

**ARTICLE 29. ITINERANT MERCHANTS, PEDDLERS, & SOLICITORS****3-2901 PURPOSE**

The purpose of this Article is to prevent fraud and other crimes, to protect citizens of Kearney from undue invasions of privacy, from undue annoyance and harassment, and to maintain the health, safety and welfare of residents of the City, by means of regulation of itinerant and transient merchants, peddlers, and solicitors.

(Ord. No. 6775, 4-10-2001)

**3-2902 DEFINITIONS**

For the purposes of this Article, the following words or phrases shall have the meanings respectively ascribed to them by this Section:

1. **Itinerant merchant** shall include the terms "transient merchant", "transient vendor," and "itinerant vendor" and means any person, firm or corporation who or which shall engage in, do or transact any temporary or transient business in the City, either in one locality or location or in traveling from place to place in the sale of goods, wares or merchandise, and who, for the purpose of carrying on such business, shall hire, lease, use or occupy any building or structure, motor vehicle, tent, car, boat or public room or any part thereof, including rooms in hotels, lodging houses, or houses of private entertainment, or any private or vacant lot or property for a period of less than one (1) year, for the exhibition or sale of such goods, wares or merchandise. This definition shall include principals and their agents and employees, and persons forming partnerships. No person shall be exempt from the provisions of this chapter by reason of associating temporarily with any local dealer, trader or merchant, or by reason of conducting such temporary or transient business in connection with or as part of the business in the name of any local dealer, trader, merchant or auctioneer, unless the transient merchant is engaging in sales on property owned by and adjacent to a local merchant under the terms of an agreement whereby the local merchant is compensated for the use of his property according to a percentage of sales by the itinerant merchant.

2. **Peddler** shall mean any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same. All such persons who do not keep a regular place of business, whether it be a house or a vacant lot or elsewhere, open at all times in regular business hours and at the same place, who shall offer for sale goods, wares and merchandise, shall be deemed peddlers under this chapter. All persons who keep a regular place of business, open at all times in regular business hours and at the same place, who shall, elsewhere than at such regular place of business, personally or through their agents, offer for sale or sell and, at the time of such offering for sale, deliver goods, wares and merchandise, shall also be deemed peddlers as above, but this Section shall not apply to those who sell or offer for sale in person, any item set forth in Section 3-2904 of this Article. This Article shall not include any peddler who sells to permitted dealers or retailers only, but shall apply to any person who solicits orders and, as a separate transaction, makes deliveries to purchasers as part of a scheme or design to evade the provisions of this chapter.

3. **Solicitor** shall mean any person, whether a resident of the City or not, traveling by foot, wagon, motor vehicle or any other type of conveyance from house to house or from street to street, or operating from a fixed location on or near a street or house not owned by that person, taking or attempting to take orders for the sale of goods, wares or merchandise, subscriptions or personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of such sale or whether he is collecting advance payments on such sale or not; or soliciting money or anything of value on behalf of himself or herself, or another, whether or not in exchange for goods, wares or merchandise.

(Ord. No. 6775, 4-10-2001)

**3-2903 REGISTRATION PERMIT REQUIRED**

It is unlawful for any itinerant merchant, peddler, or solicitor, other than a solicitor doing business by appointment, to engage in any such business within the City of Kearney without first obtaining and possessing a valid registration permit therefore in compliance with the provisions of this Article. In addition to the permit required under this Section, any person who shall sell edible products must also obtain the applicable food license or health permit under the provisions of state law. No permit shall be issued by the City without such proof being presented at the time application is made to the City Clerk for an itinerant merchant, peddler or solicitor permit.

A permit issued under this Article shall not be used or represented in any manner as an endorsement by the City of Kearney, or by any department, officer or employee thereof.

(Ord. No. 6775, 4-10-2001)

**3-2904 EXEMPTIONS FROM ARTICLE**

The provisions of this Article shall not apply to, nor shall the terms peddler, solicitor, or itinerant merchant be construed to include, the following:

1. Persons, including farmers or farmers' cooperative associations, selling, offering for sale or soliciting

orders for the following items grown or produced by them and not purchased by them for sale: Newspapers, firewood, Christmas trees, vegetables, or fruits; provided, that a dairy who uses on the streets of the City one (1) or more delivery trucks or vehicles, may sell and deliver from its trucks, or vehicles, milk, butter, cream and eggs, dairy products, and frozen food products on customer subscribed routes.

2. Persons soliciting on behalf of a candidate for public office or on behalf of a political party.

3. Salesman or agents for wholesale houses or firms who solicit orders from, or sell to, retail dealers in the county for resale or other commercial purposes or to manufacturers for manufacturing or other commercial purposes.

4. Sales to wholesale or retail merchants, by sample, for future delivery made by representatives of established wholesalers or manufacturers.

5. A manufacturer taxable on intangible property by the state who peddles the goods, wares or merchandise manufactured by him at the plant, the intangible property of which is taxed by the state and who peddles no other goods, wares or merchandise.

