

Sec. 19-89. Peddlers.

(1) Permit required. It shall be unlawful for any person to engage in business as a peddler as hereinafter defined within the corporate city limits without first having obtained a permit therefor as herein provided.

(2) Definition. The term "peddler" as used herein shall include any person traveling by foot, motor vehicle, or other type of conveyance from dwelling to dwelling, carrying, conveying, or transporting candies, foods, magazines, or other merchandise, offering and exposing the same for sale, or making sales and delivering such articles to purchasers, or taking orders for sales for future delivery, whether or not such person has, carries, or exposes for sale a sample of the subject of such sale, or whether or not he/she is collecting advance payment on such sales, or offering to furnish or perform services to be furnished now or in the future.

The term "peddler" shall also include any person selling candies, foods, magazines, or other merchandise from any location within the city, unless the sales are conducted within a permanent business establishment which has on file with the permits and inspection division a current certificate of occupancy permit. A permanent business establishment is not a peddler when it displays merchandise on the site where it is located. The term "peddler" shall also include mobile refreshment trucks.

(3) Application for permit. Applications for permits under this section shall be filed with the permits and inspection division of the planning department on a form to be furnished by the division. The following information may be required:

- (a) Name, address, date of birth, social security number, and description of the applicant.
 - (b) Brief description of the nature of the business and the merchandise to be sold or services to be provided.
 - (c) If employed, the name and address of the employer.
 - (d) The length of time (not to exceed one year) for which the right to do business as a peddler is desired.
 - (e) Temporary business location (if applicable).
 - (f) Copy of health department permit (if applicable).
 - (g) Copy of State of Nebraska sales tax permit (if applicable).
 - (h) Street closing permit (obtain from public works, if applicable).
- (4) Investigation and issuance of permit.

(a) Upon receipt of an application for door-to-door sales, the application shall be referred to the police department, which shall investigate the statements contained on the application and determine if they are true and correct. If as a result of such investigation the police department finds that the statements within the application are materially untrue or incorrect, or if it is found that the applicant has been convicted within the past ten years of a felony or violation of any municipal ordinance, state or federal law involving moral turpitude, the police department shall indicate on the application its disapproval and the reasons for the same, and return the application to the planning department, which shall notify the applicant that his/her application is disapproved and that no permit will be issued.

(b) Upon receipt of all peddler permit applications other than door-to-door permit applications, the application shall be reviewed by the permits and inspection division only, which shall cause an investigation of the statements contained within the application to be made to determine if the same be true and correct.

(c) The permits and inspection division shall evaluate all peddler permit applications and require a Nebraska sales use tax permit if such permit is required by the state.

(d) All peddler permits will be issued by the permits and inspection office, and the permit shall show the name and address of the permittee, the kind of goods to be sold or services to be furnished or performed, the date of issuance, the location (if applicable), and the length of time for which the permit is valid. Peddlers going door to door will also receive a photo identification badge, which they shall carry at all times.

(5) Qualifications of applicant for permit. No permit shall be issued to a person applying for a peddler permit who is under the age of 16 unless the applicant first obtains an employment certificate as required by state law.

Any person whose permit has been revoked pursuant to subsection (18) of this section shall not be eligible for the issuance of a new permit for a period of six months from the date of revocation and upon meeting the other qualifications required hereunder.

(6) Transfer of permit. Permits issued under this section shall be nontransferable, and no such permit shall be used at any time by any person other than the one to whom it was issued.

(7) Duty of police to enforce. It shall be the duty of any police officer of the city to enforce the provisions of this section against any person found to be violating the same. The chief of police shall report to the planning department all convictions for violations of this section.

(8) Hours restricted. It shall be unlawful to make door-to-door in-person calls as a peddler to prospective customers before 8:00 a.m. or after 6:00 p.m. on any day of

the week unless requested to do so by the prospective customer.

(9) Exhibition of permit. Peddlers without vehicles or stands shall exhibit their permits at the request of any police officer or city inspector, or at the request of any prospective customer. Peddlers with vehicles or stands shall exhibit their permits in such a manner that they are readily visible to any police officer, city inspector, or customer without the necessity of a request to see such permits.

(10) Expiration of permit. All permits issued under the provisions of this section shall expire on the date shown on the permit, which is based on the tax paid.

(11) Public property bond. Any peddler maintaining or displaying upon any sidewalk or other city owned property any stand for the sale of produce or other merchandise, articles or things, or to display any produce or other merchandise, articles, or things, shall file with the application a bond in the amount of \$10,000.00, or in an amount otherwise required by the mayor's office. The surety of such bond shall be a corporate surety company authorized to do business in this state. The bond and surety thereon shall be approved by the city attorney before the permit becomes effective. Such bond shall be conditioned:

(a) That the person to whom the permit shall be issued, and his heirs, successors or assigns, shall save and keep the city free and harmless from any and all loss or damages or claim for damages arising from or out of the use of the space or structure therein mentioned;

(b) To provide for maintenance of the sidewalk or public way so that it is safe for public use after the permitted use is completed;

(c) For the full and complete protection of the city against any and all litigation growing out of the issuance of the permit or anything done under such permit;

(d) For the faithful performance and observance of the provisions of this section;

(e) For the prompt and full payment of any taxes or other moneys which may become due pursuant to the issuance of the permit.

