

(Summary Published in the Leavenworth Times on March 16, 2018)

**ORDINANCE NO. 8072**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF LEAVENWORTH, KANSAS, CHAPTER 78 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1.** That the Code of Ordinances, City of Leavenworth, Kansas, Chapter 78 Peddlers and Solicitors, be amended to read as follows:

**Chapter 78 –PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS**

**Article I – In General**

**Sec. 78-1. - Definitions.**

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

*Peddler* means any person, whether a resident of this City or not, traveling from house to house, or from street to street traveling by foot or by any other means of conveyance, who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, carrying or transporting goods, wares, merchandise or personal property of any nature and offering the same for sale.

*Peddling* as used in this chapter shall include all activities ordinarily performed by a peddler.

*Person* as used in this chapter shall mean any individual, firm, partnership, corporation, company, religious sect or denomination, society, organization or league and includes any trustee, director, member, partner, officer, receiver, assignee, employee, agent or other similar representative thereof.

*Solicitor* means any person, whether a resident of this City or not, traveling from house to house, or from street to street traveling by foot or by any other means of conveyance who goes upon the premises of any private residence in the city, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares or other personal property of any nature for the future delivery, or for services to be performed in the future. This definition also includes any person who, without invitation, goes upon private property, to request contribution of funds or anything of value.

*Solicitation* as used in this chapter shall include all activities ordinarily performed by a solicitor.

*Transient Merchant* means as any person, whether as owner, agent, consignee or employee, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such City, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, or public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the City, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer. A transient merchant is not a person who has a permanent business presence in Leavenworth and conducts sales or activities similar as described herein on a temporary basis.

Sec. 78-2. Permit and fees required.

No person, Peddler, Solicitor or Transient Merchant, shall operate within the corporate limits of the City without having first obtained the required permits from the City Clerk. The fee for such permits shall be prescribed in Appendix F and are not prorated, refundable or transferable.

Sec. 78-3. Exclusions to the permit requirement.

The provisions of this chapter shall not apply to:

- (1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
- (2) Wholesale trade shows or conventions when conducted in conformance to the zoning ordinance;
- (3) Any general fair, auction, or bazaar sponsored by any church, religious, non-profit organization or a local permanent business;
- (4) Garage sales held on premises devoted to residential use having obtained the needed permits as allowed in Chapter 90 of the City Code of Ordinances;
- (5) Sales of agricultural goods raised or produced by the seller;
- (6) Solicitations, sales or distributions made by charitable, educational or religious organizations sponsored bazaars and sales, and concessions at school athletic events;
- (7) Sidewalk sales when conducted under the appropriate provisions of the City Code;
- (8) The sale of Christmas Trees;
- (9) Festivals, fairs and carnivals as allowed by the Governing Body on public property;
- (10) Federal, State, County or City census takers or political candidates or their agents.

Sec. 78-4. Misrepresentation of goods or services.

It shall be unlawful for any Peddler or Solicitor, or Transient Merchant to make false or fraudulent statements concerning the quality or nature of the goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

Sec. 78-5. Revocation of permit.

The City Clerk or Chief of Police may revoke any permit issued under this chapter, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for permit.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business.
- (3) Any violation of this chapter.
- (4) Conducting the business as defined herein in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the City. Notice of the revocation of a license shall be in writing to the applicant by the City Clerk and shall set forth the grounds of revocation.
- (5) Unauthorized use of the public right-of-way for sale or display of merchandise, or for display of an advertising sign.
- (6) Violation of a site plan requirement for an existing land use or violation of any applicable provisions of the zoning ordinance.

Sec. 78-6. Use of streets.

No Peddler, Solicitor or Transient Merchant shall have any exclusive right to any location on the public streets or right-of-ways, nor be permitted a stationary location on the public street or right-of-way. No Peddler, Solicitor or Transient Merchant shall be permitted to operate in any congested area where his or her operations might impede or inconvenience the public. For the purpose of this chapter, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

Sec. 78-7. - 78-17. Reserved.

