

## ORDINANCE NO. 1734

### AN ORDINANCE REGULATING THE LICENSING OF SOLICITORS, PEDDLERS, TRANSIENT MERCHANTS, STREET SALESMEN, AND MOBILE FOOD VENDORS WITHIN THE CORPORATE LIMITS OF THE CITY OF NORTON, KANSAS BY AMENDING AND RESTATING ARTICLE 1, CHAPTER 5 OF THE NORTON CITY CODE

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NORTON, KANSAS:

**Section 1.** That Chapter 5, Article 1 of the Code of the City of Norton, Kansas, is hereby amended to read as follows:

#### 5-101. Definitions.

For the purposes of this article, the following words shall be considered to have the following meanings:

(a) Soliciting shall mean and include any one or more of the following activities:

- (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or
- (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or
- (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

(b) Solicitor shall mean any individual, whether resident of the city or not, whose business is mainly or principally carried on by traveling either by foot, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, 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 the subject of such sale or whether he or she is collecting advance payments on such sales or not. Such definition shall include any person, who, for himself, herself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

(c) Peddler shall mean any person, whether a resident of the city or not, traveling by foot, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad boxcar or other vehicle or conveyance, and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this ordinance shall be deemed a peddler.

(d) Transient merchant, itinerant merchant or itinerant vendor are defined 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, tent, railroad boxcar, or boat, 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.

(e) Street salesman shall mean any person engaged in any manner in selling merchandise of any kind from a vehicle or stand temporarily located on the public streets or sidewalks of this city.

(f) Mobile Food Vendor shall mean any business which sells pre-packaged food, prepared food, or on-site prepared food or edible goods from (1) a mobile food truck or other vehicle equipped with a self-contained motorized unit; (2) a concession cart or other mobile vending unit that must be moved by non-motorized means; or (3) a concession trailer or other mobile vending unit which is pulled by a motorized unit and has no power to move on its own. Catering or delivery vehicles used merely for delivery of food or edible goods to a residence or place of business pursuant to pre-order shall not constitute a Mobile Food Vendor.

### **5-102. License required.**

It shall be unlawful for any person to engage in any of the activities defined in the preceding sections of this article, within the corporate limits of the City without then having a license therefore in his or her possession and issued by the City Clerk.

### **5-103. Same; application required.**

Before the City Clerk may issue any license required by this article, he or she shall require a sworn application in writing on a form to be supplied by the City Clerk which shall give the following information:

- (a) Name and description of applicant;
- (b) Permanent home address and full local address of applicant;
- (c) A copy of the applicant's Driver's license;
- (d) Identification of vehicle used by applicant including license therefore used by applicant in conducting his or her business;
- (e) A brief description of the nature of the business to be carried on or the goods to be sold and the length of time such applicant has been engaged in the business;
- (f) If employed, the name and address of the employer, together with credentials establishing such relationship, including the authority by the employer authorizing the applicant to represent the employer in conducting business;
- (g) The length of time which business is proposed to be carried on;
- (h) The place where services are to be performed or where the goods or property proposed to be sold or orders taken for the sale thereof are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;
- (i) A statement as to whether or not the applicant has within two years prior to the date of the application been convicted of any crime (other than minor traffic violations) or violation of any municipal law regulating peddlers or solicitors and giving the nature of the offenses, the punishment assessed therefore, if any, and the City and state where conviction occurred;

(j) The applicant's Kansas Sales Tax number;

(k) The applicant's Kansas Food Establishment license;

(l) Written consent from the property owner or lessee to use the property on which the business will be operated (if applicable).

**5-104. Issuance; county residents.**

(a) Except as provided in section 5-109, if the applicant is a current resident of Norton County, Kansas, upon receipt of an application for a license and payment of the license fee, the City Clerk shall issue the license. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance and length of time the license shall be operative, and the nature of the business involved. The City Clerk shall keep a permanent record of all such licenses issued and submit a copy of such license to the chief of police. The peddler, solicitor, merchant, or vendor shall carry the license certificate at all times.

(b) If the applicant is not a current resident of Norton County, Kansas, a license will not be issued until after investigation and payment of the investigation fee as provided in sections 5-105:106.

**5-105. Same; investigation and issuance; non-county resident.**

(a) Upon receipt of the above application from an applicant who is not a current resident of Norton County, Kansas, the City Clerk shall refer the same to the chief of police who shall cause an investigation of the fact stated therein to be made within not to exceed five days.

(b) If as a result of the investigation, the applicant's character or business responsibility is found to be unsatisfactory or the facts stated therein to be untrue, the chief of police shall endorse on such application his or her findings and endorse his or her disapproval of the application and the reasons for the same and shall return the application to the City Clerk who then shall notify the applicant that his or her application is disapproved and that no license will be issued.

(c) If however, the investigation of such application discloses that the character and business responsibility and the facts stated in the application are satisfactory and true, the chief of police shall endorse his or her findings and approval on the application and return the same to the City Clerk who shall, upon payment of the license and investigation fees prescribed, issue a license to the applicant to engage in the business described in the application. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance and length of time the license shall be operative, and the nature of the business involved. The City Clerk shall keep a permanent record of all such licenses issued and submit a copy of such license to the chief of police.

**5-106. Same; investigation fee.**

At the time of filing the application, a non-refundable fee shall be paid to the City Clerk to cover the cost of investigation of the facts stated in the foregoing application. This fee shall be set by resolution.

