ORDINANCE NO. 10-2023

AN ORDINANCE TO CORRECT THE PARAGRAPH NUMBERING OF CHAPTER 10, ARTICLE 2, ENTITLED “PEDDLERS, SOLICITORS, STREET VENDORS, AND TEMPORARY MERCHANTS,” TO PROVIDE FOR THE REPEAL OF ANY ORDINANCE OR PART OF ORDINANCE IN CONFLICT HEREWITH; TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM; AND TO PROVIDE AN EFFECTIVE DATE HEREWITH.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF WAKEFIELD, NEBRASKA:

Section 1. That Chapter 10, Article 2, of the Municipal Code of the City of Wakefield be renumbered as follows:

§ 10-201 PURPOSE AND INTENT.

It is the intent of the City of Wakefield in enacting this article:

(1) To serve and protect the health, safety and welfare of the general public.

(2) To establish a uniform set of rules and regulations that are fair and equitable.

(3) To develop a vending system that will enhance the overall appearance and environment along public streets, pedestrian ways, and other public properties;

(4) To provide economic development opportunities to small entrepreneurs in the City and its environs; and

(5) To promote stable vendors who will enrich the City’s ambiance and be assets to public security.

The regulations contained in this article are not intended to prohibit or hamper speech that is protected by the First Amendment of the United States Constitution, but merely to regulate specific activities that are commercial in nature.

§10-202 DEFINITIONS.

(1) *Peddler* shall mean a person, or persons, travelling from place to place, selling and delivering goods, wares, or merchandise at the same time. *Peddling* shall mean the business conducted by a peddler.

(2) *Solicitor* shall mean a person, or persons, travelling from place to place not carrying goods, wares, or merchandise, but taking orders for future delivery to the general public. *Soliciting* shall mean the business conducted by a solicitor.

(3) *Street vendor* shall mean a person, or persons, who travel from street to street upon public or private property, carrying, conveying, or transporting goods, wares, or merchandise, such as, but not limited to, food, beverages, flowers, balloons, and wearing apparel, offering and exposing the same for sale by hand or from a motorized vehicle or from a mobile-type device such as a push cart, lunch wagon, handcart, or bicycle. *Street vending* shall mean the business conducted by a street vendor.

(4) *Temporary merchant* shall mean a person, or person, who occupies a temporary, fixed location, sells and delivers from stock on hand, and does business in much the same manner as a permanent business. *Temporary vending* shall mean the business conducted by a temporary merchant.

(5) *Business of vending* shall mean peddling, soliciting, street vending, or temporary vending.

§10-203 PERMITS.

Any peddler, solicitor, street vendor, or temporary merchant, as defined in this article, shall obtain a permit from the Office of the City Clerk prior to engaging in the business of vending within the City of Wakefield. An application for a permit shall be filed with the Office of the City Clerk on a form supplied by that office. A nonrefundable permit fee shall accompany the application.

A permit for a peddler, a solicitor, or a street vendor shall expire seven (7) calendar days from the date of the permit.

A permit for a temporary merchant shall expire one year from the date of the permit.

§10-204 PERMIT FEES.

The amount of the permit fee shall be established from time to time by resolution of the City Council. Vendors of fireworks stands, unless otherwise exempt as set forth in this article, shall be required to get a permit but shall be exempt from the permit fee.

§10-205 OCCUPATION TAX.

Any peddler, solicitor, street vendor, or temporary merchant shall, prior to engaging in the business of vending within the City of Wakefield, pay any occupation tax required pursuant to Chapter 10, Article 7 of the Wakefield Municipal Code.

§10-206 EXEMPTIONS.

The provisions of this article shall not pertain to:

(1) Those persons whose entire profits from such activities are contributed to a charitable, religious or educational organization, association or institution.

(2) Those persons who conduct business in conjunction with a community festival or event.

(3) Those persons who are selling or delivering for sale fruits and vegetables grown in Dixon, Wayne, or Thurston Counties.

(4) Wholesale salesmen soliciting merchants directly.

§10-207 GENERAL APPLICATION REQUIREMENTS.

All applicants for a permit to conduct the business of vending within the City of Wakefield shall be required to:

(1) Provide personal photo identification including date of birth, and/or driver’s license. (2) Complete a consent form which authorizes the police department to make criminal history inquiries.

(3) Upon request, applicant shall submit to being photographed and or fingerprinted prior to receiving a permit.

(4) Specify a contact person to receive complaints against the business.

(5) List the names and provide identification required in paragraphs (1) through (3) above of all individuals within the area who will be working for the applicant.

(6) If a motor vehicle is to be used in the vending business, a description of the vehicle together with license number, and a certificate of insurance on the vehicle.

(7) Provide a description of the merchandise which will be offered for sale.

§10-208 SPECIAL STANDARDS FOR PEDDLERS, SOLICITORS, AND STREET VENDORS.