**Article II Peddlers and Solicitors**

Sec. 78-18. Peddler and Solicitor permit required.

No person shall engage in the activities of a Peddler or Solicitor as defined in section 78-1, within the corporate limits of the city, without first obtaining a permit as allowed and regulated herein. Any applicant for a permit under this article shall file an application with the City Clerk. Application shall be accompanied by the fee set out in appendix F.

Application for a Peddler or Solicitor permit shall be submitted at least two (2) business days prior to the days of peddling or soliciting to process the application. Application fee is non-refundable and permit is non-transferable.

Application shall be made on a form furnished by the City Clerk, which shall provide the following information:

- (1) Name and date of birth of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.
- (3) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (4) A copy of the applicant's government-issued photo identification
- (5) Period of time for which the permit is applied.
- (6) Address of the applicant's present place of residence.
- (7) A brief description of the nature of the business and the goods to be sold and/or services to be offered or provided.
- (8) A description of the motor vehicle including make, model, year, color and tag number if a motor vehicle will be used.
- (9) Whether or not the applicant has ever been convicted of a crime involving moral turpitude or any felony convictions, misdemeanor or ordinance violations involving force, threat of force, violence, theft, dishonesty, fraud, sexual misconduct or the violation of any laws regulating the act of soliciting or peddling within the past five years in this state or any other state or subdivision thereof or of the United States.
- (10) Two (2) 2" x 2" photographs of the applicant showing the head and shoulders of the applicant in a clear and distinguishing manner taken within sixty days prior to the date of filing the application.
- (11) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (12) A statement as to whether or not the applicant has ever had a peddler or solicitor permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.
- (13) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times while peddling/soliciting.

#### Sec. 78-19. Issuance of Peddler or Solicitor permit.

Upon determination of compliance with the requirements herein, the City Clerk shall issue a permit. Such permit shall contain the signature of the City Clerk or designee and city logo.

Permit shall include the name of the licensee, the date of issuance, length of time the license shall be valid, and the nature of the business involved.

Peddlers and Solicitors shall be issued a badge which shall be worn by the permittee in such a way as to be conspicuous at all times while the permittee is peddling or soliciting in the City.

Sec. 78-20. Refusing to leave premises.

Any Peddler or Solicitor 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 agent, to leave the premises and not return to such premises, shall be deemed guilty of a misdemeanor.

Sec. 78-21. Entrance to premises restricted.

It shall be unlawful for any Peddler or Solicitor to enter upon any private premises when such premises is posted with a sign stating "No peddlers allowed" or "No solicitations allowed" or other words to such effect.

Sec. 78-22. Hours of operation.

It shall be unlawful for any Peddler or Solicitor to engage in the business of peddling or soliciting within the City between the hours of one half-hour before sunset and 8:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

Sec. 78-23. - 78-38. Reserved.

### **Article III Transient Merchants**

Sec. 78-39 Transient Merchant permit required.

No person shall engage in the activities of a Transient Merchant as defined in section 78-1, within the corporate limits of the City without first obtaining a permit as allowed and regulated herein. Any applicant for a permit under this Article shall file an application with the City Clerk.

Application shall be accompanied by the fee set out in appendix F. Application for Transient Merchant permit shall be submitted at least two (2) business days prior to process the application except as stated in Sec 78-40 (Additional conditions Transient Merchants use in or on City owned property). Application fee is non-refundable and license is non-transferable.

Application shall be made on a form furnished by the City Clerk, which shall provide the following information:

- (1) Name and address of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.

- (3) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (4) A copy of the applicant's government-issued photo identification
- (5) Period of time for which the permit is applied.
- (6) Address of the applicant's present place of residence.
- (7) A brief description of the nature of the business and the goods to be sold.
- (8) A description of the motor vehicle including make, model, year, color and tag number if a motor vehicle will be used.
- (9) Whether or not the applicant has ever been convicted of a crime involving moral turpitude or any felony convictions, misdemeanor or ordinance violations involving force, threat of force, violence, theft, dishonesty, fraud, sexual misconduct or the violation of any laws regulating Transient Merchants within the past five years in this state or any other state or subdivision thereof or of the United States.
- (10) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (11) A statement as to whether or not the applicant has ever had a Transient Merchant permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.
- (12) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times during the permit period.