**5-107. License fee; time limits; exemptions.**

(a) The fee for the license required pursuant to section 5-102 shall be set by resolution of the governing body. Fees for all entities other than a mobile food vendor shall consist of a 6-month license fee or a one-year license fee. Fees for a mobile food vendor shall consist of a daily license fee, weekly license fee, 6-month license fee, and one-year license fee.

(b) Any such license granted upon application as required hereinabove shall be limited to and effective only on the days set out in the license. Solicitation or sales by any peddler, solicitor, transient merchant, street salesman, or food vendor shall be conducted only between the hours of 8:00 am. and 9:00 p.m., unless such vendor is a part of a special event, fair, or celebration and has the approval of the City Administrator or his or her designee.

(c) No license or fee shall be required of:

- (1) any person selling products of the farm or orchard actually produced by the seller;
- (2) any businesses, trades, or occupations which are part of fairs or celebrations sponsored by the City or any other governmental subdivision;
- (3) transient merchants on routine routes who visit regular customers;
- (4) transient merchants who pay a regular, monthly rent, throughout the year, at a physical location in Norton, if a written lease and evidence of rent is submitted to the City Administrator or City Clerk;
- (5) any not-for-profit or charitable organization as determined by the City Administrator or City Clerk; or
- (6) sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business.

#### **5-108. Renewal.**

All licenses issued shall be subject to renewal upon a showing of compliance with sections 5-101:103 of this article within a six-month period prior to the renewal date. The City Clerk need not require an additional application under section 5-103 or an additional investigation and investigation fee under sections 5-105:106 unless complaints have been received of violations of the conditions under which any license has heretofore been issued. The City Clerk shall not renew or extend any license where there is satisfactory evidence of any grounds for the suspension or revocation of any prior license, and the applicant shall be required to apply for a license as in the case of an original license.

#### **5-109. Denial, revocation or suspension of license; notice.**

(a) The City Clerk or chief of police may deny any application or may revoke or suspend for a period of not to exceed 30 days any license issued under this article, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business.
- (3) Any violation of this article.
- (4) Conducting a business as defined in section 5-101 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 denial, revocation or suspension of a license shall be given in writing to the applicant or mailed to his or her last known address and the City Clerk shall set forth the grounds of such denial, revocation or suspension.

- (5) Conviction of the crime of theft, larceny, fraud, embezzlement, or any felony within two years prior to the application date.

**5-110. Appeal to Governing Body.**

(a) Any person aggrieved by the action of the chief of police or City Clerk in the denial of an application or revocation or suspension of a license as provided in this article, shall have the right of appeal to the Governing Body.

(b) Such appeal shall be taken by filing with the City Clerk within 14 days after notice of revocation, suspension, or denial of the license has been given to or mailed to such applicant's last known address and setting forth the grounds for appeal.

(c) The Governing Body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided herein for notice of denial, revocation or suspension.

(d) The decision and order of the Governing Body on such appeal shall be final and conclusive.

**5-111. Regulations.**

(a) It shall be unlawful for any peddler, solicitor, transient merchant, street salesman, or mobile food vendor to make false or fraudulent statements concerning the quality or nature of his or her goods, wares and merchandise for the purpose of inducing another to purchase the same.

(b) Peddlers, solicitors, transient merchants, street salesmen, and mobile food vendors are required to exhibit their license at the request of any person to whom they attempt to sell their goods, wares, and merchandise or take orders for future delivery of the same.

**5-112. Use of streets and sidewalks.**

Except when authorized in writing by the City Clerk, no peddler, solicitor, transient merchant, street salesman, or mobile food vendor or any other person shall have exclusive right to any location in the public streets for the purpose of selling or soliciting sales, nor shall any person be permitted a stationary location in the public streets, nor shall any person be permitted to operate in the sidewalks and streets within the fire limits of the City or any congested area where his or her operations might impede or inconvenience the public.

**5-113. Disturbing the peace.**

Except when authorized in writing by the City Clerk, no peddler, solicitor, transient merchant, street salesman, or mobile food vendor nor any person in his or her behalf, shall use any sound device, including any loud-speaking radio or sound-amplifying system upon any of the streets, alleys, parks or other public places of the City or upon any private premises in the City where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which such licensee proposes to sell.

**5-114. Penalties.**

Any person found in violation of this article, shall be fined not less than \$150 and not more than \$500.

**5-115. Soliciting; nuisance.**

(a) The practice of being in and upon private residences in the City of Norton, Kansas, by solicitors, peddlers, hawkers, itinerant merchants, and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences, for the purpose of soliciting orders for the sale of goods, wares, and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance, and punishable as such nuisance as a misdemeanor.

(b) The Chief of Police and Police Department of the City of Norton are hereby required and directed to suppress the same, and to abate any such nuisance as is described in subsection (a).

(c) Any person convicted of perpetrating a nuisance, as described and prohibited in subsection (a), upon conviction thereof shall be fined a sum not less than Twenty-five (\$25.00) dollars or more than Five Hundred (\$500.00) dollars.

**Section 2.** That any ordinances in conflict herewith are hereby amended.

**Section 3.** This ordinance becomes effective upon publication in the official city newspaper.

**PASSED AND ADOPTED** by the Governing Body of the City of Norton, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Jerry Jones, Mayor

Attest:

\_\_\_\_\_  
Darla R. Ellis, City Clerk

First Reading: 07-01-2020  
Second Reading: 07-15-2020  
Third Reading: 08-05-2020