier with inspectors certified by the Washington State Department of Labor and Industries. The City Administrator shall be authorized to conduct an inspection of all amusement rides to verify passage of inspection.

L. Nuisance. Any carnival or circus operating in the City without the license required by this Chapter shall be considered a nuisance and shall be subject to abatement by the City.

### **3-2-28 Special Business License Requirement – Amusement Devices**

A. Purpose. No person shall operate, maintain, possess or install in any store, building, public or quasi-public place where the public is invited, or wherein the public may enter, any amusement device unless such person or entity shall have first obtained an amusement device license for that purpose from the City Administrator. Such license shall be in addition to the general business license required for the applicant to engage in business activities on the premises.

B. Gambling Devices Not Permitted. Nothing in this Chapter shall in any way be construed to authorize, license, or permit a gambling device, or a mechanism that has been judicially determined to be a gambling device, or in any way contrary to law, or that may be contrary to future laws of the state.

C. License Issuance. All amusement device licenses for the placement, operation, or use of amusement devices shall be issued to and in the name of the licensee. An amusement device license shall be required for each number of amusement devices placed for operation in a business. Such license shall be transferable from one amusement device to another similar amusement device within that business; provided, however, the total number of amusement devices placed for operation shall not at any time exceed the number of amusement device licenses issued to that business. The licensee shall notify the City Administrator of the transfer of the amusement device license within ten (10) business days of its occurrence, identifying, by serial number and title by which the game is commonly known, the device which is now installed, possessed or operated.

D. Term; Transfer. The term of an amusement device license commences January 1 and expires at midnight on December 31st of the same year. The fee for each such amusement device license shall be as set forth pursuant to OMC 3-2-9.

### **3-2-29 Special Business License Requirement – Peddlers and Solicitors**

A. Purpose. The City Council finds that the public health, safety, and welfare requires that the citizens of the City be protected from uninvited solicitors to: (1) protect against criminal activity, including fraud, bunco and burglary; (2) minimize the unwelcome disturbance of residents and their privacy; (3) preclude solicitation and sales by individuals who have been convicted of certain crimes; and (4) preclude soliciting where it would interfere with pedestrian and vehicular passage.

B. License – Required. Except as otherwise provided herein, it shall be unlawful for any individual to engage in business in the City as a solicitor or peddler

**Commented [A15]:** I really don't know if licensing amusement devices is an issue in Orting. The current code regulates these devices, so I updated those provisions.

without first having applied for and obtained, and having in full force and effect, a valid solicitor or peddler license.

C. Compliance with Laws. All solicitor or peddler licenses issued pursuant to this Chapter shall be and are conditioned upon compliance at all times with all ordinances and regulations of the City, state laws, and regulations of regulatory agencies having authority over the licensee applicable to the operation of such business or which otherwise bear a direct relationship to the conduct of the business licensed. Issuance of a business license does not imply compliance with applicable laws, ordinances or regulations.

D. Limitation on Activities Permitted By Solicitors and Peddlers. Except as otherwise authorized pursuant to this Chapter, it shall be unlawful for a solicitor or peddler within the City to:

1. Engage, or attempt to engage, in the business of soliciting or peddling upon public property, including public parks, public trails, public rights of way, and public sidewalks; provided that, such prohibition shall not apply to use of the public rights of way for travel and shall not prohibit constitutionally protected activities;

2. While engaged, or attempting to engage, in the business of soliciting or peddling, enter upon any other person's private property, home, residence, apartment complex or business that conspicuously displays a "No Peddlers" or "No Solicitors" sign, or any other similar sign that communicates the occupant's desire not to be contacted by solicitors;

3. While engaged, or attempting to engage, in the business of soliciting or peddling, persist or continue in any solicitation or attempted solicitation, or peddling or attempted peddling, of any particular member of the general public after such person has expressed his or her desire that further solicitation or peddling efforts discontinue;

4. While engaged, or attempting to engage, in the business of soliciting or peddling, call attention to his or her business or the items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure;

