**ORDINANCE NO. 634**

**AN ORDINANCE AMENDING ORDINANCE NO. 616, REVISED MUNICIPAL CODE OF THE CITY OF OSCEOLA, NEBRASKA, CHAPTER 5, ARTICLE 2, BY AMENDING ARTICLE 2 REGARDING TRANSIENT SALES; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND DECLARING THE EFFECTIVE DATE.**

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF OSCEOLA, NEBRASKA.

Section 1. That Chapter 5, Article 2, Municipal Code of the City of Osceola, Nebraska, be amended to read as follows:

ARTICLE 2. Transient Sales

(Amend. by Ord. No. 634, 05/10/17)

**Section 5-201. Definitions**

For the purposes of this article, the following definitions shall apply:

“Itinerant merchant” shall mean every person, firm, partnership, corporation, association, receiver or trustee buying for the purpose of sale in any form or selling or offering to buy for the purpose of sale in any form or to sell in the city, at wholesale or retail, any goods, wares, merchandise or chattels of any description and transporting the same by the use of a motor truck or trucks or any other vehicle or vehicles upon any public highway, except as otherwise provided in this section. The term does not include those engaged in the business of transporting property by motor vehicle for hire or operating vehicles in such business as agents, employees, lessees or contractors and who do not act on the cargo transported or interest therein, and who do not act for any party in the acquiring, purchase, sale or disposition of the cargo transported. In addition, “itinerant merchant” shall not mean or include the following and shall be exempt from the provisions of this section:

1. Those using such vehicles for the transportation of grain, fruits, vegetables, hay,

livestock or other agricultural products by them;

1. Those transporting products or property when such transportation is incidental to a

business conducted by them at an established place of business operated by them either within or without the city, and when the property is being transported to and from the established place of business, and when the entire course of such transportation extends not more than 250 miles from the established place of business; provided, when the entire course of the transportation is for the purpose of delivery of the property subsequent to sale thereof, the 250 miles restriction shall not apply;

1. Those using such vehicles for the transportation, sale and delivery at retail of any

particular group of products having a common trademark, trade name or brand, as agents, employees, or retail dealers of the manufacturers or wholesale distributors of such products through whom they market the same;

1. Those having the purpose of hauling products for the use of the owner of such vehicle,

for the use of others where no charge is made for the use of such vehicle, or those using vehicles in the exchange of work;

1. Those using such vehicles exclusively within the limits of the city and who are bona

fide residents hereof;

1. Those using such vehicles for the transportation of livestock bought or sold at any

livestock market; and

1. The provisions of this section shall not apply to grain.

“Peddler” shall mean a person traveling from place to place selling and delivering at the same time.

“Person” shall mean any natural person and any firm, proprietorship, partnership or corporation.

“Solicitor” shall mean a person who travels from place to place not carrying goods with him or her but taking orders for future delivery to the general public.

“Street vendor” shall mean a person who travels from street to street upon public or private property carrying, conveying, or transporting such items as food, beverages, flowers and balloons, offering and exposing the same for sale by hand or from a mobile-type device such as a push cart.

“Temporary merchant” shall mean a person who occupies a temporary, fixed location and sells and delivers from stock on hand, doing business in much the same manner as a permanent business; provided, however, this shall not apply to farmer’s markets which shall be exempt from the provisions herein.

 **Section 5-202. Licenses and Permits**

1. No itinerant merchant shall engage in business as such without:
2. Complying with the terms and provisions of Neb. Rev. Stat. §75-323 to 75-335;
3. Applying for and procuring from the Nebraska Public Service Commission an itinerant merchant’s license, as provided by law;
4. Obtaining a sales tax permit as required by Neb. Rev. Stat. §77-2705; and
5. Every person, partnership, firm or corporation desiring to engage in business as an itinerant merchant shall, before engaging in such business, make an application to the City Office for an itinerant merchant’s permit. Such application shall be in the form prescribed by the City Office. All applications shall set forth the name and address of the applicant, his or her post office or residence address, an exact description of the vehicle or vehicles to be used in the conduct of his or her business, and such other information as may be prescribed by the office of the City Clerk or Sheriff’s Department.
6. Every peddler, solicitor, temporary merchant, and street vendor shall obtain a permit

