



City of Elkins

Rules and Ordinances Committee Meeting

February 5, 2024
3:30 PM
401 Davis Avenue
Council Chamber, 2nd Floor

Charter Authority of the Rules & Ordinances Committee: Consider and propose to Council new and amended ordinances, rules, and policies.

AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **Minutes**
 - a. Proposed minutes for the meeting of Dec. 4, 2023
4. **Reports**
5. **New business**
 - a. Elimination of solicitors permits
 - b. Delegating authority to sign ABCA endorsements
 - c. Revision of downtown sound system policy
6. **Announcements**
7. **Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	February 5, 2024
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of Dec. 4, 2023
Recommended By:	City Clerk
Summary:	Minutes from the committee's Dec. 4 meeting
Fiscal Impact:	n/a
Recommendation:	Consider for approval
Attachments:	1. Rules and Ordinances - 2023_12_04 - minutes_proposed

RULES AND ORDINANCES COMMITTEE REGULAR MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
December 4, 2023
3:30 p.m.***

Present were committee members: Cw. L. Severino, Cm. C. Lowther.

Also present were: Mike Kesecker (operations manager), Gerry Roberts (city attorney), Steve Himes (fire chief), Travis Bennett (police chief), and Sutton Stokes (city clerk).

Cm. A. Carroll and Tracy Judy (treasurer) was absent.

MINUTES

Severino **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF NOVEMBER 6, 2023.** The motion carried.

NEW BUSINESS

Roberts presented the draft of an ordinance amending the city purchasing policy (city code (Section 30.20) to require council approval of all purchases \$25,000 and over, whether let to public bid or not.

Severino **MOVED RECOMMENDING COUNCIL APPROVAL OF THE PROPOSED AMENDMENT OF THE PURCHASING POLICY IN CITY CODE (SECTION 30.20).** The motion carried.

The meeting adjourned at 3:47 p.m.

The foregoing minutes were approved at the meeting of _____, 2023.

Name & Title

Signature



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	February 5, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	Elimination of solicitors permits
Recommended By:	
Summary:	See attached memo recommending elimination of the current requirement that door-to-door solicitors register with the city clerk
Fiscal Impact:	None
Recommendation:	Consider for recommendation to council
Attachments:	1. Memo - eliminate solicitor licenses - 2024_02_02 2. City Code - SOLICITORS

Memo

To: Rules & Ordinances Committee

From: Sutton Stokes, City Clerk

Date: Feb. 2, 2024

Re: Elimination of solicitor licenses

This memo recommends elimination of special licensing requirements for door-to-door salespeople ("solicitors").

City code § 112.15 currently requires solicitors to register with the City Clerk and receive a permit before engaging in door-to-door sales. To register, code requires that they provide:

- (A) The name, local and permanent addresses, age, weight, height, color of hair and eyes and any other distinguishing physical characteristics
- (B) The nature or purpose for which solicitations will be made and the nature of the goods, wares, merchandise and services offered for sale; and
- (C) The name and permanent address of the employer or organization represented.

After registration, they are provided with a "permit" for engaging in door-to-door sales.

This requirement wastes staff time and provides no clear public benefit.

It is not possible to vet or verify who these people are or the nature of the company they represent. Nonetheless, a city-issued permit may appear to lend legitimacy to citizens who are approached. "If the city issued a permit, this salesperson must be legitimate," some people may think.

It seems that the intention of this law was to prevent scam artists or other criminals from pretending to be solicitors. If it were the case that someone without a permit could be prevented from knocking on doors, and if therefore everyone who knocked on doors had had to identify themselves at city hall, this might tend to reduce the number of criminals willing to try to knock on doors.

Obviously, however, law-abiding people will get the permits unnecessarily, criminals will feel free to knock on doors and commit crimes, and dodgy sales operations (i.e., most door-to-door solicitors) may use our permit to claim nonexistent background checking or other vetting.

##

SOLICITORS AND CANVASSERS

§ 112.15 DEFINITION.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SOLICITOR. A person who goes from door to door, visiting multi-family or single-family dwellings or places of business for the following purposes:

- (1) To sell goods, wares, merchandise or services or accept subscriptions or orders therefor; and
- (2) To accept or request donations for any purpose.

(1991 Code, § 17-1)

§ 112.16 REGISTRATION.