5. While engaged, or attempting to engage, in the business of soliciting or peddling, obstruct the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way;

6. While engaged, or attempting to engage, in the business of soliciting or peddling, conduct business in a way so as to create a threat to the health, safety, and welfare of any specific individual or the general public;

7. Engage in or attempt to engage in business before 8 a.m. or after 8 p.m.;

8. While engaged, or attempting to engage, in the business of soliciting or peddling, fail to provide proof of license, or registration, and identification when requested;

9. Use the solicitor or peddler license of another person;

10. While engaged, or attempting to engage, in the business of soliciting or peddling, allege false or misleading statements about the products or services being sold, including untrue statements of endorsement. No peddler or solicitor shall claim to have the endorsement of the City solely based on the City having issued a license or certificate of registration to that person; or

11. Remain on the property of another when requested to leave.

E. Exemptions. In addition to the exemptions set forth at OMC 3-2-6, no solicitor or peddler license shall be required for the following:

1. Any person selling personal property at wholesale to dealers in such articles or commodities; newspaper couriers; and persons who have been invited to call upon another person for the purpose of displaying for possible purchase goods, literature or giving information about any article, thing, product or service;

2. Farmers, gardeners, or other persons who deliver or sell any agricultural, horticultural, or farm products which they have actually grown, harvested, or produced; provided, that this exemption does not apply to the sale of firewood;

3. Any person who makes casual sales of seasonal articles such as produce, holiday items, handmade gift articles, etc., or provides seasonal services such as lawn care, snow removal and other household jobs;

4. Any person engaged in the business of selling through the United States mail;

5. Charitable, religious or nonprofit organizations, or organizations that have received exempt status under 26 USC 501(c)(3) or are registered pursuant to and in compliance with Chapter 19.09 RCW (Charitable Solicitations) and have proof of such exempt status or registration;

6. Candidates for political office, campaign workers, members and representatives of political committees or political organizations campaigning on behalf of ballot issues, distributors of sample ballots and other political literature and persons soliciting signatures of registered voters on petitions to be submitted to any governmental agency;

7. Minors conducting fundraising activities, who represent an organization for the benefit of youths, including but not limited to Boy Scouts, Girl Scouts, and Little League groups;

8. Any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement for the primary purpose of exercising that person's state or federal constitutional rights such as the freedom of speech, freedom of the press, freedom of religion, and the like. This exemption shall not apply if the person's exercise of constitutional rights is merely incidental to what would properly be considered a commercial activity;

9. Mobile food vending activities pursuant to and in compliance with a valid mobile food vendor license;

10. Authorized special event vendors engaging in vending activities at a farmer's or public market or special event; and

11. Persons engaged in activities as a Non-Commercial Door-To-Door Advocate.

F. Licensee; Applicant. All applications shall be made by, and on behalf of, each individual who will engage in business in the City as a solicitor or peddler, and such individual shall be the licensee. If the licensee is not a sole proprietor, and is acting as an agent, contractor, or employee of another person, such person shall have and maintain a valid general business license in the City.

G. Application and Issuance. Any individual desiring to obtain a solicitor or peddler license under this Chapter shall apply to the City for such license upon such forms as the City prepares and provides, and shall give such information as required herein and any such additional information that the City Administrator deems reasonably necessary to administer and enforce this Chapter, and shall pay the City the sum or sums required to be paid therefore pursuant to OMC Section 3-2-9. An application not including the required information and license fee shall not be deemed complete and will not be processed by the City.