from the City Office prior to engaging in any activities defined in Section 5-201 of this Article. Application for licensing shall be filed with the City Office, together with the nonrefundable application and permit fee which shall be paid to the City Clerk. Said application shall be upon a form supplied by the City Office. Said fee shall be as set by the City Council by resolution and placed on file in the office of the City Clerk.

1. The permit and fees provided for under Section 5-203 of this Article shall not pertain

to those persons whose entire profits from such activity are contributed to a charitable, religious or education organization, association or institution and/or those who conduct business in conjunction with a community festival or event.

**Section 5-203. Occupation taxes and permit fees**

Itinerant merchants, peddlers, solicitors, street vendors and temporary merchants shall pay the following occupation taxes or permit fees as follows:

1. *Itinerant merchant*. Each itinerant merchant shall pay a nonrefundable occupation

tax/permit fee, as set out below, to the City Clerk. At the time of paying such tax/fee, the itinerant merchant shall show the City Clerk the license obtained pursuant to Neb. Rev. Stat. §75-325, the bond required by §75-329 and the sales tax permit required by §77-2705. Any itinerant merchant licensed by the State of Nebraska as required by law and who shall have paid the occupation tax/permit fee must register with the Sheriff’s Department as set forth in section 5-204. Consecutive renewal fees shall be set out below.

1. *Peddler or solicitor.* Each peddler and/or solicitor shall submit an initial application

and pay a nonrefundable permit fee, as set out below, to the City Clerk. There shall be a renewal fee for any expired permit. In addition, any person who shall transport, sell or deliver at retail of any particular group of products having a common trademark, trade name, or brand, as agents, employees or retail dealers of the manufacturers or wholesale distributors of such products through whom they market the same shall be exempt hereunder. Consecutive renewal fees shall be set out below.

1. *Street vendor or temporary merchant*. Each street vendor and/or temporary merchant

shall submit an initial application and pay a nonrefundable permit fee, as set out below, to the City Clerk. There shall be a renewal fee for any expired permit. Consecutive renewal fees shall be set out below.

1. All occupation taxes and permit fees as provided in this Article shall be set by the City

Council by resolution and placed on file in the office of the City Clerk.

**Section 5-204. General Requirements**

Itinerant merchants, peddlers, solicitors, street vendors and temporary merchants shall meet the following standards and conditions:

1. Provide personal identification(s), including date of birth, driver’s license number

and/or other appropriate identification, together with a recent photograph of the individual who will be selling within the community;

1. Supply copies of any state or county licenses which are also required to operate or

conduct activities proposed by the applicant;

1. Specify a local agent to receive complaints against the business;
2. List of names and identification of all individuals within the area who will be working

for and/or with the applicant;

1. Contact the Sheriff’s Department prior to initiating any sales or soliciting activities

within the community;

1. Sign a disclaimer of city liability relating to any action caused or charged against the

applicant;

1. Provide a description of the merchandise offered for sale; and
2. Provide such other information as may be prescribed by the office of the City Clerk

and the Sheriff’s Department.

 **Section 5-205. Special Standards; Itinerant Merchant, Peddler or Solicitor**

1. An itinerant merchant, peddler or solicitor shall limit hours of operation to only those

hours between 9:00 A.M. and 6:00 P.M.

1. No person, while engaged in the business of itinerant merchant, peddler or solicitor,

shall enter uninvited into a private building, structure or room.

1. An itinerant merchant, peddler or solicitor shall observe the following requirements

when soliciting door to door:

1. Within 30 seconds after beginning the conversation, the itinerant merchant, peddler or solicitor shall:

1. Provide identification of both the person and whom the person represents;
2. Explain the purpose of the person’s call;
3. Provide a description in commonly understood terms of the goods or services offered for sale; and
4. Inquire whether the person being solicited is interested in listening to a sales presentation and immediately discontinue the solicitation if the person being solicited gives a negative response.