(1) Peddlers and solicitors shall limit their hours of operation to only those hours

between 8:00 a.m. and 8:00 p.m. Monday through Saturday, and from 1:00 p.m. and 8:00

p.m. on Sunday.

(2) Street vendors shall limit their hours of operation to only those hours between 8:00

a.m. and 10:00 p.m. Monday through Saturday, and from 1:00 p.m. and 10:00 p.m. on Sunday.

(3) No peddler or solicitor shall enter uninvited into a private building, structure, or room.

(4) Peddlers and solicitors when conducting their business shall:

(a) Present to the person being solicited identification of themselves

and the person whom, or firm, association, organization, company, or

corporation which they represent;

(b) Explain the purpose of the peddler’s or solicitor’s call;

(c) Inquire whether the person being solicited is interested in listening

to a sales presentation and immediately discontinue the solicita-

tion if the person being solicited gives a negative response;

(d) During the course of the solicitation, provide in writing the total

cost of the goods and services offered for sale and the number,

timing and amount of installment payments if payment on an

installment basis is available to the person being solicited.

(5) A permit for a peddler or solicitor shall be carried on the person of the peddler or solicitor, and the peddler or solicitor shall be required to show his or her permit to any customer or police officer upon request.

(6) A permit for a street vendor shall be displayed by the street vendor in a visible location, and the street vendor shall be required to show his or her permit to any customer or police officer upon request.

§10-209 SPECIAL STANDARDS FOR TEMPORARY MERCHANTS.

(1) A temporary merchant shall limit his or her hours of operation to only those hours between 7:00 a.m. and 10:00 p.m. Monday through Sunday.

(2) If the temporary vending business is being conducted on private property, the

temporary merchant shall have available at the business location a signed, written consent from the owner of the property which authorizes the temporary merchant to conduct business from the property.

(3) The temporary merchant shall obtain written authorizations from the City Clerk and the police department permitting sales from public property.

(4) The activities of the temporary merchant shall not impair or impede the proper flow of traffic on public or private property.

(5) The activities of the temporary merchant shall not unduly restrict parking spaces on public or private property.

(6) The permit for a temporary merchant shall be displayed by the temporary merchant in a visible location, and the temporary merchant shall be required to show his or her permit to any customer or police officer upon request.

(7) Temporary merchants shall comply with all intersection site line setback require­ ments of the City zoning regulations for the purpose of traffic safety.

(8) Signs for temporary vendors shall be of professional appearance and mounted upon the vehicle used for sales. No free-standing signs shall be permitted.

(9) Temporary merchants are limited to the use of no more than two (2) signs.

(10) A temporary merchant must remove all trash or debris within 50 feet of the vehicle or stand used for temporary vending at the conclusion of each workday. Temporary merchants must provide at least one trash container at each temporary vending site.

§10-210 PERMIT APPROVAL.

The City Clerk’s office shall have the authority to approve or deny any application for a permit to be issued under this article. A permit shall not be issued to any applicant:

(1) Who has been convicted of any one or more of the following crimes: theft, burglary, robbery, fraud, deceit, child molestation, or any other crime of violence.

(2) Who has a previous history of violations of this article involving door-to-door sales.

(3) Who has provided false information on the application form.

(4) Who has failed to comply with any condition, standard or requirement of this article.

§10-211 VIOLATIONS.

It shall be a violation of the provisions of this article to:

(1) Conduct the business of peddling, soliciting, street vending, or temporary vending without a permit issued by the Office of the City Clerk.

(2) Make a fraudulent or knowingly false statement or misrepresentation in the application for a permit.

(3) Make a fraudulent or knowingly false statement or misrepresentation in the course of carrying on the business for which a permit was issued.

(4) Conduct the business for which the permit was issued in any manner contrary to the conditions of the permit.

(5) Conduct the business for which the permit was issued in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners.

§10-212 PENALTIES.

The penalty for violating any provision of this article shall be a fine not exceeding $500.00 for each offense. Each day that a violation continues shall constitute a separate offense.

Any permit so granted shall be subject to revocation for good and sufficient cause by the Office of the City Clerk.

§10-213 APPEALS.

Any party to whom a permit is denied or any party whose permit has been revoked may appeal such action to the City Council. The appeal must be in writing and delivered to the City Office within thirty (30) days of the date of denial. The City Council shall schedule a hearing no later than thirty (30) days from the date of delivery of the written appeal to the Office of the City Clerk.

Section 2. All original sections of Article 10, Section 2, of the Wakefield Municipal Code and any other ordinances in conflict herewith are hereby repealed.

Section 3. If any section, subsection, sentence, clause or phrase of this ordinance is held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. This ordinance shall become effective upon its passage, approval and publication as required by law. Publication may be in pamphlet form.

Passed and approved this 6th day of June, 2023.

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Jim Lehmkuhl, Mayor

Attest:

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Pam Vander Veen, City Clerk