

CHAPTER V. BUSINESS REGULATIONS

Article 1. Solicitors, Canvassers, Peddlers

Article 2. Payday and Title Loan Businesses

ARTICLE 1. SOLICITORS, CANVASSERS, PEDDLERS

5-101. DEFINITIONS. For the purpose of this article, the following words shall be considered to have the following meanings:

(a) Soliciting - shall mean and include any one or more of the following activities:

(1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; 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.

(b) Residence - shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

(c) Canvasser or Solicitor - shall mean any individual, whether resident of the city or not, whose business is mainly or principally carried on by traveling either by foot, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not. Such definition shall include any person, who, for himself, herself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

(d) Peddler - shall mean any person, whether a resident of the city or not, traveling by foot, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad boxcar or other vehicle or conveyance, and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler.

(e) Transient merchant, itinerant merchant or itinerant vendor - are defined as any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and

delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

(f) Street salesman - shall mean any person engaged in any manner in selling merchandise of any kind from a vehicle or stand temporarily located on the public streets or sidewalks of this city.

(Code 1996)

5-102. LICENSE REQUIRED. (a) It shall be unlawful for any person to engage in any of the activities defined in the preceding sections of this article, within the corporate limits of the city without then having an unrevoked and unexpired license therefor in his or her possession and issued by the city clerk.

(b) The governing body may waive the license requirements of this section for any person, firm or corporation exempt from the payment of a license fee under section 5-107(d).

(Code 1996)

5-103. SAME; APPLICATION REQUIRED. Before the city clerk may issue any license required by this article, he or she shall require a sworn application in writing prepared in duplicate on a form to be supplied by the city clerk which shall give the following information:

(a) Name and description of applicant;

(b) Permanent home address and full local address of applicant;

(c) Identification of applicant including driver's license number, date of birth, expiration date of license and description of applicant;

(d) Identification of vehicle used by applicant including license therefor used by applicant in conducting his or her business;

(e) A brief description of the nature of the business to be carried on or the goods to be sold and the length of time such applicant has been engaged in the business;

(f) If employed, the name and address of the employer, together with credentials establishing such relationship, including the authority by the employer authorizing the applicant to represent the employer in conducting business;

(g) The length of time which business is proposed to be carried on;

(h) The place where services are to be performed or where the goods or property proposed to be sold or orders taken for the sale thereof are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;

(i) A photograph of the applicant, taken within 90 days prior to the date of making application which picture shall be at least two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner; or in

lieu thereof, the fingerprints of the applicant may be taken by the chief of police and filed with the application;

(j) A statement as to whether or not the applicant has within two years prior to the date of the application been convicted of any crime, misdemeanor (other than minor traffic violations) or violation of any municipal law regulating peddlers, solicitors or canvassers and giving the nature of the offenses, the punishment assessed therefor, if any, and the city and state where conviction occurred.

(k) The applicant's Kansas Sales Tax number.
(Code 1996)

5-104. SAME; INVESTIGATION AND ISSUANCE. (a) Upon receipt of the above application from an applicant, the city clerk shall refer the same to the chief of police who shall cause an investigation of the fact stated therein to be made within not to exceed five days.

(b) If as a result of the investigation, the applicant's character or business responsibility is found to be unsatisfactory or the facts stated therein to be untrue, the chief of police shall endorse on such application his or her findings and endorse his or her disapproval of the application and the reasons for the same and shall return the application to the city clerk who then shall notify the applicant that his or her application is disapproved and that no license will be issued.

(c) If however, the investigation of such application discloses that the character and business responsibility and the facts stated in the application are satisfactory and true, the chief of police shall endorse his or her findings and approval on the application and return the same to the city clerk who shall, upon payment of the license and investigation fees prescribed, issue a license to the applicant to engage in the business described in the application. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance and length of time the license shall be operative, and the nature of the business involved. The city clerk shall keep a permanent record of all such licenses issued and submit a copy of such license to the chief of police. The licensee shall carry the license certificate at all times.

(d) It shall be the duty of any police officer of the City of Cheney, Kansas to require any person engaged in the activities as defined in this article, who is not known by such officer to be duly licensed, to produce his or her license and to enforce the provisions of this article against any person found to be violating the same. (Ord. 842; Code 2016)

5-105. SAME; PENALTY. Any person who shall fail or refuse to comply with the provisions of this article shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$100 and/or incarcerated for not more than 30 days. (Ord. 842; Code 2016)

5-106. SAME; INVESTIGATION FEE. At the time of filing the application, a fee of \$25 shall be paid to the city clerk to cover the cost of investigation of the facts stated in the foregoing application. (Code 1996)

5-107. LICENSE FEE; TIME LIMITS; EXEMPTIONS. (a) Except as provided in subsection (c), the fee for the license required pursuant to section 5-102 shall be in the amount of \$10 per each day, or portion thereof, that the licensee shall operate within the city limits. In no event, however, shall fees in excess of \$100 be collected from a licensee during any six-month period of time.