~~All persons, before entering into or upon a residential or business premises within the city for the purpose of soliciting, shall register with the City Clerk and furnish the City Clerk with the following information:~~

~~(A) The name, local and permanent addresses, age, weight, height, color of hair and eyes and any other distinguishing physical characteristics of the applicant;~~

~~(B) The nature or purpose for which solicitations will be made and the nature of the goods, wares, merchandise and services offered for sale; and~~

~~(C) The name and permanent address of the employer or organization represented.~~

~~(1991 Code, § 17-2)~~

§ 112.17 ISSUANCE, TERM AND DISPLAY OF PERMIT.

~~(A) Upon furnishing the information required under § [112.16](#), the applicant shall be issued a permit 24 hours from the date of submission of the application.~~

~~(B) A permit issued under this subchapter shall be valid for one year from the date of issuance.~~

~~(C) Every solicitor shall carry his or her permit with him or her at all times while engaged in soliciting, and shall display such permit to any person who shall demand to see such permit while he or she is so engaged.~~

~~(1991 Code, § 17-3)~~

§ 112.18 PROHIBITED ACTS.

No person shall:

(A) Enter into or upon a residential or business premises in the city under false pretenses, to solicit for any purpose;

(B) Remain in or on any residential or business premises after the owner or occupant, or his or her agent or employee, has requested any such person to leave;

(C) Enter upon any residential or business premises for soliciting, when the owner or occupant, or his or her agent or employee, has displayed a "No Soliciting" sign on such premises;

~~(D) Engage in the practice of soliciting in the city without a permit, as provided by this subchapter and~~

~~(E) Knowingly give false information or withhold correct information in obtaining a permit.~~

(1991 Code, § 17-5) Penalty, see § [112.99](#)

~~§ 112.19 EXCEPTIONS.~~

The provisions of this chapter, except § [112.18](#), shall not apply to:

~~(A) Any person who visits any residence or business at the request or invitation of the owner or occupant, or his or her agent or employee;~~

~~(B) Newsboys soliciting subscriptions to any newspaper for home delivery within the city; and~~

~~(C) Route delivery persons who make deliveries at least once a week to regular customers and whose solicitation is only incidental to their regular deliveries.~~



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	February 5, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	Delegating authority to sign ABCA endorsements
Recommended By:	City Clerk
Summary:	See attached memo recommending that council delegate its approval authority for ABCA endorsement applications to the mayor
Fiscal Impact:	None
Recommendation:	Consider for recommendation to council
Attachments:	1. Memo - delegate ABCA endorsement authority - 2024_02_02 2. ABCA endorsement requirements 3. Elkins Law Concerning Open Containers

Memo

To: Rules & Ordinances Committee

From: Sutton Stokes, City Clerk

Date: Feb. 2, 2024

Re: Delegation of ABCA endorsement authority

This memo recommends the delegation of council's authority to endorse applications to the W. Va. Alcoholic Beverage Control Administration (ABCA) for two categories of special/temporary licenses to sell alcoholic liquors and/or nonintoxicating beer/craft beer.

- Fair and Festival Permits allow for events on private property to sell liquor and beer for on-premises consumption. E.g., homecoming concert at D&E.
- Floor Plan Extensions allow for currently licensed bars/restaurants to sell nonintoxicating beer (i.e., beer) in an area, often outside, that is contiguous with the licensed property. E.g., when Beanders serves beer in a tent in the alley next to its establishment.

Applications for these permits in Elkins require endorsement by the city's governing body. Currently, these permits are approved as council agenda items. However, this can introduce delays for applicants, who are asked by ABCA to apply well in advance of their events to ensure time for processing.

This memo recommends delegating this authority to the mayor.

Questions to be resolved:

- Are there certain types of these events that council should retain approval authority for? For example, a floorplan extension that involves a public right-of-way (like the Beander's example above). Keep in mind that, if alcohol were not being served, a request to close an alley or street is currently reviewed and approved by administrative officers.
- What criteria might be given to the mayor for declining to approve such an event? Should the resolution simply state that the mayor has the discretion to bring an event to council if he or she is not sure it should be approved?

For what it is worth, events serving only nonintoxicating beer are not violating any city laws, even if they are allowing people to drink on a public right of way (e.g., the Beander's example). There is no prohibition in Elkins City Code against drinking beer in public.

##

Fair and Festival Permit

§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.

There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of alcoholic liquors and nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption. To be eligible for this license, the private fair and festival or other event shall:

- Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;
- Make application with the commissioner at least 15 days prior to the private fair, festival, or other event;
- Pay a nonrefundable non-prorated license fee of \$500; and
- Be approved by the commissioner to operate the private fair, festival, or other event. (c)
A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days.

The applicant must provide a letter from the governing body stating the dates and times of the event has been approved to be held.