2. During the course of the solicitation, state the total cost of the goods or services offered for sale and the number, timing and amount of installment payments if payments on an installment basis are available to the person being solicited.

 **Section 5-206. Special Standards; Temporary Merchants and Street Vendors**

A temporary merchant or street vendor shall adhere to the following additional standards and conditions:

1. If located on private property, the temporary merchant shall obtain a signed, written

consent from the owner of the property which authorizes him or her to conduct business from the property;

1. The temporary merchant shall obtain a written authorization from the Sheriff’s

Department to allow any sales from public property;

1. The activities of the temporary merchant shall not impair or impede the proper flow of

traffic on public or private property;

1. The activities of the temporary merchant shall not unduly restrict parking spaces on

public or private property. Any parking spaces which are customarily in use during normal working hours shall not be used as a location for a temporary merchant or street vendor.

1. No more than one temporary merchant may be located on any individual lot or

development site.

1. Permits for temporary merchants and street vendors shall be displayed by the temporary

merchant or street vendor in a visible location and he or she is required to show his or her permit to any customer or law enforcement officer upon request.

1. Temporary merchants shall comply with all zoning setback requirements. No sign,

storage, display or sales may take place in an area inside the required setback (front yard) area.

1. Temporary merchants and street vendors shall comply with all vision clearance

requirements of the Osceola Municipal Code.

1. Signs for street vendors shall be of professional appearance and mounted upon the

mobile-type device or push car used for sales. No accessory signs shall be permitted.

1. Temporary merchants are limited to the use of no more than two signs, which shall

have a professional appearance.

**Section 5-207. Permit Approval, Authority, Appeals and Revocation**

1. The City Clerk and/or Sheriff’s Department shall have the authority to approve or deny

any application for a permit to be issued under this Article. Any application for a permit which is denied may be appealed to the City Council. The City Council may accept or reject the decision of the City Clerk and/or Sheriff’s Department. All appeals must be made by submitting a formal request of an appeal to the City Clerk, together with a $50.00 nonrefundable processing fee.

1. A permit may not be issued to any applicant where any of the following has been

determined during the initial investigation and review of the application:

1. If the applicant has been convicted of a crime, the nature of which indicates a lack of honesty and reliability which would lead one to believe that future violations of the law could occur. An example of such crimes would be theft, burglary, robbery, fraud, deceit or any other crime of violence.
2. Any previous history relating to the manner in which the applicant made door-to-door sales which resulted in a revocation of permit authorized by the City Clerk or Sheriff’s Department or violation of the law.
3. Providing false information on the application form.
4. A failure to comply with any condition, standard or requirement of this article or any city, county or state regulation.
5. The City Clerk and the Sheriff’s Department shall have the authority to revoke any

issued permit, at any time and for any reason, at the discretion of the City Clerk or law enforcement officer.

**Section 5-208. Penalty**

Any person identified within Section 5-201 of this article who engages in activities within the city limits without having first paid the occupation tax or applied for and obtained a permit herein provided for or who violates any other of the provisions of this article shall be subject to revocation of permit and/or shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding Five Hundred Dollars ($500.00) for each and every offense. Every day of a continuing violation shall be deemed a separate offense for the purposes of these penalties.

Section 2. That all ordinances and parts thereof in conflict with this ordinance are hereby repealed.

Section 3. If any section of this ordinance or any part of the section shall be declared invalid or unconstitutional, such declaration shall not affect the validity and constitutionality of the remaining portion thereof.

Section 4. This ordinance shall be in full force and effect from and after its final passage as provided by law and shall be published in pamphlet form.

PASSED and APPROVED this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017.

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Charles Kucera - MAYOR

ATTEST:

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Renee Johansen - CITY CLERK

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