

TITLE 3 CHAPTER 5

ITINERANT MERCHANT, SOLICITATION AND MOBILE FOOD VENDOR REGULATIONS

SECTION:

- 3-5-1: Definitions
- 3-5-2: License Required; Exceptions; Fees; Term
- 3-5-3: Application for Itinerant Merchant License
- 3-5-4: Investigation and Issuance
- 3-5-5: Assumption of Liability, Indemnification and Insurance
- 3-5-6: Service of Process
- 3-5-7: Exhibition of License
- 3-5-8: License Non-Transferable
- 3-5-9: Duty to Enforce
- 3-5-10: Records
- 3-5-11: Solicitation Regulations
- 3-5-12: Revocation of License
- 3-5-13: Appeal
- 3-5-14: Mobile Food Vendor License
- 3-5-15: License Applications
- 3-5-16: Term of Mobile Food Vendor License
- 3-5-17: Issuance of License; Appeal
- 3-5-18: License Fee
- 3-5-19: Operation Requirements
- 3-5-20: Mobile Food Vending in Public Places
- 3-5-21: Sales Vehicle Registration
- 3-5-22: Sales Vehicle Equipment
- 3-5-23: Traffic and Parking Regulations
- 3-5-24: Litter Control
- 3-5-25: Revocation of License

3-5-1: DEFINITIONS:

ITINERANT MERCHANT DEFINED: As used in this Chapter a “transient merchant”, “itinerant merchant” or “itinerant vendor” is any person, firm or corporation, or other entity, whether as owner, agent, consignee or employee, who sells or offers to sell any goods, wares, merchandise or services from any structure or other location within the City, with an intent to remain at that location for less than ninety (90) days. Execution or adoption of any rental or lease agreement or other contract for use of such location for a term of ninety (90) days or less, or with the ability to terminate the agreement or contract within such time period, will be prima facie evidence of such intent.

MOBILE FOOD VENDOR DEFINED: As used in this Chapter, a “mobile food vendor” is a person or entity who sells at retail or serves food or beverages for human consumption, to the public from any vehicle.

VEHICLE DEFINED: As used in this Chapter, “vehicle” will have the same meaning as under Chapter 1, Title 49 of the Idaho Code.

3-5-2: LICENSE REQUIRED; EXCEPTIONS, FEES; TERM: It shall be unlawful for a transient merchant, itinerant merchant or itinerant vendor as defined in Section 3-5-1 hereof to engage in such business within the City without first obtaining a license therefor in compliance with the provisions of this Chapter, and receiving written approval from the City.

(A) Exceptions: (Insofar as the site of sale is permitted by the zoning ordinance or a conditional use permit is granted by the City for sale at the site.)

1. Any sales conducted pursuant to court order.
2. The sale of goods, wares, merchandise or services by any student group or religious, philanthropic or charitable organization exempt from taxation under 26 U.S.C. Section 501 and meeting all the requirements for the exemptions provided by 26 U.S.C. 503, and which has a local charter or sponsor located in the City.
3. The sale of goods, wares or merchandise to a business establishment that intends to offer these items for resale.
4. Garage, yard, estate or similar sales by individuals at their residence or place of business, not exceeding three (3) separate sales in one calendar year, and not to exceed three (3) days each.
5. Community yard sales at a city residence, place of business or on city property, when approved in advance by the City Council, not to exceed two (2) separate sales in one calendar year, and not to exceed three (3) days each.
6. The sale of farm or garden products by the person producing the same.
7. Any political group or candidate seeking funds, membership or support.
8. A bona fide auction sale.
9. Any bona fide City sponsored sale or auction of City surplus property.

(B) Fees for Itinerant License: The fee for an itinerant merchant license will be in an amount set from time to time by Resolution of the City Council. Such fee will be paid at the time of filing of an application with the City. The fee is non-refundable if the license is denied.

(C) Term of Itinerant License: The term of an itinerant merchant's license will expire one (1) year from the date the license was issued.

