

ORDINANCE NO. 1282

AN ORDINANCE TO ESTABLISH BUSINESS PERMITS AND REGULATIONS AS CHAPTER 113 OF THE BROKEN BOW CITY CODE; PROVIDE REGULATION OF ITINERANT MERCHANTS AND VENDORS; TO REPEAL ALL ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH; AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BROKEN BOW, NEBRASKA, AS FOLLOWS:

Section 1. That Chapter 113 of the Broken Bow City Code is hereby amended to read as follows:

CHAPTER 113

BUSINESS PERMITS AND REGULATIONS

Sec. 113-1	Vendors
Sec. 113-1.1	Purpose and Intent
Sec. 113-1.2	Definitions
Sec. 113-1.3	Permit Required
Sec. 113-1.4	Application for Permit
Sec. 113-1.5	Health Inspection Certificate
Sec. 113-1.6	Issuance of Permits
Sec. 113-1.7	Permit Fees
Sec. 113-1.8	Display of Permits
Sec. 113-1.9	Notification Change
Sec. 113-1.10	Exemptions
Sec. 113-1.11	Claims of Exemption
Sec. 113-1.12	Littering and Trash Removal
Sec. 113-1.13	Itinerant Merchant Rules
Sec. 113-1.14	Prohibited Conduct
Sec. 113-1.15	Penalties
Sec. 113-1.16	Suspension and Revocation of Permit
Sec. 113-1.17	Appeals
Sec. 113-1.18	Renewals
Sec. 113-1.19	Construction
Sec. 113-1.20	Advertising Signs

Sec. 113-1 Vendors

- **Itinerant Merchant** shall include “transient merchant”, “transient vendor”, and “itinerant vendor” engaged in transacting any temporary or transient business in the City within one locality or traveling from place to place in the sale of merchandise.
 - **Peddler** shall mean any person who shall carry and offer to sell any merchandise from place to place. (Cottage Food Registration and Egg Code Numbers may apply to specific peddler permits)
 - **Solicitor** shall mean any person traveling by foot from house to house or from street to street or from a fixed location taking orders for the sale of merchandise.

- **Mobile Food Vendor** shall mean any person preparing and offering food or beverages for sale from a cart, truck or other vehicle or conveyance who has obtained an Itinerant Merchant Permit from the City.

Sec. 113-1.1 Purpose and intent.

It is the intent of the council 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,
- (5) To promote regulation of vendors who will enrich the city's ambiance and to further promote small businesses and entrepreneurship.

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.

Sec. 113-1.2 Definitions.

When used in this article, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Conveyance includes any public or privately owned vehicle, method or means of transporting people, bicycles, motorized or non-motorized vehicle, handcart, pushcart, lunch wagon or any other device or thing, whether or not mounted on wheels;

Goods, wares, merchandise shall include, but not be limited to, fruits, vegetables, farm products or provisions, dairy products, fish, game poultry, meat, plants, flowers, appliances, wearing apparel, jewelry, ornaments, artwork, toys, cosmetics and beauty aids, health products, medicines, household needs or furnishings, food of any kind, whether or not for immediate consumption, confections or drinks. For other specialty items requiring state or federal permits, said applicable state and/or federal rules shall be adhered to.

Intersection means the convergence of two or more public ways and, for purposes of this article, proximity measurements will be taken from the outermost perimeters of said converging public ways;

Motor vehicle means any vehicle used for displaying, storing, or transporting articles for sale by a vendor which is required to be licensed and registered by the state department of motor vehicles of any state;

Private space shall include privately owned property, whether developed or undeveloped, which is properly zoned for retail sales;

Public space all city-owned property, including but not limited to parks and city-owned property within street rights-of-way, including any roadways and sidewalks and parking lots;

Public way means all areas legally open to public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the areas surrounding and immediately adjacent to public buildings;

Pushcart means any wheeled vehicle approved by the City and in accordance with this article designed for carrying property and for being pushed by a person without the assistance of a motor or motor vehicle;

Sidewalk means all areas legally open to public use as a pedestrian public way between the curb line and the legal building line of the abutting property;

Special event means any occasion approved by the city, including but not limited to Market on the Square, fairs, shows, exhibitions, city-wide celebrations, and festivals taking place within a specifically defined area within the jurisdiction of the City of Broken Bow, Nebraska, for a specific period of time;

Stand means any showcase, table, bench, rack, handcart, pushcart, stall or any other fixture or device that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise upon a sidewalk;

Street means all that area legally open to public use as public streets, and sidewalks, roadways, highways, parkways, alleys and any other public way;

Vendor and/or Vending means any person, traveling by foot, wagon, vehicle or any other type of conveyance from street to street carrying, conveying, or transporting goods, wares, or merchandise and offering and exposing them for sale, or making sales and delivering articles to purchasers; or who, without traveling from place to place, exhibits, displays, sells or offers for sale such products from a wagon, handcart, pushcart, motor vehicle, conveyance or from his person while on the public ways of the City of Broken Bow, Nebraska, or upon private space. A "Vendor" also includes any street vendor, hawker, huckster, itinerant merchant, transient vendor, door-to-door salesperson; and,

Vehicle means every device in, upon, or by which a person or property may be transported or drawn upon a street or sidewalk, including, but not limited to, devices moved by human power.

