

City
clerk

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CITY COUNCIL MEETING
SEPTEMBER 5, 1984

NO ACTION TAKEN
ON AGENDA ITEM
REGARDING
"SOLICITORS"

Agenda Item K-1 - "Request by Dan Prater of Big Valley Teens for amendments to City Code regarding "Solicitors" was introduced by the City Manager and City Attorney. Mr. Prater was not in the audience to address the Council regarding the matter. Following a brief discussion, on motion of Mayor Snider, Reid second, Council voted to take no action on the matter.

COUNCIL COMMUNICATION

TO THE CITY COUNCIL
FROM THE CITY MANAGER'S OFFICE

DATE

AUGUST 30, 1984

NO.

SUBJECT

PEDDLERS/SOLICITORS LICENSING

Last week, Don Prater of Big Valley Teens, came to see me regarding peddlers and solicitors licensing. For your information and review, a copy of Ordinance No. 375 is attached hereto. Mr. Prater's concern was that other peddlers and solicitors in town were taking the business licenses that they received from our Finance Department and were duplicating same, and giving the duplicate to other persons working with them. I reported same to Police Chief Floyd Williams' office and they are going to look into that matter.

Mr. Prater was also concerned about the cost of a peddlers/solicitors license. For your information, said cost is \$10.00 per day. I would direct your attention to Section 26(f) and 26(h) for the definitions of "peddler" and "solicitor". You should be aware that our ordinance is a revenue, rather than a regulatory, ordinance. However, requiring a peddler and/or solicitor to have a license in their possession does give some protection to our citizens.

Mr. Prater in his concern over the cost of said license, asked what the cost would be if he had a fixed place of business. You will note Section 3 sets forth the license fees, based on having a fixed place of business, to be an annual license based on the average number of employees:

- \$15.00 for the first employee;
- \$ 3.00 for each of the next nine employees; and
- \$ 1.00 for each of the next forty employees.

The word that I want this Council to key in on is the word "employee". The definition is set forth in Section 26(d), to wit:

"Employee shall mean all persons engaged in the operation or conduct of any business, whether as owner, any member of the owner's family, partner, agent, manager, solicitor and any and all other persons employed or working in the business."

In speaking with Mr. Prater, I asked whether the teens working for him were employees, and he said that they were not employees, but rather, independent contractors. Under said circumstances, each individual would be required to have a peddlers/solicitors license.

For your information, I would also direct your attention to the exemptions from the license tax which includes, but is not limited to charitable and/or religious organizations. It is to be noted that Mr. Prater's business is not a charitable or religious organization which would fall under that exemption category.

Council Communique

Re: Peddlers and Solicitors Licensing

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Of further information to the Council, any applicant for peddlers/solicitors license is fingerprinted and investigated through the Police Department via the National Crime Information Center, California Law Enforcement Telecommunications System, and through the San Joaquin County and local investigative systems, prior to the decision to license or not to license the applicant.

I would hope that the foregoing is of help to the Council and will be happy to do any further research required in this regard.



RONALD M. STEIN
CITY ATTORNEY

RMS:vc

attachment

ORDINANCE NO. 375

As Amended by Ordinance No. 382
and by Ordinance No. 382-A

Licensing for purposes of Revenue, certain professions, businesses, trades and occupations in the City of Lodi.

BE IT ORDAINED by the Council of the City of Lodi as follows:

Sec. 1. PURPOSE. This Ordinance is enacted solely to raise revenue for municipal purposes, and is not intended for the purpose of regulation.

Sec. 2. LICENSE REQUIRED. There are hereby imposed upon all business in the City of Lodi, license taxes in the amount hereinafter in this Ordinance prescribed. It shall be unlawful for any person, either for himself or for any other person, to commence, transact or carry on any business in the City of Lodi not included in this Ordinance, without first having procured a license from said City so to do, or without complying with any and all regulations contained in this Ordinance. The carrying on of any business without first having procured a license from said City so to do, or without complying with any and all regulations of this Ordinance, shall constitute a separate violation of this Ordinance for each and every day that such business is carried on.