The following information shall be included with and be made a part of the application:

1. The applicant's name;
2. An address at which the licensee will receive notices from the City;
3. A telephone number at which the licensee can be contacted;
4. Applicant's name, prior name(s) and aliases; address; present place of residence and the length of residence at such address; and business address if other than above identified address;

5. Address or place of residence of applicant during the two years prior to the date of the application;

6. In the event the name or address of applicant has changed within the two years prior to the date of application, each name and address used over the last two-year period;

7. Applicant's physical description, date of birth and social security number(s);

8. Whether applicant has ever been, within the ten-year period prior to the date of the application, convicted of a violation of a felony under the laws of this state or any other state or federal law of the United States;

9. Whether applicant has ever been, within the five-year period prior to the date of the application, convicted of a violation of a misdemeanor or gross misdemeanor under the laws of this state or any other state or federal law of the United States;

10. A description of the item(s) or services being sold and/or a description sufficient for identification of the subject matter of the business in which applicant will engage;

11. The license plate number, registration information, vehicle identification number (VIN) and physical description for any vehicle to be used in conjunction with the licensed business operation;

12. Applicant's driver's license number or other acceptable form of identification; and

13. The uniform business identifier number issued by the State of Washington or federal tax identification number for the business on whose behalf the licensee is performing soliciting or peddling services.

H. Authorization for Background Check. Applicant shall complete an authorization form to release information allowing the police department to conduct a local criminal history background check and allowing the Washington State Patrol to conduct a state and national criminal history check in accordance with the provisions of RCW 35A.21.370 and RCW 10.97.050. Applicant may be required to submit to fingerprinting or palm scanning by the police department, in connection with the application for the license, and shall be required to provide a copy of a valid driver's license or picture I.D. for identification purposes.

I. Attestation. Each applicant shall sign the application either in the presence of the City Clerk, or designee, or the City Administrator, and shall provide proof of applicant's identity, or each such applicant's signature shall be notarized. Each

applicant shall attest as to the truth and accuracy of the contents of the application provided by applicant.

J. Receipt. The City shall, upon receipt of a complete application and the required sum or sums, issue to applicant a receipt stating therein the date, amount paid and for which type of license was applied.

K. Content of Solicitor or Peddler License. Every peddler or solicitor license issued under this Chapter shall recite the date of issue, date of expiration, and the name of the licensee, include an endorsement for either a peddler or solicitor license, and be signed by the City Administrator.

L. Investigation of Applicants. It shall be the duty of the chief of police, or his/her designee, to investigate each application. The chief of police, or his/her designee, shall endeavor to complete such investigation within a reasonable time period after receipt of the complete application. In his/her investigation, the chief of police, or his/her designee, shall determine to the best of his/her ability:

1. The genuineness of all credentials presented by the applicant;
2. The truth of the facts set forth in the application; and

3. If the applicant has been convicted of a crime which bears a direct relationship to the conduct of the business licensed pursuant to this Chapter; provided that, such conviction, if for a felony is less than ten (10) years old, and if for a misdemeanor or gross misdemeanor, is less than five (5) years old. In considering whether or not the conduct in question relates to the licensee's/applicant's ability to operate as an itinerant vendor, the City may consider whether the conduct indicates that the applicant or licensee is unfit to operate as an itinerant vendor. The City will presume that the following categories of crimes that constitute a felony or misdemeanor under Washington state law or under the laws of the state or district in which the crime was committed and for which a conviction is less than ten (10) years old for a felony and less than five (5) years old for a misdemeanor, have a direct relationship to the fitness of such person to engage in business as solicitor or peddler:

- a. Homicide;
- b. Assault;
- c. Crimes of dishonesty (e.g., theft, bunco, embezzlement, fraud, etc.);
- d. Sex crimes;
- e. Drug-related crimes;
- f. Crimes against children and/or vulnerable adults;

g. Burglary and/or trespass; or

h. Kidnapping and/or unlawful imprisonment.

M. Carrying of License Required. The license required by this Section shall be carried at all times by the solicitor or peddler for whom it was issued when soliciting in the City. The license shall be displayed by the solicitor or peddler whenever and wherever he or she shall be requested to do so by any police officer, city official or person solicited or peddled.