3-5-3: APPLICATION FOR ITINERANT MERCHANT LICENSE:

Applicants for an itinerant merchant license under this Chapter, whether a person, firm or corporation, shall file a written, sworn application not less than thirty (30) days prior to the intended date of commencement of activity, signed by the applicant if an individual, by all partners if a partnership, and the president of a corporation with the City Clerk, showing:

(A) The name of the person having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the City; the local address of such person while engaged in such business; the permanent address of principal place of business of such applicant; the capacity in which such person will act (that is, whether as proprietor, agent or otherwise); the name and address of the person for whose account the business will be carried on, if any; and if a corporation, under the laws of what state the same is incorporated.

(B) The names, residential addresses and contact information for all persons who will sell or offer for sale any goods, wares, merchandise or services.

(C) A description of the place or places in the City where it is proposed to carry on the Applicant's business, and the length of time during which it is proposed that said business shall be conducted at each such designated place.

(D) The place other than the permanent place of business of the applicant where such applicant conducted the transient business within six (6) months next preceding the date of the application, stating the nature thereof and giving the street address of any building or office in which such business was conducted.

(E) A brief description of the nature, character and quality of the goods, wares, merchandise or services to be sold or offered for sale by the applicant in the City.

(F) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers.

(G) Whether or not the person having the management or supervision of the applicant's business has been convicted of any crime, except traffic violations, and the nature, place and date and place of each such offense.

(H) The inclusive dates and times of day for which said license is desired.

(I) A description and license and registration numbers of each motor vehicle that will be used in connection with making sales or providing services, and the names of all person

who will be operating such motor vehicles, their driver's license numbers and names of the states by which such licenses were issued. Also, a copy of the automobile certificate of insurance for each specific vehicle that is propose for use in the business operation.

(J) A statement of whether any business-related permit or license held by the applicant or any of the applicant's agents or employees has been revoked within the past five (5) years by any jurisdiction, and if so, where, why and when the revocation occurred.

(K) A two inch by two-inch (2" x 2") photograph of the applicant, or if a corporation or partnership, limited liability company, association or other organization, a similar photograph of the person submitting the application.

(L) The names and addresses of the manufacturers or other persons or organizations supplying the goods or services to be sold or offered for sale.

(M) Such other reasonable information as the City Clerk may deem proper to fulfill the purpose of this Chapter in the protection of the public good.

(N) The City Clerk shall prepare a suitable application in compliance with this Chapter.

3-5-4: INVESTIGATION AND ISSUANCE:

(A) Upon receipt of the application, the City Clerk will cause such investigation of the applicant's business responsibility or moral character to be made as the Clerk deems necessary in the protection of the public good. The City Clerk may use such departments of the City, the County Sheriff's Office, and such other means as the Clerk deems appropriate in the aid of the investigation.

(B) As a result of the investigation, if the applicant's character and business responsibility are found to be unsatisfactory, the application will be denied. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the City Clerk will so indicate in writing and the license shall be issued if all of the requirements of this Chapter have been met.

(C) The City Clerk will keep a full record in the Clerk's office of all licenses issued. Each such license shall contain:

1. the number of the license;
2. the date the same was issued;
3. the nature of the business authorized to be carried on;
4. the amount of the license fee paid;
5. the expiration date of the license;
6. the place where such business may be carried on under said license; and
7. the name of the person authorized to carry on the same.

3-5-5: ASSUMPTION OF LIABILITY, INDEMNIFICATION AND INSURANCE:

- (A) The City will not be responsible for any injury, loss, or damages of any type or character to any persons or property of the merchant or vendor, or its agents or employees, or for any personal injury suffered or caused by the merchant or vendor, or its agents or employees, as licensed under this chapter, and at any time or place, and all such risk to person or property is assumed by the merchant or vendor, its agents or employees by virtue of an application for a license under this chapter. The City will not be held responsible for any or all damage from loss of occupancy or otherwise caused to merchant or vendor resulting from the destruction or damage to any area in which said merchant or vendor will seek or desire to conduct its business.
- (B) The merchant or vendor will be held responsible for all damages caused by the merchant or vendor's operation to the City or to any third parties and agrees to hold the City harmless from any liability incurred by merchant or vendors, or its agents or employees, activities or possessions. Merchant or vendor agrees to indemnify the City from any and all liability, loss, or damage the City may suffer as a result of claims, demands, costs or judgments against the City arising from merchant or vendors, or their agents' or employees' conducting of business within the jurisdiction of the City of Albion.
- (C) A certificate of merchant's or vendor's general commercial liability insurance coverage in the amount of not less than Five Hundred Thousand Dollars (\$500,000.00) must be provided to the City prior to commencing operations or transacting any business within the jurisdiction of the City. Said certificate of insurance shall name the City of Albion, Idaho as an additional insured, and protecting the City from and against all claims, losses, actions, and judgments for injury or damages to persons or property arising out of, or in connection with, merchant's or vendor's acts or failures to act under this chapter or under any commercially reasonable standard of care in its operations of its business.