Sec. 3. LICENSE TAX—FIXED PLACE OF BUSINESS. Every person commencing, transacting and carrying on at a fixed place of business in the City of Lodi any business other than those enumerated in Section 5 hereof shall pay an annual license tax based upon the average number of employees employed in such business as defined in Section 26a hereof, of Fifteen Dollars (15.00) for the first employee, Three Dollars (\$3.00) each for the next nine (9) employees, One Dollar (\$1.00) each for the next forty (40) employees and Fifty Cents (.50) each for each additional employee.

Sec. 4. LICENSE TAX — NO FIXED PLACE OF BUSINESS. Every person commencing, transacting and carrying on at other than a fixed place of business in the City of Lodi any business other than those enumerated in Sections 5 and 7.1 hereof shall pay an annual license tax based upon the average number of employees as defined in Section 26b hereof, of Thirty Dollars (\$30.00) for the first employee, Six Dollars (\$6.00) each for the next nine (9) employees, Two Dollars (\$2.00) each for the next forty (40) employees and One Dollar (\$1.00) each for each additional employee.

Sec. 5. LICENSE TAX—FLAT AMOUNT. Every person commencing, transacting and carrying on in the City of Lodi any business herein enumerated shall pay a license tax as follows:

Business	Period	Tax
Auctioneer	Quarter	\$ 25.00
Bowling	Year	24.00
Bowling and Pool or Billiards	Year	30.00
Boxing and Wrestling	Day	20.00
Circuses and Side Shows	Day	100.00
Carnivals	Day	100.00
Dances	Day	5.00
Junk Dealer (Resident)	Quarter	15.00
Junk Dealer (Non-resident)	Quarter	30.00
Pawn Broker	Quarter	15.00
Peddlers and Solicitors	Day	10.00
Peddlers and Solicitors, personally manufacturing goods or produce	Quarter	6.00
Pool, Billiards	Year	24.00
Swimming Pools	Year	24.00
Theatres, Occasional	Day	5.00

Sec. 6. LICENSE TAX—HOME OCCUPATIONS - PHYSICALLY HANDICAPPED PERSONS.

Every person commencing, transacting and carrying on in the City of Lodi, any business in his home in a residential zone. (Not as a nonconforming use), whose annual gross receipts from such business is \$1,000 or less shall be exempt from the payment of a license tax hereunder but shall be required to obtain and display a license issued by the City Treasurer without charge. Where the annual gross receipts from such business exceeds \$1,000, a license tax as prescribed in Section 3 of this Ordinance shall be imposed. Persons who, by reason of age or infirmity, are physically unable to earn a livelihood through ordinary means of labor or business shall be exempt from any tax on business conducted from their own homes, as a home occupation but shall be required to obtain a license to be used without charge.

Sec. 7. EXEMPTIONS AND INCLUSIONS. Persons in the categories set out in Sections 7.1 to 7.5 inclusive, shall be exempt from the payment of a license tax hereunder, but shall be required to obtain and display a license, which license shall be issued free of charge by the City Treasurer.

Sec. 7.1. DELIVERY AND SOLICITATION—PLACES OF BUSINESS. Persons operating without a fixed place of business in the City of Lodi whose sole business in said City consists of delivering to places of business within said City, provided that such persons soliciting and making immediate delivery shall be required to pay an annual license as prescribed in Section 3 hereof. For the purpose of this section, the City Government, Public Library and Public Schools shall be considered to be places of business.

Sec. 7.2. CHARITABLE ORGANIZATIONS. Any charitable institution, organization or association organized for charitable purposes and conducted for charitable purposes only.

Sec. 7.3. RELIGIOUS, FRATERNAL ORGANIZATIONS. Any religious, fraternal, educational, military, state, county or muni-

cipal organization, for the conduct of any business or entertainment, which is open only to the members thereof, or which is conducted for the benefit of such organization and not for the private gain of any person.

Sec. 7.4. SCAVENGER SERVICE. Any person collecting garbage or refuse under contract or agreement with the City of Lodi, for the portion of such business done under such contract or agreement.

Sec. 7.5. EXCLUSIONS. Any public utility which pays to the City of Lodi a tax under a franchise or similar agreement; banks, as provided by article XIII, Section 16, Subdivision 1 (a) of the State Constitution; insurance companies as provided by Article XIII, Section 14, of the State Constitution; any person whom the City of Lodi is not authorized to license under any law or constitution of the United States or the State of California.

