

TITLE 5

PUBLIC OFFENSES

Chapter 5-1: Offenses Against the Public Welfare

Chapter 5-2: Property Offenses

CHAPTER 5-1: OFFENSES AGAINST THE PUBLIC WELFARE

5-1-1: Disturbing the Peace.

No person shall use any obscene, profane or vulgar language which tends to incite the person to whom it is directed to physical violence upon any street or other public place.

5-1-2: False Emergency Alarms Prohibited.

No person shall knowingly give or make any false alarm of fire or other emergency by calling or causing to be called the Fire Department or any authorized emergency vehicle.

5-1-3: Discharge of Firearms or Air Rifles.

It shall be unlawful for any person except a public law enforcement officer in the performance of their duty to discharge or fire any air rifle, gun, sling shot, bow and arrow, or other dangerous weapons within the limits of the City unless prior approval is obtained from the Deuel County Sheriff and except for the following tract:

West 400 feet of the South One-half (S1/2) of Section Fourteen (14), Township One Hundred Fifteen (115) North, Range Forty-nine (49) West of the 5th P.M., in the City of Clear Lake, County of Deuel, State of South Dakota, lying North of the north border of the driveway located in Crystal Springs Feeds Addition.

Also, a person is exempt from the prohibition set forth herein if exigent or emergency conditions exist.

Updated 2.6.2024 – Ord. No. 628

5-1-4: Firecrackers and Fireworks.

It shall be unlawful for any person or persons to use or cause to be used or burn, or ignite, or cause to be burned or ignited, any firecracker, Roman candle, torpedo, sky rocket, or powder, either alone or combined with any other substance, or to burn, ignite or use or cause to be burned, ignited or used any explosive or combustible matter or material of any kind, including all kinds of fireworks anywhere within the limits of the City except caps for toy cap pistols.

5-1-5: Fireworks.

No person, firm or corporation may offer fireworks for sale to individuals at retail before

the twenty-seventh day of June and after the fifth day of July. Retail sales are not permitted after twelve o'clock a.m. or prior to seven o'clock a.m. from the twenty-seventh day of June through the fifth day of July.

Updated 4.9.19 – Ord. No. 569

5-1-6: Curfew Hours.

- (a) No minor under the age of 18 years shall be or remain in or upon the public alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, streets, vacant lots or other unsupervised public places within the city between the hours of 12:30 a.m. and 5:30 a.m. on a weekday, or between the hours of 1:30 a.m. and 5:30 a.m. on a Saturday or Sunday.

The provisions of this ordinance imposing a curfew on minors shall not apply to a minor accompanied by his parent, guardian or other adult person having the care and custody of the minor or where the minor is upon an emergency errand or legitimate business authorized or directed by his parent, guardian or such other adult person having the care and custody of the minor.

- (b) It shall be unlawful for the parents, guardian or other adult person having the care and custody of a minor under the age of 18 years to knowingly permit such minor to be or remain in or upon the public alleys, parks, playgrounds, public grounds, public places, public buildings, public places of amusement and entertainment, streets, vacant lots or other unsupervised public places within the city between the hours of 12:30 a.m. and 5:30 a.m. on any weekday or between the hours of 1:30 a.m. and 5:30 a.m. on any Saturday or Sunday except when the minor is accompanied by his parent, guardian or other adult person having the care and custody of the minor or when the minor is upon an emergency errand or legitimate business authorized or directed by his parent, guardian or other adult person having the care and custody of the minor.

It shall be the right of any authorized officer or person to arrest and detain any minor violating the curfew and to keep the minor detained until the parent, guardian or custodian is notified. The minor may be released upon the giving of a promise by the minor and his parent, guardian or custodian that such minor, together with his parent, guardian or custodian, will appear at a stated time before the proper authority to answer to the charges.

5-1-7: Public Indecency and Nudity.

A person who knowingly or intentionally, in a public place either

- (a) engages in sexual intercourse; or

- (b) appears in a state of nudity; or
- (c) fondles the genitals of himself, herself or another person commits the offense of Public Indecency.

“Nudity” means the “showing of the human male or female genitalia, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.”

“Public Place” includes all outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, banquet halls, clubs, dance halls, restaurants, taverns, theaters, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission charge is levied.

The prohibition set forth hereinbefore shall not apply to:

- (a) any child under ten (10) years of age; or
- (b) any female exposing a breast in the process of breast feeding an infant under two (2) years of age.