(b) Any such license granted upon application as required hereinabove shall be limited to and effective only on the days set out in the license. Solicitation or sales by any peddler, solicitor or canvasser shall be conducted only between the hours of 8:00 a.m. and 9:00 p.m.

(c) No license fee shall be required of: (1) any person selling products of the farm or orchard actually produced by the seller; (2) any businesses, trades or occupations which are part of fairs or celebrations sponsored by the city or any other governmental subdivision, or the state, or when part of all of the expenses of the fairs or celebrations are paid for by the city, any other governmental subdivision, or the state; and (3) any not-for-profit or charitable organization as determined by the governing body.

(K.S.A. 12-1617; Code 2016)

5-108. RENEWAL. All licenses issued shall be subject to renewal upon a showing of compliance with sections 5-102:103 of this article within a six month period prior to the renewal date. The city clerk need not require an additional application under section 5-203 or an additional investigation and investigation fee under sections 5-105:106 unless complaints have been received of violations of the conditions under which any license has heretofore been issued. The city clerk shall not renew or extend any license where there is satisfactory evidence of any grounds for the suspension or revocation of any prior license, and the applicant shall be required to apply for a license as in the case of an original license. (Code 1996)

5-109. DENIAL, REVOCATION OR SUSPENSION OF LICENSE; NOTICE. (a) The city clerk or chief of police may deny any application or may revoke or suspend for a period of not to exceed 30 days any license issued under this article, for any of the following causes:

(1) Fraud, misrepresentation or false statement contained in the application for license.

(2) Fraud, misrepresentation or false statement made in the course of carrying on the business.

(3) Any violation of this article.

(4) Conducting a business as defined in section 5-101 in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the city. Notice of the denial, revocation or suspension of a license shall be given in writing to the applicant or mailed to his or her last known address and the city clerk shall set forth the grounds of such denial, revocation or suspension.

(5) Conviction of the crime of theft, larceny, fraud, embezzlement or any felony within two years prior to the application date.

(Code 1996)

5-110. APPEAL TO GOVERNING BODY. (a) Any person aggrieved by the action of the chief of police or city clerk in the denial of an application or revocation or suspension of a license as provided in this article, shall have the right of appeal to the governing body.

(b) Such appeal shall be taken by filing with the city clerk within 14 days after notice of revocation, suspension or denial of the license has been given to or mailed to such applicant's last known address and setting forth the grounds for appeal.

(c) The governing body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided herein for notice of denial, revocation or suspension.

(d) The decision and order of the governing body on such appeal shall be final and conclusive.
(Code 1996)

5-111. REGULATIONS. (a) It shall be unlawful for any licensee to make false or fraudulent statements concerning the quality of nature of his or her goods, wares and merchandise for the purpose of inducing another to purchase the same.

(b) Licensees are required to exhibit their license at the request of any person to whom they attempt to sell their goods, wares and merchandise or take orders for future delivery of the same.
(Code 1996)

5-112. USE OF STREETS AND SIDEWALKS. Except when authorized in writing by the city clerk, no peddler, solicitor or canvasser or any other person shall have exclusive right to any location in the public streets for the purpose of selling or soliciting sales, nor shall any person be permitted a stationary location in the public streets, nor shall any person be permitted to operate in the sidewalks and streets within the fire limits of the city or any congested area where his or her operations might impede or inconvenience the public. (Code 1996)

5-113. DISTURBING THE PEACE. Except when authorized in writing by the city clerk, no licensee nor any person in his or her behalf, shall use any sound device, including any loud-speaking radio or sound-amplifying system upon any of the streets, alleys, parks or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell. (Code 1996)