Sec. 113-1.3 Permit required.

It shall be unlawful for any person to engage in the business of vending unless he or she has first obtained a permit from the City. All permits shall be issued according to regulations established by the City. Each conveyance or location must obtain a separate permit.

Sec. 113-1.4 Application for permit.

The application for a vending permit shall contain all information relevant and necessary to determine whether a particular permit may be issued, including but not limited to:

- (1) The applicant's full name, permanent address, telephone number and valid government issued photo identification;
- (2) A brief description of the nature, character and quality of goods, wares or merchandise to be offered for sale;
- (3) The specific location, in which the vendor intends to conduct business, and the

- length of time during which it is proposed the business will be conducted;
- (4) If the applicant is employed by another, the name and address of the person, firm, association, organization, company or corporation;
 - (5) If a motor vehicle is to be used, a description of the vehicle together with a valid motor vehicle registration number and license number;
 - (6) A sales tax permit as required by Neb. R.S. § 77-2705 and Department of Agriculture Food Permit;
 - (7) If applicable, Cottage Food Registration and Egg Code Numbers, which may apply to specific peddler permits;
 - (8) If the applicant intends to operate on private property, not owned by the applicant, the location, and written permission of the record title owner of the private space;
 - (9) Proof of Applicable Liability Insurance.

Sec. 113-1.5 Health inspection certificate.

Any application for a vending permit to engage in the sale of prepared food or beverages shall be required to furnish and maintain a certificate of health inspection from the Nebraska Department of Agriculture. The applicant's equipment shall be subject to inspections at the time of application and at periodic intervals thereafter. Applicant is responsible for maintaining a valid certificate throughout the entirety of duration of the permit.

Sec. 113-1.6 Issuance of permit.

The City shall deny any application for permit when:

- (a) it shall appear that a permit shall be in conflict with any of the provisions of this Chapter;
- (b) when the applicant shall not provide the required information, in a timely manner as provided herein;
- (c) when a permit shall be in conflict with a permit previously issued for a specific location; or
- (d) city reserves the right to deny, accept or revoke any and all permits for good cause shown, including but not limited to public safety and sanitation.

The applicant shall be notified in writing by the City of the city's decision to issue or deny the vending permit, no later than thirty (30) days after the applicant has filed a completed application with the City. Applications received within (30) days of the desired sale date are not guaranteed approval by the desired sale date.

Each permit shall show the name and address of the permittee, the type of permit issued, the kind of goods to be sold, the amount of the permit fee, the date of issuance, the permit number, the expiration date, an identifying description of any vehicle or conveyance used by the permittee plus, where applicable, the motor vehicle registration number.

All permits issued under this section are valid for the term of the permit fee paid by the vendor unless suspended or revoked and shall be both non-assignable and non-transferable.

Sec. 113-1.7 Permit fees.

Any vendor granted a vending permit under this article shall pay a permit fee as established by a separate fee ordinance.

Sec. 113-1.8 Display of permits.

Any permit issued by the City shall be carried with the permittee whenever he/she is engaged in vending. Certificates of health inspection shall also be properly and conspicuously displayed at all times during the operation of the vending business.

A certificate of health inspection shall be deemed to be properly displayed when attached to the vending pushcart, vehicle, stand or other conveyance, and clearly visible to the public and law enforcement officials.

Sec. 113-1.9 Notification change.

All vendors shall ensure that a current and correct name, residence address, mailing address and telephone number are on file with the City. Whenever either the name or address provided by a permitted vendor on his or her application for a vending permit change, the permittee shall notify the City in writing within seven days of such change and provide the same with the name change or address change. The vendor must notify the City whenever he or she changes the nature of the vending operation, such as adding prepared food merchandise when food was previously not offered.

Sec. 113-1.10 Exemptions.