In addition to the specific penalties provided in this ordinance, it is hereby declared that any building, portion of a building, or enclosed place regularly used for the prohibited display of public nudity is a public nuisance, subjecting the owner, proprietor or other operator thereof to any and all actions authorized by the City of Clear Lake for the abatement of public nuisances, including but not limited to the procedures set forth in Ordinances 3-3-17 and 3-3-21.

It is the intention of the City of Clear Lake that the provisions of this ordinance be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights consistent with the purposes of this ordinance. Should a court of competent jurisdiction determine that any part of this ordinance, or any application or enforcement of it is excessively restrictive of such rights or liberties, then such portion of the ordinance, or specific application of the ordinance, shall be severed from the remainder, which shall continue in full force and effect.

The violation of this ordinance either by commission of a public indecency, or by the maintenance or promotion of public indecency as a property owner, proprietor or manager of a business shall be punishable for each occasion or day that a violation occurs.

5-1-8: Peddler's Permit

A peddler is defined as a person engaged in the selling of personal property by going from place to place or house to house to sell personal property. A fee shall be paid to the Finance Officer by all peddlers before any sales are attempted in the city limits. Additionally, each peddler shall provide the Finance Officer with a photo ID which includes the person's name and address. Also, each peddler shall provide the Finance Officer with a copy of their South Dakota Sales Tax license number. Furthermore, no peddler shall approach any structure displaying a sign indicating "No Soliciting", or "No Peddling" or similar language indicating door-to-door sales are not welcome at the location. All sales by a peddler shall be done after 9:00 a.m. and before 5:00 p.m. The above provisions shall not apply to bona fide merchants having regularly established places of business within the City, local civic or service clubs, volunteer groups, or local fundraising (ex: school groups, 4-H groups, scouts, etc.).

Updated 8.13.2024 – Ord. No. 632

5-1-9: Prohibiting Marijuana Production and Sale.

No license granted by the South Dakota Department of Revenue to an individual or any entity pursuant to Amendment A for the commercial production and sale of marijuana shall be allowed to operate such a business within the jurisdiction of the city. Each hour of each day this ordinance is violated shall be considered a separate offense. A violation of this ordinance is a class 2 misdemeanor and shall be fined up to the maximum amount permitted by SDCL 22-6-2 and acts amendatory thereof.

Adopted 4.6.21 – Ord. No. 596

5-1-10: Mobile Food Vendors and Special Event Food Vendors are subject to, but not limited to, the following considerations:

- Mobile Food Vendors and Special Event Food Vendors wishing to work in the City of Clear Lake must obtain a permit to do so. Permits issued under this ordinance shall be non-transferrable.
- The application for a permit required by the provisions of this ordinance shall contain:
 - Applicant's name, permanent address, phone number and government issued ID
 - Business name, permanent address, business phone number
 - Statement describing kinds of goods or services the applicant wishes to sell, location/site where Mobile Food Vendor will be set up and size of unit
 - Dates that applicant will be working in this jurisdiction
 - Provide a photocopy of applicable South Dakota Sales Tax License
 - Certificate of Liability Insurance
 - Copy of continuous licensure issued by the state Department of Health for food related establishments
- Prior to any permits issued to Mobile Food Vendors under the provisions of this ordinance, the applicant shall pay a fee tendered at the time of application pursuant to the fees established via resolution by the City Council.

- All mobile food vendors and special event food vendors must abide by and be in compliance with all federal, state and local laws, rules and regulations.
- The vendor shall not conduct any vending in a way that causes congestion or blocking of vehicle or pedestrian traffic or fire lanes. Each vendor has an affirmative and independent duty to determine the safety and suitability of any particular location of operation and to operate in a manner reasonably calculated to avoid and prevent harm to people and to other vehicles.
- All areas within and surrounding a mobile service establishment must be maintained in a clean, neat and sanitary condition.
- A mobile food vending establishment or special event food vendor cannot be permanently located on any property and cannot function as a permanent structure.
- Every operator of any mobile food vending or special event food vendor licensed under this article shall display, in a conspicuous place, the license provided by the city.
- The City Council shall approve the issuance of a mobile food vendor permit or special event food vendor permit applied for under this article if it is satisfied that the applicant has met the following requirements:
 - That he or she is a fit person to engage in the business.
 - Business is operated in compliance with all applicable requirements of City Ordinances and State Laws.