6. Yard sales conducted on residentially zoned property.

7. The distribution of goods for which there is no charge.

8. Persons giving, selling or offering for sale goods, wares or merchandise, or soliciting orders for sale of same who qualify as bona fide nonprofit organizations under Section 501(c) of the Internal Revenue Code or which are organized and operated exclusively for nonprofit, religious, charitable, educational or civic purposes or where persons selling or offering for sale goods, wares or merchandise, or soliciting orders for sale of the same do so in an event held exclusively for nonprofit, religious, charitable, educational or civic purposes.

9. Reserved.

(Ord. No. 6775, 4-10-2001)

### **3-2905 APPLICATION.**

At the time of application, applicants for a registration permit shall present a valid driver's permit or other acceptable form of identification and file with the City Clerk a written sworn application signed by the applicant showing the following:

A. The local, and permanent, address and phone number of the applicant.

B. The place or places in the City where it is proposed to carry on the applicant's business, and the length of time which it is proposed such business shall be conducted.

C. The identification of any automotive vehicle being used.

D. A statement of the nature of the merchandise to be sold or offered for sale by the applicant.

E. The name, address, and phone number of the individual, partnership, firm, or corporation for whose account the business will be carried on, if any.

F. A disclaimer of City liability relating to any action caused or charged against the applicant.

G. Such other relevant information as may be required for the investigation of the applicant.

H. Thumbprint of applicant affixed by the City Clerk.

I. The applicant's Nebraska sales tax permit number and Federal tax identification number.

(Ord. No. 6775, 4-10-2001)

### **3-2906 INVESTIGATION AND ISSUANCE.**

Upon receipt of such application, a copy shall be referred to the Chief of Police, who shall cause within three (3) work days after the receipt thereof such an investigation of the applicant to the extent permitted by law and facilities, and, if applicable, the individual, partnership, firm or corporation who the applicant is representing, to be made as he deems necessary for the protection of the public good. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons for the same, and return the said application to the City Clerk, who shall notify the applicant that his/her application is disapproved and that no permit will be issued. Similarly, if the business responsibility of the individual, partnership, firm or corporation who the applicant is representing is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons for the same, and return the said application to the City Clerk, who shall notify the applicant that his/her application is disapproved and that no permit will be issued.

No permit shall be issued to any person:

A. who has been convicted of or who is currently under indictment for a felony, or a crime involving moral turpitude within ten years preceding the date of the filing of such application with the City Clerk.

B. who is under the age of sixteen.

C. whose permit has previously been revoked for one of the following:

1. Any fraud, misrepresentation, or false statement contained in the application for a permit.

2. Any fraud, misrepresentation, or false statement made in connection with the selling of goods, wares, or merchandise.

3. Any violation of this Article and its stipulations contained within.
4. Conviction of the permittee of any felony or of a misdemeanor involving moral turpitude.
5. Conducting the business permitted under this Article in an unlawful manner or in such a manner as to threaten the health, safety, or general welfare of the public.

If, as a result of the investigation, the character and business responsibility of the applicant and, if applicable, the individual, partnership, firm or corporation the applicant is representing, are found to be satisfactory, the Chief of Police shall endorse on the application the approval and return said application to the City Clerk, who shall notify the applicant that his/her application has been approved.

(Ord. No. 6775, 4-10-2001)

### **3-2907 FEES**

The daily and/or annual registration permit fee for each itinerant merchant, peddler, or solicitor shall be as set forth in the City of Kearney Comprehensive Fee Schedule per day per person and/or annually per person, for the calendar year beginning January 1 and ending December 31; the annual fee shall not be pro-rated.

(Ord. No. 6775, 4-10-2001; Ord. No. 7358, 6-12-2007 effective October 1, 2007)

### **3-2908 SALES; RESTRICTIONS**

All solicitations to private residences, including but not limited to homes, residences, rooming houses, duplexes, and apartments shall occur only between the hours of 8:00 a.m. and 8:00 p.m., unless otherwise posted and prohibited by the private property owner or by someone with apparent authority to act for the owner. This regulation does not apply where the solicitor is on the property by the express, prior invitation of the person residing on the premises. A person engaged in solicitation shall not:

- A. Make physical contact with the person being solicited unless that person's permission is obtained.
- B. Misrepresent the purpose of the solicitation.
- C. Misrepresent the affiliation of those engaged in the solicitation.
- D. Continue efforts to solicit from an individual once that individual informs the solicitor that he/she does not wish to give anything to or buy anything from that solicitor.
- E. Represent the issuance of any permit or registration under this Article as an endorsement or recommendation of the solicitation.
- F. Enter upon any private premises when the same is posted with a sign stating, "No Peddlers Allowed" or "No Solicitation" or other words to that effect.
- G. Block, obstruct, or unduly hinder passage on public sidewalks or passageways. For the purposes of this Article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether an area is blocked, obstructed, passage is hindered, or the public is impeded or inconvenienced.