The provisions of this article do not apply to:

- (1) Goods, wares, or merchandise temporarily deposited on the sidewalk in the ordinary course of delivery, shipment or transfer;
- (2) Persons, including farmers or farmers' cooperative associations, selling, offering for sale or soliciting orders for the following items grown or produced by them and not purchased by them for sale: Newspapers, firewood, Christmas trees, vegetables, or fruits; provided, that a dairy who uses on the streets of the City one (1) or more delivery trucks or vehicles, may sell and deliver from its trucks, or vehicles, milk, butter, cream and eggs, dairy products, and frozen food products on customer subscribed routes;
- (3) The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals and paperbound books;
- (4) The distribution of free samples of goods, wares and merchandise by any individual from his person;
- (5) Salesman or agents for wholesale houses or firms who solicit orders from, or sell to, retail dealers in the county for resale or other commercial purposes or to manufacturers for manufacturing or other commercial purposes;
- (6) Sales to wholesale or retail merchants, by sample, for future delivery made by representatives of established wholesalers or manufacturers;
- (7) Yard sales conducted on residentially zoned property;
- (8) The distribution of goods for which there is no charge;
- (9) Persons giving, selling or offering for sale goods, wares or merchandise, or soliciting orders for sale of same who qualify as bona fide nonprofit organizations under Section 501(c) of the Internal Revenue Code or which are organized and operated exclusively for nonprofit, religious, charitable, educational or civic purposes or where persons selling or offering for sale goods, wares or merchandise, or soliciting orders for sale of the same do so in an event held exclusively for nonprofit, religious, charitable, educational or civic purposes;
- (10) Recognized, established charitable organizations which have a business location in Custer County, Nebraska;
- (11) Persons soliciting on behalf of a candidate for public office or on behalf of a political party;

- (12) Merchants offering goods for sale from a permanent structure in an appropriate zoning area of the City of Broken Bow;
- (13) Fireworks Stands licensed and regulated by the State of Nebraska. Fireworks are covered under Ordinance 1224.
- (14) The city reserves the right to exempt community wide events at the City's discretion.

Sec. 113-1.11 Claims of exemption and notice requirements.

Any person claiming to be legally exempt from the regulations set forth in this article, or from the payment of a permit fee, shall cite to the City Clerk the statute or other legal authority under which exemption is claimed and shall present to the City Clerk proof of qualification for such exemption. The City Clerk shall respond within 30 days.

Itinerant Merchants having successfully met the requirements for exemption, shall notify the City of Broken Bow of the following information, no later than two hours prior to the commencement of sales activities:

- (1) The exempt vendor's full name, permanent address, and telephone number;
- (2) A brief description of the nature, character and quality of goods, wares or merchandise to be offered for sale;
- (3) The specific location, in which the vendor intends to conduct business, and the length of time during which it is proposed the business will be conducted;

If the merchant is commencing sales Monday through Friday, the City of Broken Bow shall be notified; either in person at the Municipal Building, located at 314 South 10th Avenue, or via telephone at 308-872-5831, between the hours of 8 a.m. and 5 p.m.

If the merchant is commencing sales on Saturday, Sunday, a holiday, or after regular business hours, the City of Broken Bow shall be notified; either in person at the Broken Bow Police Station, located at 116 South 11th Avenue, or via telephone at 308-872-6424.

Sec. 113-1.12 Littering and trash removal.

Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their businesses. All trash or debris accumulating within 100 feet of any vending stand shall be collected by the vendor and disposed of appropriately off site.

Persons engaged in food vending shall affix to their vending station, vehicle, pushcart or other conveyance a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

Sec. 113-1.13 Itinerant Merchant Rules.

- (1) The holder of the Itinerant Merchant Permit shall not park on any City property unless participating in a Special Event authorized and approved by the City.
- (2) When vending on City property during Special Events, due to the nature of the electrical demands required, Mobile Food Vendors shall not be permitted to utilize City electrical outlets.
- (3) When vending on City property during Special Events, Peddlers and Solicitors shall be required to ensure that, all cords used to provide electrical service to vending operations, be appropriately covered, or made safe, so as not to create a tripping hazard.

- (4) It shall be unlawful for an itinerant merchant to consume, sell or offer to sell alcoholic drinks.
- (5) All vendor's auxiliary equipment shall not be parked in a parking space adjacent to the corner of a street intersection.
- (6) Itinerant Merchants shall comply with all City ordinances and relevant and applicable State and Federal Laws, Rules, and Regulations.
- (7) Itinerant Merchants may park parallel to the curb on the north, east, and south sides of the City Square, during Market on the Square and only when authorized by either the Mayor or City Administrator, during other permitted special events at the City Square.
- (8) Vendors shall not be parked in a parking space adjacent to the corner of a street intersection, when permitted to park on the south side of the City Square.
- (9) A Mobile Food Vendor may sell or offer to sell food, seven (7) days a week from 7:00 am to 11:59 pm.
- (10) A Peddler may sell or offer to sell goods, wares, or services, seven (7) days a week, from 8:00 a.m. to 8:00p.m.
- (11) A Solicitor may sell or offer to sell goods, wares, or services, Monday through Friday, from 10:00 a.m. to 6:00p.m., excluding all State and Federal holidays.
- (12) Itinerant Merchant Permits shall expire on December 31 of each year, unless renewed by the permit holder. The permit holder shall renew the permit for the following year by filing with the City Clerk, on or before December 1st of each year, if the Merchant desires a valid permit by January 1st of the subsequent year. The application shall be on a form provided by the City Clerk. At the time of applying, the permit holder shall pay a permit fee per the fee ordinance.