Floor Plan Extension

Per West Virginia Code §11-16-3: "Nonintoxicating beer floor plan extension" means a temporary one-day extension of an existing Class A licensee's floor plan to a contiguous, adjoining, and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee's licensed premises; further the license shall be endorsed or approved by the county or municipality where the license is located; the license shall be in good standing with the commissioner, and further the temporary event shall cease on or before midnight of the approved temporary one-day event.

Elkins Law Concerning Open Containers

Summary:

City code prohibits drinking “alcoholic liquor” in public places (other than licensed establishments) and in cars. For definitions, city code references state code. Per state code, “alcoholic liquor” includes all alcoholic beverages except “nonintoxicating beer.” Nonintoxicating beer is beer and similar that has less than 15 percent alcohol by volume (ABV).

Therefore, it is legal to drink most common forms of beer on city streets and in vehicles.

City Code:

§ 111.004 INTOXICATION OR DRINKING IN PUBLIC PLACES; VIOLATION.

(A) It shall be unlawful for any person to:

- (1) Appear in a public place in an intoxicated condition;
- (2) Drink alcoholic liquor in a public place other than a business establishment duly licensed by the state to sell alcoholic liquor or nonintoxicating beer for consumption on its premises;
- (3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage; and/or
- (4) Tender alcoholic liquor to another person in a public place.

§ 111.001 DEFINITIONS.

For the purposes of this chapter, words and phrases defined by W.Va. Code §§ 11-16-2, 60-1-5 and 60-7-2 shall have the meanings ascribed to them therein.

State Code:

§60-1-5. Definitions.

(2) “Alcoholic liquor” includes alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

(13) “Nonintoxicating beer” means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by §11-16-2 [sic] of this code.

§11-16-3. Definitions.

(14) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by weight, or 15 percent alcohol by volume, whichever is greater. The word "liquor", as used in §60-1-1 *et seq.* of this code, does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this definition.



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	February 5, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	Revision of downtown sound system policy
Recommended By:	City Clerk
Summary:	See attached memo recommending changes to council's policy for use of the downtown sound system
Fiscal Impact:	TBD
Recommendation:	Consider for recommendation to council
Attachments:	1. Memo soundsystem rule changes - 2024_02_02 2. Downtown Sound System Use Application_Final

Memo

To: Rules & Ordinances Committee

From: Sutton Stokes, City Clerk

Date: Feb. 2, 2024

Re: Updating downtown sound system rules

In the past, the City of Elkins Downtown Sound System has been used exclusively by community organizations, who manage playing their own music themselves (“Manual Music Program”). Under council policy, these organizations must:

- Pay \$40/day for use of the system.
- Obtain performance rights licenses from BMI and ASCAP for public broadcast of copyrighted music (at an approximate annual cost of \$600). (They must do this even if the city holds the same licenses.)
- Operate the system themselves, including playing music into the system through their own equipment.

This policy has the following downsides:

- Risk of damage to the \$17,000 system
- Risk of legal liability for community organizations for missing rights licenses or violation of terms of service of apps like Spotify, which do not allow public performance)
- Increased tech support demands on city personnel
- No city control over what music is played

After the successful piloting of an “Automated Music Program” (using an app designed for use in businesses that wish to play music for customers) during the 2023 holiday season, and in light of the above issues with Manual Music Programs, council may wish to revise its policy as follows:

- Incentivize use of Automated Music Program by charging less per day than for the Manual Music Program option (e.g., \$40/day for Automated; \$100/day for Manual).
- Formally announce city sponsorship of the annual Holiday Music Program (i.e., this program is not being “given” to any outside organizations but is simply a city-run event)
- Consider taking the same position, i.e., announcing city sponsorship of music for, Independence Day Weekend and Mountain State Forest Festival, but requiring other events to pay.

- Alternatively:
 - o Don't charge anyone for using the system at all (whether Automated or Manual)
 - o Don't charge for using the Automated but do charge for Manual

Here are some remaining questions/issues:

- Should there be standards for what kinds of events we will allow the system to be used for?
- Should there be a limit on how many days per month it can be used (other than for the holiday music program)?
- What justification do we give for “sponsoring” some events but not others?
- If we make the system free to use, how do we avoid overuse? Who has (who would even want) authority to decline a request?
- The organizers of Independence Day Weekend and Forest Festival have traditionally liked to have access to a microphone to make announcements (especially Independence Day) and Forest Festival (mainly just lost kids; wasn't used once this last festival as far as we know).

For additional information, the current cost to the city of holding the appropriate licenses and subscribing to the app is about \$1,300/year.

