

ORDINANCE NO. 1165

AN ORDINANCE TO AMEND CHAPTER 58 OF THE MUNICIPAL CODE OF THE CITY OF MINDEN, KEARNEY COUNTY, NEBRASKA, BY AMENDING SECTION 58-1 , AS THE SAME RELATES TO PEDDLERS AND SOLICITORS.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MINDEN, KEARNEY COUNTY, NEBRASKA.

Section 1. That Section 58-1 of the Municipal Code of the City of Minden, Kearney County, Nebraska, be amended to read as follows:

Sec. 58-1. Street vendors; selling or vending of merchandise on city streets prohibited; exceptions.

The selling or vending of merchandise, wares, goods, food, drinks, or any other merchandise or materials, is prohibited on the streets of the city, either from vehicles, whether motorized or not, or by any other method of traveling about the city, except that the city council may permit the use of public streets and sidewalks within those areas of the city zoned commercial or by business abutting the street or sidewalk in accordance with the provisions of R.R.S. 1943 §19-4301.

ARTICLE II. CHARITABLE SOLICITATIONS shall be repealed.

58-2. Penalty for violations of this article.

Any persons violating any of the provisions of this article, or knowingly filing, or causing to be filed, a false affidavit in connection with the application as provided in this article, or representing in any way that any permit granted pursuant to this article is an endorsement of such solicitation, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25.00 nor more than \$500.00.

58-3. Expiration of permits.

Any and all permits issued pursuant to this chapter shall expire on December 31 of the year in which such permit was issued.

Sec. 58-67. Exceptions to article.

The provisions of this article shall not apply to the following:

- (1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business;
- (2) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law;
- (3) Solicitations, sales or distributions made by nonprofit, charitable, educational or

religious organizations which may have their principal place of activity within this city. These organizations not having their principal place of activity in this City shall register at the office of the city clerk prior to the initiation of any solicitation.

Sec. 58-69. Entrance to premises restricted.

Going on private premises; Nuisances. The practice of going in and upon private residences or public property in the city by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise & services, not having been requested or invited to do so by the owner or owners, occupant or occupants of private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of, peddling or hawking the same, is hereby declared to be a nuisance and unlawful unless a Solicitors Business Permit is acquired pursuant to this Ordinance.

Sec. 58-70. Refusing to leave.

(1) Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, shall be deemed guilty of an offense punishable as provided in section 1-8 of this Code.

(2) The law enforcement officers of the City of hereby required and directed to suppress all unlawful nuisances described in the foregoing section and are empowered upon proper complaint to arrest in the manner authorized by law any and all persons complained of engaged in such unlawful practices.

Sec. 58-86 Required.

It shall be unlawful for any person to engage in business as a peddler within this city without first obtaining a permit to do so.

Sec. 58-87. Application.

Peddlers shall be required to give the following information on a form to be furnished by the city clerk:

- (1) The company whom they represent, including the name of the company, the home office address and telephone number of said company;
- (2) The product or product line which they are selling;
- (3) The names, addresses and telephone numbers of the individuals who are in the city, or will be in the city, who are representing the company and the product or product line which they are selling.
- (4) Valid driver's license including photo ID, or in the event the person or persons do not have a valid driver's license, then a state photo ID.
- (5) Vehicle information including the make, year and license number of the vehicle or vehicles that will be operating within the city;

- (6) Copies of any appropriate permits issued by any city, state or federal governmental agency including but not limited to health permits, federal and state ID numbers for taxing purposes or any other purposes.
- (7) By making said application the peddler agrees to allow the City of Minden to conduct any appropriate background checks deemed necessary for consideration of the application and agree to sign any required waivers of liability documents.
- (8) Any background checks shall be completed and permits issued within seven (7) business days of the application being filed.

Sec. 58-89. Application fee.

To defray the city's expenses in processing the application of the peddler, the applicant shall pay an application fee of \$50.00 at the time of filing his application.

Sec. 58-97. Record.

The city clerk shall keep a permanent record of applications filed with the city under the provisions of this chapter in accordance with the Nebraska Public Records Retention Act.