Prohibited conduct. No mobile food vendor shall:

- Place any object that blocks any pedestrian pathway or ADA access;
- Utilize any signage other than signage that is affixed to the exterior of the mobile food vending establishment or other than two additional banners or signs located within 100 feet of the establishment; and that does not hinder the vision of any street or sidewalk.
- Vend alcohol.

Exemption of fees. The following are exempt from license fees due to the City, but still must make application:

- Any Clear Lake City Chamber of Commerce business that is current on dues.
- Any non-profit organization, including schools and school-related fundraisers, and churches and church-related fundraisers.

*Effective 9.5.23 – Ord. No. 624
Amended 8.13.2024 – Ord. No. 633*

5-1-11: Define Transient Merchant Requirements

Transient Merchants are defined as a person(s), principal or agent, who engages in a temporary or itinerant business from a temporary location or structure in the city, and who, for the purpose of carrying on such business, hires, leases or occupies any land, structure, trailer or truck for the exhibition and sale of such goods, wares, or merchandise and includes the sale of any article, fruit, vegetable or farm product excluding South Dakota home-grown products. Transient

Merchants may occupy any table, showcase, bench, rack, pushcart, wagon, or any other movable vehicle or device, which may be moved without the assistance of a motor; and which is not licensed and registered by the state department of commerce and regulation, used for the displaying, storing or transporting of articles offered for sale by a merchant.

Transient Merchants are subject to, but not limited to, the following considerations:

- Transient Merchants wishing to work in the City of Clear Lake must obtain a permit to do so. Permits issued under this ordinance shall be non-transferrable.
- The application for a permit required by the provisions of this ordinance shall contain:
 - Applicant's name, permanent address, phone number and government issued ID
 - Business name, permanent address, business phone number
 - Statement describing kinds of wares, merchandise or services the applicant wishes to engage in such business within the City
 - Dates that applicant will be working in this jurisdiction
 - Any other such relevant information as the city may require for the investigation of the applicant.
- Prior to any permits issued to Transient Merchants under the provisions of this ordinance, the applicant shall pay a fee tendered at the time of application pursuant to the fees established via resolution by the City Council
- All transient merchants must abide by and be in compliance with all federal, state and local laws, rules and regulations.
- The merchant shall not conduct any business in a way that causes congestion or blocking of vehicle or pedestrian traffic or fire lanes. Each merchant has an affirmative and independent duty to determine the safety and suitability of any particular location of operation and to operate in a manner reasonably calculated to avoid and prevent harm to people and to other vehicles.
- All areas within and surrounding the merchant's temporary location must be maintained in a clean, neat and sanitary condition.
- A transient merchant cannot be permanently located on any property and cannot function as a permanent structure.
- It is unlawful for any person to give any false or misleading information in connection with the application for a permit. Every individual having a permit issued under the provisions of this section shall display, or present said permit upon the request of any person.
- The City Council shall approve the issuance of a transient merchant permit applied for under this article if it is satisfied that the applicant has met the following requirements:
- That he or she is a fit person to engage in the business.
- Business is operated in compliance with all applicable requirements of City Ordinances and State Laws.

Exemption of fees. The following are exempt from permit fees due to the City, but still must make application:

- Any Clear Lake City Chamber of Commerce business that is current on dues.
- Any non-profit organization, including schools and school-related fundraisers, and churches and church-related fundraisers.
- Any person age 16 or younger

Exceptions to this ordinance: The provisions of this chapter (5-1-11) shall not apply to bona fide merchants having regularly established places of business within the city, or to any regularly licensed auctioneer, or to any person distributing by sale, or otherwise, produce, produced by him or her on owned or leased premises; provided such premises are located within fifty (50) miles of the city.