##

CITY OF ELKINS

Application to Use City-Owned Downtown Sound System

401 Davis Avenue

Elkins, West Virginia 26241

Applicant's (or Organization's) Name _____

Event Name or Purpose _____

Date(s) for Sound System Use _____

Intended Usage Hours (See General Conditions on Page 2 for limitations): From _____ AM/PM To _____ AM/PM

Applicant's Address _____

City/State/Zip _____

Contact _____ Telephone (____) ____ - ____ Email _____

2nd Contact _____ Telephone (____) ____ - ____ Email _____

Does Applicant have liability insurance that names the City of Elkins, WV as an additional insured?* Yes___ No___

Does Applicant intend to use system to broadcast only public service announcements? Yes___ No___

Does Applicant intend to use system to broadcast copyrighted music during the event hours? Yes___ No___

If Applicant intends to broadcast copyrighted music, does Applicant hold a current Performance Rights Organization (such as ASCAP, BMI, SESAC) covering the intended music?* Yes___ No___

Permit Fee* \$_____ System Interface Security Deposit* \$_____ (*Refundable with return of equipment*)

(* A Certificate of Insurance; PRO license; Indemnity, Defense, and Save Harmless Agreement; \$40/per day Permit Fee; and \$50 Equipment Security Deposit must be provided to the City prior to the event and release of system equipment to the Applicant.)

The undersigned Applicant has reviewed this application and its General Conditions and understands the requirements outlined herein and further understands that the City may assign additional Special Conditions as warranted prior to the approval of this Application.

Signature of Applicant

Date

_____/_____
City Clerk Approval

Initials

Date

Received from Applicant: _____

Certificate of Insurance___ PRO License (if music to be broadcast)___ Permit Fee___ System Interface Security Deposit___
Indemnity, Defense, and Save Harmless Agreement___

Returned to Applicant:

Application___ Approved___ Approved with Special Conditions Attached___ Disapproved___

Signature of Mayor

Date

Please file this application **IN PERSON** at the Mayor's Office at least two (2) months prior to the requested Sound System use date to assure full consideration. Approval is subject to any Special Conditions assigned by the City; **the City may deny approval if necessary for public safety reasons.**

CITY OF ELKINS

Application to Use City-Owned Downtown Sound System

Applicant: _____ Event/Date(s) _____

GENERAL CONDITIONS

1. By submitting this application for consideration by the City of Elkins, the Applicant understands that he/she must abide by the General Conditions outlined herein, as well as any attached Special Conditions, in consideration for the approval to use the City-Owned Downtown Sound System (the System).
2. The Applicant must also execute the *City of Elkins Indemnity, Defense, and Save Harmless Agreement* (attached to this application).
3. The System is intended only for the broadcast of general public service announcements (such as, but not limited to, “lost children”, “please move your car”, the beginning of a scheduled event, or schedule changes) and/or copyrighted music during the event when appropriate.
4. While the City recognizes the need to protect Constitutional “First Amendment” rights, the System is not intended for the broadcast of overtly political, religious, or discriminatory content; nor is intended for the broadcast of “off-color” or controversial content during events planned for the general public’s attendance, including children.
5. For events with intended broadcasting of copyrighted music, the Applicant must demonstrate that they are currently licensed by appropriate Performance Rights Organizations (such as ASCAP, BMI, SESAC, etc.) prior to the release of System interface equipment to the Applicant.
6. The System may only be used between the hours of 9:00 AM to 8:00 PM on Monday – Thursday; 9:00 AM to 9:00 PM on Friday, Saturday, or nationally recognized holidays; and 11:00 AM to 6:00 PM on Sunday; ***unless specifically altered as a Special Conditions below.***
7. Prior to final approval of this application, the Applicant must provide the required Certificate of Insurance; a copy of a current PRO license (if copyrighted music will be broadcast); an executed City of Elkins Indemnity, Defense, and Save Harmless Agreement; the Permit Fee; and the refundable System Security Deposit.
8. The City reserves the right to deny approval of an Applicant if the conditions outlined herein are not met or there is a viable public safety concern. Further, the City reserves the right to cancel any approved application if the prescribed conditions are not being met and corrected immediately by the Applicant upon notification.
9. The Applicant must return all System equipment provided by the City within 24 hours of the closing of the event, unless otherwise authorized in the Special Conditions. The System Interface Security Deposit will be returned to the Applicant within 14 days of the return of the equipment.

SPECIAL CONDITIONS

Approved Application with any Special Conditions returned to Applicant: ____/____/____

Security Deposit Refunded on ____/____/____