Sec. 8. CONTENTS OF LICENSE. All licenses shall be prepared and issued by the City Treasurer of the City of Lodi, and each license shall state upon the face thereof the following:

- a. Name of the person to whom license is issued.
- b. Kind or kinds of business licensed thereby.
- c. Location of such business.
- d. Date of expiration of such license.
- e. Such other information as the City Treasurer shall require.

Sec. 9. LICENSE TAX—WHEN AND HOW PAYABLE. All licenses shall be paid in advance in lawful money of the United States at the office of the City Treasurer. When a license tax is per day, it shall be due and payable each day. Quarterly licenses shall be due on the first day of January, April, July and October. Annual licenses shall be due on the first day of January, and may be prorated to the nearest quarter-year.

Sec. 10. DELINQUENCY—PENALTY. Every license tax which is not paid when due and payable shall be deemed delinquent, and if such license tax is not paid within thirty (30) days

from the time it is due and payable, the City Treasurer shall add to such tax and collect a penalty of ten per cent (10%) of such tax for each month or fraction thereof during which such tax shall be delinquent.

Sec. 11. BRANCH ESTABLISHMENTS. Separate licenses must be obtained for each branch establishment or location, as if each branch establishment or location were a separate business, provided that warehouses and distributing plants used in connection with and incidental to a business licensed hereunder shall not be deemed to be separate places of business or branch establishments.

Sec. 12. JOINT LICENSE. Whenever any person is engaged in two or more businesses at the same location, such person shall be issued one license which shall specify on its face all such businesses, and the license tax to be paid shall be computed as if one business were being conducted at such location, except that businesses listed in Section 5 hereof shall in every case be regarded as separate businesses.

Sec. 13. TRANSFER OF LICENSE. No license issued pursuant to this Ordinance shall be transferred except under the following conditions:

a. When a licensee transfers his business from one location to another in the City of Lodi, the license previously issued may be amended to authorize the conduct of the business at the new location.

b. When a licensee who conducts a business from a fixed place of business in the City of Lodi makes a bona fide sale of the business, an amended license may be issued to authorize the purchaser to conduct such business at such location upon the surrender of the old license.

c. The license transfers authorized herein may be obtained upon application therefor to the City Treasurer and payment of a fee of One Dollar (\$1.00).

Sec. 14. POSTING OF LICENSE. Every person having a license under the provisions of this Ordinance and carrying on a business at a fixed place of business shall keep such license posted and exhibited in some conspicuous part of said business.

Every person having such a license and not having a fixed place of business shall carry such license with him at all times, or shall have attached to the vehicle or vehicles used in such business the windshield sticker provided for in Section 16 hereof.

Sec. 15. PROCEDURE FOR ISSUANCE OF LICENSE.

a. **AFFIDAVIT.** Every person required to have a license shall make application to the City Treasurer of the City of Lodi. Such application shall be a written statement upon a form provided by the City Treasurer and shall set forth such information as may be necessary properly to determine the amount of the license tax to be paid by the applicant.

b. **NEWLY ESTABLISHED BUSINESS.** Every person making application for a license for a business, taxable under Section 3 hereof, which has not been established in the City of Lodi for a sufficient length of time to meet the requirements of Section 26e hereof, shall pay to the City Treasurer the minimum license tax for the business in which he is engaged. The tax thus paid shall be tentative only. Such license shall within thirty (30) days after the expiration of the period for which the license was issued, furnish the City Treasurer with an affidavit as prescribed in paragraph (a) hereof, showing the average number of employees during the period of such license. The license tax shall be ascertained and paid upon the basis of such average number of employees, credit being given for the minimum license tax previously paid. Every person making application under this Section shall furnish such information as may be deemed necessary by the City Treasurer to provide satisfactory proof of intent to establish a fixed place of business in the City of Lodi.

c. Every person making application for a license for a business without a fixed place of business in the City of Lodi and not included in Section 5 hereof, shall pay to the City Treasurer the minimum license tax for the business in which he is engaged. The tax thus paid shall be tentative only.

and, prior to the expiration of the period for which such license was issued, such person shall furnish the City Treasurer with an affidavit as prescribed in paragraph (a) hereof, showing the average number of employees as provided in Section 26b hereof. The license tax shall be ascertained and paid upon the basis of such average number of employees, credit being given for the minimum license tax previously paid.