3-5-6: SERVICE OF PROCESS:

Before any license as herein provided shall be issued for engaging in business as an itinerant merchant, as herein defined, in the City, such applicant shall file with the City Clerk an instrument nominating and appointing the City Clerk his true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of said applicant in respect to any matters connected with or arising out of the business transacted under said license. Said instrument will also contain recitals to the effect that said applicant for said license consents and agrees that service of any notice or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served upon the person applying for the said license

under this Chapter, according to the law of this or any other State, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the City Clerk, as herein provided, the City Clerk will send to the licensee at his last known address, by registered mail, a copy of said process.

3-5-7: EXHIBITION OF LICENSE:

The license issued under this Chapter shall be posted conspicuously in the place of business named therein. In the event that such person applying for said license shall desire to do business in more than one place within the City, separate licenses may be issued for each place of business, and shall be posted conspicuously in each place of business.

3-5-8: LICENSE NONTRANSFERABLE:

. Licensees shall not allow their license to be used by any person other than their agents or employees for any purpose. Itinerant merchant licenses are nontransferable and are non-assignable.

3-5-9: DUTY TO ENFORCE:

It shall be the duty of the law enforcement officers of and for the City to examine all places of business and persons in their respective territories subject to the provisions of this Chapter, to determine if this Chapter has been complied with and to enforce the provisions of this Chapter against any person found to be violating the same.

3-5-10: RECORDS:

The City Clerk shall keep a record of all such licenses and complaints and/or violations associated therewith.

3-5-11: SOLICITATION REGULATIONS:

(A) Nuisance Declared: The practice of going in and upon private residences in the City by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, where the owners have posted "NO SOLICITATION" notices, for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance and punishable as such nuisance as a misdemeanor.

(B) Enforcement: The law enforcement officers of the City are hereby required and directed to suppress the same and to abate any such nuisance as is described in subsection (A) herein.

3-5-12: REVOCATION OF LICENSE:

(A) The permits and licenses issued pursuant to this Chapter may be revoked by the City Council after notice and hearing, for any of the following causes:

1. Any fraud, misrepresentation or false statement contained in the application for license;
2. Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, merchandise, or provision of services;
3. Any violation of, or failure to comply with, any provision of this Chapter by licensee or any of licensee's agents or employees;
4. Conviction of the licensee of any felony or of misdemeanor involving moral turpitude;
5. Conducting the business licensed under this Chapter in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public; or
6. Cancellation or termination of the insurance coverage as required by Section 3-5-5 of this Chapter prior to the expiration of the license.

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

3-5-13: APPEAL:

Any person aggrieved by the decision of the City Clerk in regard to the denial of application for a license as provided for in Section 3-5-4 of this Chapter or in connection with the revocation of a license as provided for in Section 3-5-12 herein shall have the right to appeal to the Council. Such appeal will be taken by filing with the Council, within fourteen (14) days after notice of the decision by the City Clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The Council will set the time and place for a hearing on such appeal and notice of such hearing shall be given to such person in the same manner as provided in Section 3-5-12 herein for notice of hearing on revocation. The order of the Council on such appeal will be final.

3-5-14: MOBILE FOOD VENDOR LICENSE: No person will engage in the business of a mobile food vendor without first obtaining a mobile food vendor license from the City.