(Ord. No. 6775, 4-10-2001)

### **3-2909 REGISTRATION PERMIT; CONTENTS**

A permit issued under this Article shall contain a permit number, the name of the permit holder, the kind of goods to be sold thereunder, the name of the employer, if any, the date of issuance, the date of expiration, a listing of the places which the applicant has identified as the place or places at which he intends to do business, and the signature of the Chief of Police or his authorized agent. Every permit shall set out the prohibition of nighttime solicitation set forth in Section 3-2908. (Ord. No. 6775, 4-10-2001)

### **3-2910 REGISTRATION PERMIT; TO BE CARRIED AND EXHIBITED**

Every peddler and solicitor or itinerant merchant shall carry the permit issued to him under this chapter on his person at all times while engaged in selling, peddling or soliciting in the City. It shall also be the duty of every peddler and solicitor to exhibit such permit when requested so to do by any law enforcement officer or other department personnel designated by the Chief of Police, or any person with whom the peddler, solicitor or itinerant merchant attempts to do business.

(Ord. No. 6775, 4-10-2001)

### **3-2911 REGISTRATION PERMIT; TO BE POSTED**

The permit to the permittee hereunder by the City Clerk shall be posted in a conspicuous place if the permittee is using a vehicle or a building in his/her business and otherwise must be kept by the person and exhibited at any time upon request.

Any person who shall exercise the vocation of an itinerant merchant, peddler or solicitor shall display the permit, and permit expiration date issued by the City Clerk. Transient merchants shall post conspicuously in their place of business the permit issued hereunder, which permit shall be shown at the request of any citizen or law enforcement officer.

(Ord. No. 6775, 4-10-2001)

**3-2912 REGISTRATION PERMIT; NOT TRANSFERABLE.**

Each peddler, solicitor or itinerant merchant must secure a personal permit. No permit shall be used at any time by any person other than the person to whom it is issued.

*(Ord. No. 6775, 4-10-2001)*

**3-2913 PERMITTEE; FURTHER REQUIREMENTS.**

1. No itinerant merchant shall advertise, represent or hold any sale as an insurer, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver, wholesaler or manufacturer's closing out sale, or as a sale of any goods damaged by smoke, fire, wreck, water or otherwise, or in any similar form, unless he or she shall have first so stated under oath before the Chief of Police or his designee, either in the application form required hereunder, or in a supplementary application subsequently filed and copied on the permit, all the facts relating to the reasons and character of such sale so advertised or represented; including a statement of the names of the persons from whom the goods, wares or merchandise were obtained, the date of delivery to the person applying for the permit, and the place from which such goods, wares and merchandise were last taken, and all details necessary to locate exactly and fully identify all goods, wares and merchandise to be so sold.

2. Any false statement in an application, either original or supplementary, under this Section, and any failure on the part of the permittee to comply with all requirements of this Section, shall subject such itinerant merchant, peddler or solicitor to the same penalty as if he had no permit.

3. No itinerant merchant, peddler, or solicitor shall conduct business or sales upon or from any public property, including but not limited to, public streets including right-of-way, sidewalks, alleys, drives, parking lots, parks, unless authorized by the City Council in accordance with the terms of Section 19-4301, of the Nebraska Revised Statutes.

*(Ord. No. 6775, 4-10-2001)*

**3-2914 REGISTRATION PERMIT; REVOCATION.**

Permits issued pursuant to this Article may be revoked by the City Manager, after notice has been issued. Said notice shall include the City Manager's reasoning for such revocation. Notice shall be sent by registered mail, postage prepaid, to the permittee at his/her last known permanent address.

*(Ord. No. 6775, 4-10-2001)*

**3-2915 REGISTRATION PERMIT; APPEAL OF DENIAL, REVOCATION.**

Any person aggrieved by the decision of the City Manager in regard to the denial of an application for a permit under this Article or in connection with the revocation of a permit shall have the right to appeal to the City Council. Such appeal shall be taken by filing with the Council, within fourteen (14) days after notice of the decision has been mailed to such person's last known permanent address, a written statement setting forth the grounds for appeal. The Council shall set the time and place for a hearing on such appeal and notice of such hearing shall be sent by registered mail, postage prepaid, to the permittee at his/her last known permanent address. The order of the Council on such appeal shall be final.

*(Ord. No. 6775, 4-10-2001)*

**3-2916 REGISTRATION PERMIT; INTERSTATE COMMERCE EFFECT OF ARTICLE.**

Nothing in this Article shall be construed or enforced so as to be in derogation of interstate commerce.

*(Ord. No. 6775, 4-10-2001)*

**3-2917 SALES; POLICE ENFORCEMENT.**

It shall be the duty of the City police to examine all places of business and persons subject to the provisions of this Article and to enforce the provisions herein against any person found to be violating the same.

*(Ord. No. 6775, 4-10-2001)*

**3-2918 VIOLATIONS OF ARTICLE; PENALTY.**

Any person, partnership, firm or corporation violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished in accordance with Section 1-111 of this Code. Each distinct act or violation of the terms of this Article shall constitute a separate offense.

*(Ord. No. 6775, 4-10-2001)*