Sec. 113-1.14 Prohibited conduct.

No person authorized to engage in the business of vending under this article shall do any of the following:

- (1) Obstruct traffic signals or regulatory signs;
- (2) Stop, stand or park any vehicle, pushcart or another other conveyance upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings;
- (3) Leave any conveyance unattended at any time; or store, park, or leave such conveyance in a public space overnight;
- (4) Use a conveyance that, when fully loaded with merchandise, cannot be easily moved and maintained under control by the permittee, his employee, or an attendant;
- (5) Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention, or otherwise violate noise regulations of the City Code;
- (6) Conduct his/her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles; and,

Sec. 113-1.15 Penalties.

The penalty for violating any provision of this article or any other applicable section of the Broken Bow City Code shall be, in addition to any other sanctions provided, a fine not exceeding \$500.00 for each offense together with revocation or suspension of the vendor's permit. Each violation

shall be evidenced by a separate written notice presented at the time of citation for the offense. Each day of violation shall be deemed a separate offense.

Any business activity in violation of this article is further declared to be a nuisance as being against the public health, safety and welfare, and in addition to any penalty imposed, the Court may enter an order of abatement as part of the judgment of that case.

Sec. 113-1.16 Suspension and revocation of permit.

In addition to the penalties contained in this article, any permit issued under this article may be suspended or revoked for any of the following reasons:

- (1) Fraud, misrepresentation or knowingly false statement contained in the application for the permit;
- (2) Fraud, misrepresentation or knowingly false statement in the course of carrying on the business of vending;
- (3) Conducting the business of vending in any manner contrary to the conditions of the permit; or
- (4) Conducting the business of vending 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.

The City shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation, and notifying the permittee of his or her right to appeal. Such notice shall be mailed to the address shown on the permit holder's application by certified mail, return receipt requested.

If the city revokes a vending permit, the fee already paid for the permit shall be forfeited. A person whose permit has been revoked under this section may not apply for a new permit for a period of one year from the date that the revocation took effect.

Sec. 113-1.17 Appeals.

If the City denies the issuance of a permit, suspends or revokes a permit, or orders the cessation of any part of the business operation conducted under the permit, the aggrieved party may appeal the City's decision to the City Administrator.

The filing of an appeal stays the action of the City in suspending or revoking a permit or any part of the business operation being conducted under such permit until the City Administrator makes a final decision, unless determined that continued operation of the vending business constitutes an imminent and serious threat to the public health or safety, in which case the City shall take or cause to be taken such action as is necessary to immediately enforce the suspension, revocation or order.

Sec. 113-1.18 Renewals.

A vending permit may be renewed, provided an application for renewal and permit fees are received by the city no later than the expiration date of the current permit. Any application received after that date shall be processed as a new application. The City shall review each application for renewal, and upon determining that the applicant is in full compliance with the provisions of this article, shall issue a new permit.

Sec. 113-1.19 Construction.

No part of this article or the article itself shall be construed to be an amplification or derogation of the rights or responsibilities of abutting property owners. Any remedies, rights or obligations provided to such property owners or their successors in interest under the law of real property or their successors in interest under the law of real property or the laws of the State of Nebraska shall be in addition to the remedies, rights, obligations or penalties provided hereunder.

Sec. 113-1.20 Advertising signs.

All signs advertising a permitted vending business hereunder must conform to the following requirements:

- (1) A maximum of two signs are allowed per vending location;
- (2) Each sign allowed may not exceed 16 square feet in area;
- (3) The signs must be attached to the trailer, tent, table or other display area of the permitted vendor; and,
- (4) Free-standing signs must be located within 3 feet of the Conveyance and no holes may be drilled on concrete, or make alterations of any kind, located on public property.

Section 2. All Ordinances or sections of Ordinances in conflict herewith are hereby repealed.

Section 3. This Ordinance shall be published in pamphlet form and take effect as provided by law.

Passed and approved this _____ day of _____, 2024.

Rodney W. Sonnichsen, Mayor

ATTEST:

Jennifer A. Waterhouse, City Clerk