Sec. 16. VEHICLE STICKERS. Upon the issuance of a license, the City Treasurer shall deliver to the licensee one (1) windshield sticker for each commercial vehicle used by the licensee in the conduct of his business, which said windshield sticker shall be attached to the windshield of such vehicle. In the event such vehicle does not have a windshield, such sticker shall be attached in a conspicuous place in the operator's compartment of such vehicle.

Sec. 17. VENDING MACHINES —STICKERS. Upon the issuance of a license, the City Treasurer shall deliver to the licensee one (1) sticker for each vending machine used by the licensee in the conduct of his business, which said sticker shall be attached in a conspicuous place on such machine.

Sec. 18. STICKERS — FORM AND CONTENT. Each such sticker shall have thereon the words "LODI, CALIFORNIA", or any abbreviation thereof, and shall be of such form and color and contain such information as the City Treasurer shall determine.

Sec. 19. STICKER FOR SUBSEQUENTLY ACQUIRED VEHICLES. If, subsequent to the issuance of any license and prior to its expiration date, any licensee shall use any commercial vehicle in his business for which a windshield sticker has not been issued, he shall procure a windshield sticker for such vehicles from the City Treasurer. The City Treasurer shall furnish such windshield sticker without cost upon the production of satisfactory proof of the use of such vehicle by the licensee.

Sec. 20. STICKER FOR SUBSEQUENTLY ACQUIRED VENDING MACHINES. If sub-

sequent to the issuance of any license and prior to the expiration date, any licensee shall use any vending machine in his business for which a sticker has not been issued, he shall procure a sticker from the City Treasurer. The City Treasurer shall furnish such sticker without cost upon the production of satisfactory proof of the use of such machine by the licensee.

Sec. 21. OPERATION OF VEHICLE WITHOUT STICKER. It shall be unlawful for any person to drive or operate or use, or cause to be driven, operated or used, any commercial vehicle in the conduct of his business without a sticker being attached as in this Ordinance required, or to remove or deface or cover up said sticker, or to place the same upon any vehicle other than a vehicle used by the licensee in his business.

Sec. 22. OPERATION OF VENDING MACHINE WITHOUT STICKER. It shall be unlawful for any person to operate or use, cause to be operated or used, or offer for operation and use in the conduct of his business any vending machine without a sticker being attached as in this Ordinance required, or to remove, deface or cover up said sticker, or place, cause to be placed, or permit the placing of the same upon any such machine other than one used by the licensee in his business.

Sec. 23. SUBSTITUTE FOR OTHER REVENUE ORDINANCES. Any person required to pay a license tax upon this ordinance shall be relieved from the payment for the privilege of doing business which has been required under other revenue ordinances of the City of Lodi, except the license taxes required to be paid by Ordinance No 373 of this city, but shall remain subject to regulatory provisions and fees of such other ordinances. This section shall not apply to inspection fees.

Sec. 24. REVOCATION. The City Council shall have the authority to revoke any license issued under the provisions of this Ordinance upon information that the licensee has not complied or is not complying with any provisions of this Ordinance, any other City Ordinance, or any requirement of a competent governmental jurisdiction.

Sec. 25. EXAMINATION OF RECORDS. For the purpose of ascertaining the correctness of any affidavit filed, or the amount of any license tax paid, the City Treasurer, or any person designated by him for that purpose, is authorized to examine any papers, records and memoranda bearing upon the matter, and may require attendance of any person having knowledge in the premises and may take his testimony with reference thereto, with power to administer oath to such person or persons.

Sec. 26. DEFINITIONS. For the purpose of this Ordinance, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended.

a. AVERAGE NUMBER OF EMPLOYEES, FIXED PLACE OF BUSINESS. The Average number of employees for any business having a fixed place of business in the City of Lodi shall mean the average number of persons employed daily in said City in the applicant's business for the twelve (12) months' period ending on the last day of the month next preceding the date of such application, and shall be determined by ascertaining the total number of hours of service performed by all employees during such year, exclusive of overtime, and dividing the total number of hours of service thus obtained by the number of hours constituting a day's work, according to the custom of laws governing such employments, and by again dividing the sum thus obtained by the number of working days in such year. In computing the average number of employees, fractions of numbers shall be excluded.