Severability: The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

Adopted 8.13.2024 Ord. No. 635

5-1-12: Definitions

- a.) A “PEDDLER” shall be defined as a person engaged in the selling of personal property by going from place to place or house to house to sell personal property.
- b.) A “MOBILE FOOD VENDOR” shall be defined as an activity whereby prepared food, either on-site or at other licensed food preparation facility, or beverages are sold to the general public from a food truck or food cart. This definition shall include both food trucks and food carts. This definition shall not include food and beverage delivery services. “MOBILE FOOD VENDOR(s)” conduct business within the City limits in which the duration exceeds six days during the calendar year, either consecutive or non-consecutive.
- c.) A “SPECIAL EVENT FOOD VENDOR” shall be defined as an activity whereby prepared food, either on-site or at other licensed food preparation facility, or beverages are sold to the general public from a food truck or food cart. This definition shall include both food trucks and food carts. This definition shall not include food and beverage delivery services. “SPECIAL EVENT FOOD VENDOR(s)” conduct business within the City limits during dates that are classified as Special Events by the City and/or does not exceed a duration of six days.
- d.) A “TRANSIENT MERCHANT” shall be defined as a person, principal or agent, who engages in a temporary or itinerant business from a temporary location or structure in the city, and who, for the purpose of carrying on such business, hires, leases or occupies any land, structure, trailer or truck for the exhibition and sale of such goods, wares or merchandise and includes the sale of any article, fruit, vegetable or farm product excluding any South Dakota home-grown products. Transient Merchants may occupy any table, showcase, bench, rack, pushcart, wagon, or any other movable vehicle or device, which may be moved without the assistance of a motor; and which is not licensed and registered by the state department of commerce and regulation, used for the displaying, storing or transporting of articles offered for sale by a merchant.

Adopted 8.13.2024 Ord. No. 634

CHAPTER 5-2: PROPERTY OFFENSES

5-2-1: Injuring Signs.

No person shall change, deface, mar, remove or in anyway interfere with or obliterate either wholly or in part any card, sign or signboard erected, extended, placed or posted by the City.

5-2-2: Traffic Signs - Injuring or Placing Unauthorized Prohibited.

No person shall deface, injure, move, obstruct or interfere with any official traffic sign or signal, or street sign. Furthermore, no person shall display, maintain or place upon or in view of any street an unofficial device, sign, or signal which purports to be, or is an imitation of, or resembles an official traffic sign or signal, or which attempts to direct the movement of traffic. Every such prohibited device, sign or signal is hereby declared to be a public nuisance, and the Deuel County Sheriff is hereby empowered to remove the same or cause the same to be removed without notice.

5-2-3: Interference with Electric Light Posts and Apparatus.

No person shall break, injure, jar or interfere with any electric light, telephone, or fire alarm system, pole or post or apparatus in any manner, or climb any telephone, electric light or fire alarm pole without being properly authorized so to do.

5-2-4: Unauthorized Connection with Gas, Water or Electrical Pipe or Wire.

No person shall, without lawful authority, connect or cause to be connected with any main service pipe, wire or other conductor of any gas, water or electrical energy, any pipe, wire or other device for the purpose of obtaining gas, water or electrical current therefrom; nor shall they with intent to defraud, connect or cause to be connected with any meter installed for the purpose of registering the amount of gas, water or electricity supplied to any customer any pipe, wire or other device or disconnect, change or in any manner so interfere with any such meter or any pipe, wire or appliance connected therewith, that such meter will not measure or register the full amount of gas, water or electricity supplied to any customer.

5-2-5: Interference with City Property.

No person shall climb on or in any manner interfere with any bridge, building, structure or water tower belonging to the City without being authorized so to do by the City, and no person shall in any manner deface or injure any such structure.

5-2-6: Destroying Property.

No person shall willfully break, damage, deface, destroy or interfere with the property of the City or of any other person.

5-2-7: Chemicals Used at Airport.

Any party intending to use the municipal airport for the purpose of either delivering, loading, unloading or selling any chemical substance shall first obtain a permit from the Finance Office for the sum of \$500.00 per calendar year, and additionally, each party shall simultaneously deposit the sum of \$1,000.00 cash with the Finance Officer to be used by the City in the event the premises are damaged in anyway whatsoever. The deposit required herein may be returned by the Finance Officer only after the premises have been inspected and a report regarding the status of same presented to the City for its approval. Furthermore, the deposit required herein shall in no way imply or indicate on behalf of the City Council that damages to the premises shall be limited to the sum of \$1,000.00. A violation of this ordinance shall be punished for each occasion or day that a violation occurs, plus the City may recover any expenses incurred in a civil suit for such purpose. *Updated 1.23.18 – Ord. No. 549*

5-2-8: Defecation on Public and Private Property.

No owner, keeper, caretaker or attendant of an animal shall allow an animal to defecate on public or private property other than their own. If such an animal does defecate upon public or private property, then the owner, keeper, caretaker or attendant must immediately and thoroughly clean the fecal material from such property. Public property shall include any public park. Service animals and animals used in parades are exempt from the provisions of this section.