Sec. 58-121. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) Transient merchant means any person that:
  - a. Engages, either in one location or in traveling from place to place, in a temporary business of selling and/or delivering goods, wares, merchandise, commodities, products of any kind or nature, or services within the city, and who, in furtherance of such purpose, hires, rents, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, room in hotels or motels, lodginghouses, apartments, shops, or any other premises, including street, alley, parking lot or other public building, facility or place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction; or
  - b. Sells, offers or exhibits for sale any goods, wares, merchandise, commodities, products or services during the course of or any time within six months after a lecture or public meeting on or presentation of such goods, wares, services, franchises, business opportunities, contracts or distributorships.
- (2) Subsection (1) notwithstanding, however, a transient merchant, for the purposes of this section, shall not include the following:

- a. A person who shall occupy any of the places described in subsection (1)(a) of this section for the purpose of conducting a permanent business therein; provided, however, that no person shall be relieved from the provisions of this article by reason of rental or lease of space on the premises of a permanent merchant or by a temporary association with any local dealer, trader, merchant or auctioneer or by conducting such temporary or transient business in connection with, or as a part of, or in the name of any local dealer, trader, merchant or auctioneer.
- b. Any sales of merchandise damaged by smoke or fire, or of bankrupt concerns, where such stocks have been acquired from merchants of the city regularly engaged in business; provided, however, that no such stocks of merchandise shall be augmented by new goods.
- c. A person exhibiting goods for sale concurrent with and as an adjunct to a group display, meeting or convention duly authorized to be held in a publicly owned building and authorized and permitted pursuant to this article.
- d. A person who sells his own property which was not acquired for resale, barter or exchange and who does not conduct such sales or act as a participant by furnishing goods in such a sale more than twice during any calendar year.
- e. Art exhibits where participating artists sell their original works and which do not include any sales of artworks purchased elsewhere and held for resale, providing such art exhibits are sponsored by a responsible civil or nonprofit organization.
- f. Itinerant merchants as defined by R.R.S. 1943 §75-323 et. seq., as amended, and by this article, and peddlers, canvassers or solicitors as defined by this chapter.
- g. Garage sales held at private residences but no more than twice a year.
- h. The provisions of this article shall not apply to commercial travelers or selling agents in the usual course of commercial business; nor to a bona fide sales of goods, wares or merchandise for future delivery in interstate commerce, or where no license fee or occupation tax may be collected under the provisions of the Constitution or laws of the United States, nor to any sales of goods, wares or merchandise, or exhibition thereof on the grounds of any agricultural society or county fair association during the continuance of any annual fair or exposition held by such society, fair board, fair association, or civic organization; nor to any sales by any other nonprofit organization or society acting for charities, religious or other public or civil purposes.

- i. The promotor, sponsor or other person organizing a convention, show or sale, which convention, show or sale includes ten or more transient or local dealers, merchants or exhibitors, shall pay a display license fee of \$50.00 and obtain a display license in accordance with the provisions of this article.
- j. Conventions or religious, civic, charitable or benevolent groups, nonprofit trade associations, concerts and cultural events shall be exempt from this article.

## DIVISION 2. PERMITS

Sec. 58-131. Transient merchant permit.

It shall be unlawful for any person or for any agent, servant or employee of any person to engage in, carry on or conduct the business of a transient merchant without first obtaining a permit to do so. The information required in the application shall be the same as that required in section 58-.87.

Sec, 58-134. Record.

The city clerk shall keep a permanent record of all applications filed with the city.

Sec. 58-135. Registration fee.

To defray the city's expense in processing the application of the transient merchant and the display license fee, the applicant shall pay a registration fee of \$50.00 at the time of filing his application.

Section 2. That any other ordinance or section passed and approved prior to the passage, approval and publication or posting of this ordinance and in conflict with its provisions is hereby repealed.

Section 3. This ordinance shall be known as Ordinance No. 1165 and shall be in full force and effect from and after its passage, approval and publication according to law.

Passed and approved this 7<sup>th</sup> day of February, 2011.

/s/ Roger Jones  
Roger Jones, Mayor

ATTEST:

/s/ Lisa Karnatz  
Lisa Karnatz, Deputy City Clerk