b. AVERAGE NUMBER OF EMPLOYEES, NO FIXED PLACE OF BUSINESS. The average number of employees for any business not having a fixed place of business in the City of Lodi shall mean the number of persons employed daily in the City of Lodi in the applicant's business for the period during which such applicant conducts such business in the City of Lodi, and shall be determined by ascertaining the total number of hours of service, exclusive of over-

time, performed by all such employees during the three (3) days, or less, on which the greatest number of persons are so employed, and dividing the total number of hours of service thus obtained by the number of hours constituting a day's work, according to the custom of laws governing such employments, and by again dividing the sum thus obtained by the number of working days upon which the total hours of service is based. In computing the average number of employees, fractions of numbers shall be excluded.

c. BUSINESS. Business shall mean professions, trades, occupations, and all and every kind of calling carried on for profit or livelihood.

d. EMPLOYEE. Employee shall mean all persons engaged in the operation or conduct of any business, whether as owner, any member of the owner's family, partner, agent, manager, solicitor, and any and all other persons employed or working in said business.

e. FIXED PLACE OF BUSINESS. Fixed place of business shall mean a place of business in the City of Lodi, regularly kept open, with someone in charge thereof for the transaction of the particular business engaged in during the hours customary to transact such business, and shall not so qualify unless and until such place of business shall have been so operated for a period of not less than six (6) months.

f. PEDDLER. Peddler shall mean any person who sells and makes immediate delivery, or offers for sale and immediate delivery, any goods, wares, merchandise or thing, in the possession of the seller, at any place in the City of Lodi other than from a fixed place of business, and who does not follow a fixed route or serve purchasers in the City of Lodi regularly and continuously.

g. PERSON. Person shall mean all domestic and foreign corporations, associations, syndicates, joint stock corporations, clubs, Massachusetts, business or common law trusts, societies and individuals commencing, transacting and carrying on any business in the City of Lodi.

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X h. SOLICITOR. Solicitor shall mean any person who sells or takes orders, or offers to sell or take orders for any goods, wares, merchandise or thing, for future delivery, or for services to be performed, at any place in the City of Lodi other than a fixed place of business, and who does not follow a fixed route or serve prospective purchasers in the City of Lodi regularly or continuously.

Sec 27. APPEAL. Any person aggrieved by any decision of an administrative officer or agency with respect to the issuance or refusal to issue such license may appeal to the City Council by filing a notice of such appeal with the City Clerk. The City Council shall thereupon fix time and place for hearing such appeal. The City Clerk shall give notice to such person of the time and place of hearing by serving it personally or by depositing it in the United States Post Office at Lodi, California, postage prepaid, addressed to such person at his last known address.

Sec. 28. ADDITIONAL POWER OF CITY TREASURER. In addition to all other powers conferred upon him, the City Treasurer shall have the power, for good cause shown, to extend the time for filing any required sworn statement for a period not exceeding thirty (30) days, and in such case to waive any penalty that would otherwise have accrued, and shall have the further power, with the consent of the City Council, to compromise any claim as to the amount of license tax due. He may also receive evidence of compliance with other Ordinances of the City as a prerequisite for the issuance of any license prescribed in this ordinance.

Sec. 29. PENALTY. Any person violating any of the provisions of This Ordinance, or knowing or intentionally misrepresenting to any officer or employee of this City any material fact in procuring a license herein provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the City Jail for a period of not

more than six (6) months, or by both such fine and imprisonment.

Sec. 30. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not effect the validity of the remaining portion of this Ordinance. The City Council of the City of Lodi hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Sec. 31. EFFECTIVE DATE. This Ordinance shall be effective on and after January 1, 1949.

Approved this 3rd day of November, 1948

ROBERT H. RINN,

Mayor of the City of Lodi

Attest: J. F. BLAKELY,

City Clerk

I, J. F. Blakely, City Clerk of the City of Lodi, do hereby certify that the foregoing Ordinance No. 375 was regularly introduced in regular meeting of the City Council of the City of Lodi on October 20, 1948, and was therefore passed, adopted and ordered to print at a regular meeting of said City Council held November 3, 1948.

I further certify that said Ordinance was approved and signed by the Mayor on the date of its final passage and that the same has been published according to law.

November 3, 1948.

J. F. BLAKELY,

City Clerk.

Note — Section 6 — This section amended to read as herein by Ordinance No. 382, effective on February 19, 1949.

Section 23 — This section amended to read as herein by Ordinance No. 382-A effective on March 16, 1949.