N. Uninvited Solicitors/Peddlers – Prohibited – Violation a Nuisance. It is unlawful and constitutes a nuisance for a person to go upon a premises and ring the doorbell upon or near a door, or create a sound in any other manner calculated to attract the attention of the occupant of such residence or business for the purpose of securing an audience with the occupant thereof, and engage in soliciting or peddling, in defiance of the notice prohibiting soliciting or peddling conspicuously posted upon the premises of such residence or business.

O. Uninvited Solicitors/Peddlers – Departure From Premises Required. It shall be the duty of every solicitor and peddler upon going onto any premises of any residence or business in the City to determine if a notice prohibiting soliciting or peddling has been posted, and to be governed by the statement contained on the notice by immediately and peacefully departing from the premises.

A solicitor who has gained entrance to a residence, business, or development, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

### **3-2-30 Violation – Penalty**

A. Any act or omission in violation of OMC 3-2-5(A) (failure to obtain a business license) constitutes a class 1 civil infraction under OMC Chapter 1-4 for which a monetary penalty may be assessed and enforced.

B. Any act or omission in violation of OMC 3-2-5(B) (expired license) constitutes a class 4 civil infraction under OMC Chapter 1-4 for which a monetary penalty may be assessed and enforced.

C. Any act or omission in violation of OMC 3-2-5(C) or (D) (suspended or revoked license) constitutes a class 1 civil infraction under OMC Chapter 1-4 for which a monetary penalty may be assessed and enforced.

D. Any act or omission in violation of OMC 3-2-11 (license nontransferable) constitutes a class 1 civil infraction under OMC Chapter 1-4 for which a monetary penalty may be assessed and enforced.

E. It shall be a misdemeanor offense for any person who, with intent thereby to obtain a business license pursuant to this Chapter, knowingly makes any materially false statement in a written instrument submitted or offered as part of or in conjunction with a business license application. “Materially false statement” means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the issuance of a business license.

F. Any act or omission in violation of OMC 3-2-13, OMC 3-2-26(C) or 3-2-29(M) (display license) constitutes a class 1 civil infraction under OMC Chapter 1-4 for which a monetary penalty may be assessed and enforced.

G. It shall be a misdemeanor offense for any person to operate a carnival or circus in the City without first having obtained, and having in full force and effect, a valid special business license issued pursuant to OMC 3-2-27.

H. Except as otherwise provided herein, any act or omission in violation of this Chapter constitutes a class 3 civil infraction under OMC Chapter 1-4 for which a monetary penalty may be assessed and enforced.

I. Every act or omission which constitutes a civil violation under this Chapter, or any rule or regulation issued pursuant thereto, shall constitute a separate civil violation for each and every day during any portion of which the act or omission constituting the violation is committed, continued or permitted.

J. The penalties set forth herein are in addition to any other penalties or remedies that may be otherwise available pursuant to the City Code or applicable laws, or in equity.

Section 2. Repeal of Chapters 4-1, 4-3, 4-4, 4-6, 4-7 and 4-8 of the Orting Municipal Code. Orting Municipal Code Chapters 4-1 (General Licensing Provisions), 4-3 (Amusements), 4-4 (Theaters), 4-6 (Peddlers), 4-7 (Auctioneers) and 4-8 (Taxicabs) are hereby repealed in their entirety.

Section 3. Fees: Existing Business Licenses. Any Licensed business having paid its annual business license fee prior to the adoption of this Ordinance shall be considered as having met its obligation for payment of business license fees for the 12-month period in which the payment of the annual license fee or renewal fee was made. It is further provided that all City issued business licenses valid at the time of the adoption of this Ordinance shall remain valid and in effect until expiration as indicated upon the business license.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 5. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. A summary of this Ordinance may be published in lieu of publishing the ordinance in its entirety.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 30<sup>th</sup> DAY OF APRIL, 2014.**

CITY OF ORTING

\_\_\_\_\_  
Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Mark Bethune, City Clerk/Treasurer

Approved as to form:

\_\_\_\_\_  
Chris D. Bacha  
Kenyon Disend,  
City Attorney  
Passed by the City Council: 4/30/14  
Ordinance No.939