ARTICLE 2. PAYDAY AND TITLE LOAN BUSINESSES

- 5-201. PAYDAY AND TITLE LOAN BUSINESSES; PURPOSE. Payday and title loan businesses should be regulated by the City of Cheney because certain payday and title loan lending practices have proven detrimental to the financial security of individuals and families residing in the City. Payday and title loan lending practices often have an unreasonably adverse effect upon the elderly, the economically disadvantaged and other residents of the City. Frequently, taking a payday or title loan puts borrowers in much worse financial shape than before they took the loan. Therefore, the purpose of this article is to require licensing for the purpose of regulating certain payday and title loan lending practices to minimize the detrimental effects of such practices on the citizens of the City by regulating payday and title loan lending practices occurring in the City, consistent with the laws of the State of Kansas. Furthermore, the City finds there is a need to regulate the placement and location of Payday and Title Loan businesses throughout the City. A clustering of these businesses can have a detrimental effect on the neighborhood and create the appearance of a commercial district in decline. These businesses do not create much foot traffic for adjacent businesses and a proliferation of them at particular locations can overwhelm a neighborhood and can be a disincentive for the location of other neighborhood businesses in close proximity to them. Finally, the fact that many surrounding communities in the metropolitan area are adopting or considering adopting restrictions on the location of such businesses could result in the City of Cheney having an undue concentration of these businesses in the City unless location regulations are enacted. (Ord. 834; Code 2016)
- 5-202. DEFINITIONS. For the purpose of this Article:
- (a) Payday Loan Business shall refer to any business regulated by K.S.A. 16a-2-404, as the same may be amended from time to time.
 - (b) Title Loan Business shall refer, except as provided below, to a consumer loan transaction, including a loan made pursuant to K.S.A. 16-706 et seq., and amendments thereto, secured by a vehicle. It shall not include a purchase money consumer loan or a loan made pursuant to subsection (2) of K.S.A. 16a-2-401 and amendments thereto.
 - (c) Vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway and the ownership of which is evidenced by a certificate of title.
- (Ord. 834; Code 2016)
- 5-203. PERMIT. After January 1, 2011, it shall be unlawful for any person or business:
- (a) To operate or maintain a Payday or Title Loan Business in the City unless the owner, operator or lessee thereof has applied for and obtained a Payday Loan and Title Loan Business Permit from the City, or
 - (b) To operate such business after such permit has expired or has been revoked or suspended by the City. Permits shall be required for each location a lender operates in the City, shall be valid for a one year period of time and may be renewed annually. The application shall be in a form to be determined by the Cheney City Clerk. The annual cost for the permit shall be \$1,000, payable to the City. This permit shall be in addition to any other permit or license required by other local, state or federal government agencies. No permit shall be issued for

any business seeking to operate at a location prohibited by any applicable local, state or federal law, statute, ordinance, rule or regulation; provided, however, that a business lawfully in existence on the date of adoption of such prohibition may be issued a permit if allowed by such provisions. (Ord. 834; Code 2016)

5-204. SAME; REVOCATION.

(a) Any permit holder violating any provision of this Article or any applicable local, state or federal law, statute, ordinance, rule or regulation shall, upon the first violation, be issued a written warning by the City. On any second or subsequent violation, the City shall revoke the permit.

(b) Any permit holder whose permit is revoked hereunder may appeal to the City Administrator of the City of Cheney, Kansas by notice served upon the City Clerk of the City of Cheney, Kansas, and a hearing shall be called and held not less than 10 business days from the date of the filing of such notice of appeal. The determination of the City Administrator of the City of Cheney, Kansas shall be final. (Ord. 834; Code 2016)

5-205. RESTRICTION UPON LOCATION. No permit shall be issued for any Payday or Title Loan Business that is located within 5,280 feet of any other Payday or Title Loan Business or within 200 feet of any property used primarily for a single-family residence, a two-family residence, a town home, or an apartment building. The separation distances shall be measured from or to the outer wall of the Payday or Title Loan Business, and from or to the property line of the property containing the residential use. However, this separation provision shall not apply to any Payday or Title Loan Business that can demonstrate to the City that it was in operation at the location requested in the Permit application prior to the effective date of Ordinance No. 834, and that it has operated continuously under the same business name since that time. (Ord. 834; Code 2016)

5-206. PERMIT; POSTING. (a) Any business that applies for and receives a Payday or Title Loan Business Permit from the City shall keep such permit posted on a wall within their business in a prominent location clearly visible to potential customers. Failure to keep the permit posted in the manner required shall be prima facie evidence that the business has not obtained such a permit. It shall also be prima facie evidence that any person who performs any business or service as part of the Payday or Title Loan Business had knowledge that such business was not permitted.

(b) Any business that applies for and receives a Payday or Title Loan Business Permit from the City shall post a sign in the business at a location clearly visible to potential customers that informs customers of their rights under federal, state or local laws, in a form approved by the Cheney City Administrator. (Ord. 834; Code 2016)

5-207. SAME; UNLAWFUL ACTS. It shall be unlawful for any person that does not have a valid Payday or Title Loan Business Permit pursuant to this Article to perform any work or service directly related to the operation of a Payday or Title Loan Business within the corporate limits of the City of Cheney, Kansas. (Ord. 834; Code 2016)

5-208. SAME; PENALTY. Any person who commits an unlawful act pursuant to Section 5-207 shall, upon conviction thereof by the Cheney Municipal Court, be required to pay a fine of not more than \$500.00 for each violation.
(Ord. 834; Code 2016)