3-5-15: LICENSE APPLICATIONS: Applications for mobile food vendor licenses will be made at the office of the Clerk on a form furnished by the City. The application will state:

1. The applicant's full name, residential address, and contact information;
2. The business name under which the applicant will be operating and the address of the applicant's principal place of business;
3. A brief description of the food to be sold;
4. The applicant's social security number or taxpayer identification number; and
5. A description and the license or registration numbers of each vehicle from which sales will be made; and
6. Property addresses or site map indicating place or places where applicant proposes to engage in or conduct business. Note: if the proposed site is located in the RA or R-1 zones, then a conditionally use permit from the City is required before any mobile food vendor licensed will be issued.
7. The application will be accompanied by the mobile food vendor license fee in an amount which will be set from time to time by Resolution of the Council. This fee is non-refundable.
8. The application of any mobile food vendor, within the City, will obtain, and provide a copy to the City of, certification from the South Central Public Health District for such business.

3-5-16: TERM OF MOBILE FOOD VENDOR LICENSE: The term of a mobile food vendor's license will expire one (1) year from the date that the license is issued.

3-5-17: ISSUANCE OF A LICENSE; APPEAL: On receipt of a completed application for a mobile food vendor license and payment of the license fee, the Clerk will forward the application to the Cassia County Sheriff's Office for review and recommendation for approval or denial. Within thirty (30) days from the date the application is filed with the Clerk, the Sheriff's Office will forward their recommendation to the Clerk. The Clerk shall then approve or deny the application. If the Clerk denies the application, the applicant may appeal the decision to the City Council under provisions of Albion City Code Section 3-5-13.

3-5-18: LICENSE FEE: The fee for a mobile food vendor license will be in an amount set from time to time by Resolution of the Council, and is a non-refundable fee. Separate licenses and fees will be required for each separate mobile food vendor unit and for each separate mobile food vendor site.

3-5-19: OPERATION REQUIREMENTS:

1. Mobile vendors and itinerant merchants making sales from vehicles operated on the City's public roadways will stop their vehicles at curbside before making any sales.
2. Mobile vendors will not make sales from vehicles parked, stopped or standing on public sidewalks of the City.
3. Sales will not be made to persons who are on public streets, but may be made to persons on public sidewalks.
4. Mobile vendors may operate during the hours of seven o'clock (7:00) a.m. and nine o'clock (9:00) p.m, and seven (7) days a week.
5. Mobile food vending licenses are non-transferable and must be displayed in a prominent place on the unit that is readily visible to the public.
6. Mobile food vending units must remain capable of being readily moved.
7. Mobile food vending units cannot obstruct sidewalks, streets, alleys or other public spaces, or in any manner that obstructs the free flow of pedestrians or vehicles.
8. All wastewater generated or used by a mobile food vending unit must be disposed of in an approved wastewater dump site that is equipped with a grease trap.
9. Any mobile food vending unit that is connected to the City's water system must be equipped with an approved backflow prevention device to prevent backflow and contamination of the City's water system.
10. The owners, managers, and operators of any mobile food vending unit within the City of Albion are responsible for any violations of this Chapter by their agents or employees.

3-5-20: MOBILE FOOD VENDING IN PUBLIC PLACES:

1. Issuance of a mobile food vendor or itinerant merchant's license will not entitle the licensee to conduct business on any street, sidewalk or other location within any park owned or maintained by the City.
2. No person willlll conduct the business of mobile food vending within any park owned or maintained by the City except under specific written approval by the City Council.

3-5-21: SALES VEHICLE REGISTRATION: Any vehicle from which a mobile vendor or itinerant merchant makes sales must be registered as required by State law.

3-5-22: SALES VEHICLE EQUIPMENT: Mobile vendors and itinerant merchants shall not operate, move, park, stop or stand and sales vehicle on the City streets unless the vehicle is equipped as required by State law.

3-5-23: TRAFFIC AND PARKING REGULATIONS: Mobile food vendors and itinerant merchants will comply with all State and City traffic, parking, stopping and standing laws, ordinances and regulations.

3-5-24: LITTER CONTROL: Any sales vehicles operated by a mobile food vendor must be equipped with a suitable trash container readily accessible to the public, in which the vendor's customers may deposit any litter, trash or waste related to the vendor's sales. Prior to moving a sales vehicle from a sales location, a mobile food vendor will pick up and remove all litter, trash and waste related to the vendor's sales within a one-hundred-foot (100') radius of the sales vehicle.

3-5-25: REVOCATION OF LICENSE: The City Council may revoke a mobile food vendor license if the licensee violates any provision of this Chapter.