(12) Consent of adjacent businessmen. The applicant shall file with the application written consent of the property owner of the premises abutting the area in which the stand or display shall be located.

(13) Obstruction of travel. The issuance of a permit shall not authorize or permit the location(s) of any stand or display of produce or other merchandise, articles, or things in a location which obstructs the sidewalk or interferes with free travel thereon.

(14) Street shows authorized. Street exhibitions, displays, festivals or shows by or under the auspices of which goods, wares and merchandise or other articles or things or food are held for sale to the public may be authorized upon the streets

and sidewalks of the city when such street exhibitions, displays, festivals and shows will not be a public nuisance or endanger the public health, safety, and welfare and will be of public interest and benefit to the city. Before any permit for such an event may be issued, the application must be approved by the public works department, and a street closing permit must be obtained.

(15) Certificate of insurance for street shows. Before a permit to conduct a street-sidewalk exhibition, display, festival or show upon the streets and sidewalks shall be issued, the applicant requesting the permit for the event shall file with the city a certificate of insurance for property damage and public liability in the amount of \$500,000.00, or an amount otherwise required by the mayor's office.

(16) Expiration of street show permit. All permits as described in subsection (14) of this section shall be valid for a period not exceeding seven consecutive days.

(17) Revocation of permit.

(a) Permits issued under the provisions of this section may be revoked by the planning director after notice and hearing for any of the following causes:

1. Fraud, misrepresentation, or false statement contained in the application for the permit;
2. Fraud, misrepresentation, or false statement made in the course of carrying on the permittee's business as a peddler;
3. Any violation of this section;
4. Conviction of any felony or violation of any municipal ordinance, state or federal law involving moral turpitude.

(b) Notice of the hearing for revocation of the permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed to the permittee at his or her last-known address at least five days prior to the date set for the hearing.

(18) Appeals. Any person aggrieved by the action of the police department or planning department in denial of an application for a permit as provided in subsection (4) of this section or in a decision with reference to the revocation of a permit as provided in subsection (18) of this section shall have the right of appeal to the administrative board of appeals. Such appeal shall be made in writing by filing with the planning department, within ten days after notice of the action complained of has been mailed to such person's last-known address. The appeal shall set forth the grounds for the appeal. The planning department shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in subsection (18) of this section for notice of hearing on revocation. The decision and order of the administrative

board of appeals on such appeal shall be final and conclusive.

(19) Exceptions. The provisions of this section shall not apply to:

(a) Officers or employees of the city, county, state, or federal government or any subdivision thereof when on official business;

(b) Any person selling or offering for sale merchandise or services in conjunction with a charitable solicitation for which a valid solicitation permit has been issued under the provisions of section 20-7 of this Code.

(20) Penalty for violations. Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with section 1-10. Each day that a violation of this section continues shall constitute a separate and distinct offense and shall be punishable as such.

The penalty provided in this section shall be cumulative with and in addition to the revocation of a permit granted under the provisions of this section.

(21) Fees. Prior to the issuance of a peddler's permit, the applicant shall pay an occupation tax based on the duration of the permit. That tax shall be:

One week . . . \$15.00

One month . . . 30.00

Six months . . . 50.00

One year . . . 75.00

Additional fee for photo identification, if applicable . . . 10.00

The tax amounts for the first week of the permit and the photo identification are not refundable if the application is denied.

(Code 1980, § 19-89; Ord. No. 33756, § 17, 12-19-95; Ord. No. 34192, § 1, 5-20-97)

Cross references: Peddled goods, § 11-41 et seq.; soliciting contributions, § 20-7; street vendors, § 20-8; sales, ch. 30; private use of public property, § 34-141 et seq.

Annotations-- n ordinance levying an occupation tax and making further requirements on every person or corporation not a regular retail merchant in the state to display samples in any wholesale room, rented or occupied temporarily for the purpose of securing retail orders, is invalid as a discrimination against interstate commerce. *Best v. Omaha*, 149 Neb 868, 33 NW2d 150 (1948).

An ordinance imposing an occupation tax and requiring a license for the sale or solicitation of orders for goods constitutes unlawful interference with interstate commerce, as applied to solicitation of orders for goods not within the orders are accepted from other states in fulfillment of orders previously taken. *Best v. Omaha*, *ibid.*