Sec. 78-40. Additional conditions Transient Merchant use in or on City owned property.

A Transient Merchant permit shall not be issued for use in or on a City owned property including rights-of-way, parks or open spaces or the Community Center; provided, that the Governing Body of the City may grant in specific cases a waiver of this general prohibition.

Application and request for waiver shall be on a form provided by the City Clerk and submitted to the City Clerk at least 30 days prior to the date of the activity to be placed on the agenda of the next regular meeting of the Governing Body.

Application and request for waiver of use of City owned property shall include the following information:

- (1) Name and address of applicant.
- (2) Valid Kansas sales tax number or proof of exemption from the collection of Kansas sales tax.

- (3) Statement that any vendors associated with the event may be subject to Kansas sales tax and the City will inform the Kansas Department of Revenue (KDOR) of the event.
- (4) Credentials from the person, firm or corporation or association whom the applicant is employed by or represents and name and address of such person, firm, corporation or association.
- (5) City property requested to be used.
- (6) Period of time for which the permit is applied.
- (7) A brief description of the nature of the business and the goods to be sold and/or services to be offered or provided.
- (8) A statement that the applicant understands and agrees that if a permit is granted, it will not be used or represented in any way as an endorsement by the City or by any department or officer of the City.
- (9) A statement as to whether or not the applicant has ever had a Transient Merchant permit, license or registration revoked or suspended under the ordinance of the City of Leavenworth or any other city.
- (10) A statement by the applicant attesting to the truthfulness of all information contained in the application and that the license will be displayed at all times during the permit period.

Sec. 78-41. Insurance Certificate Required for Transient Merchant use in or on City owned property.

Every Transient Merchant before obtaining any permit as provided herein for use in or on city property, shall cause a certificate of insurance to be posted with the City Clerk of bodily injury liability in the amount of \$1,000,000.00 per incident, and such certificate shall also provide that the policy of insurance shall not be canceled, amended, changed or altered without giving the City Clerk ten days' written notice thereof. Such certificate shall further provide for the indemnification of any person who shall incur damage claimed as a result of use of the public way under the permit issued under this division and hold the City harmless and indemnify the City for any claim for damages as a result of such use.

Sec. 78-42. Issuance of Transient Merchant permit.

A Transient Merchant permit shall be valid for a period not to exceed five days. Not more than two (2) permits may be issued to any Transient Merchant in a calendar year. The City Clerk shall keep a permanent record of all such licenses issued. The permittee shall display the permit at all times.

Upon determination of compliance with the requirements herein, the City Clerk shall issue a permit. Such permit shall contain the signature of the City Clerk or designee, city logo and shall show the name of the licensee, the date of issuance, place and length of time the license shall be operative, and the nature of the business involved.

Sec. 78-43. - Setbacks.

Display of merchandise and parking of vehicles for the sale or display of merchandise shall be within an enclosed structure and subject to the building setback requirements of the zoning district in which any activity subject to the provisions of this chapter is being conducted.

Sec. 78-44. - Signs.

Signs shall be limited to those allowed in the City Development Regulations and shall be subject to applicable sign fees.

Sec. 78-45. - 78-60. Reserved.

**Section 2.** That all sections of Chapter 78 amended herein and all other sections in conflict herewith are hereby repealed.

**Section 3.** That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City newspaper.

Passed by the Leavenworth City Commission on this 13th day of March, 2018.

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Mark Preisinger, Mayor

{Seal}

ATTEST:

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Carla K. Williamson, City Clerk, CMC

APPROVED AS TO LEGAL FORM:

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David E. Waters, City Attorney