

ORDINANCE 2004-01 -

AN ORDINANCE TO PROVIDE FOR LICENSING, LICENSE FEES, BONDING REQUIREMENTS, AND PENALTIES FOR TRANSIENT/TEMPORARY MERCHANTS ENGAGING IN BUSINESS IN THE CITY OF PERRYVILLE.

SECTION 1

Transient/temporary merchants are difficult to monitor due to such merchants businesses' mobile nature and the City of Perryville desires to help protect the public from improper sales techniques by providing for the licensing and regulation of transient merchants.

SECTION 2

It is the purpose and intent of the ordinance to help protect the public from improper sales techniques by providing for the licensing and regulation of transient merchants as provided for in Arkansas Code Annotated 14-54-1407.

14-54-1407 TRANSIENT VENDORS

- (a) All municipalities shall have the power to define, license, regulate, or tax transient and itinerant vendors, or transient dealers in merchandise, or transient dealers in horses and mules.
- (b) No one who conducts the same business in the same municipality for six (6) consecutive months shall be classed as a transient.

SECTION 3

As used in this ordinance, unless the context otherwise requires:

- (a) "PERSON" means any individual, corporation, partnership, association, or other entity.
- (b) "TEMPORARY OR TRANSIENT BUSINESS" means any business conducted for the sale or offer for sale of goods, wares, or merchandise which is carried on in any building, structure, motor vehicle, railroad car, or real estate for a period of less than six (6) months in each year.
- (c) "TRANSIENT MERCHANT" means any person, firm, corporation partnership, or other entity which engages in, does, or transacts any temporary or transient business in the state, either in one locality or in traveling from place to place in the state, offering for sale or selling goods, wares, merchandise, or services and includes those merchants who hire, lease, use, or occupy any building, structure, motor vehicle, railroad car, or real estate for the purpose of carrying on such business.

SECTION 4

- (a) The provisions of this ordinance 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.

- (3) Sales of goods, wares, or merchandise by sample catalogue or brochure for future delivery.
- (4) Fairs and convention center activities conducted primarily for amusement or entertainment.
- (5) Any general sale, fair auction, rally or bazaar sponsored by any church, non-profit group, civic, religious organization or any group authorized by the city council.
- (6) Garage sales held on the premises devoted to residential use or garage sales/general sales by owners of commercial property when sale is by the owner and at the owner's commercial property or by a renter of commercial property if said renter conducts business at that location on a regular daily basis.
- (7) Sales of crafts or items made by hand and sold or offered for sale by the person making the crafts or handmade items.
- (8) Sales of agricultural products, sales at farmers markets. (except nursery products and foliage plants unless such plants are offered for sale by Perry County residents)
- (9) Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.
- (10) School sponsored bazaars and sales, concessions at school athletic and other events, and sales of paraphernalia used in the celebration of any nationally recognized holiday or used in connection with any public school, university, or college related activities, flea markets, retail fireworks establishments, gun show, sales by charitable organizations, sales of coins, and expositions sponsored by government entities or by nonprofit trade associations.

(b) A transient merchant not otherwise exempted from the provisions of this ordinance shall not be relieved or exempted from the provisions of this ordinance by reason of associating himself temporarily with any local dealer, auctioneer, trader, contractor, or merchant or by conducting such temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor, or merchant.

SECTION 5

A permit or license to conduct door-to-door sales or solicitation or to establish a temporary business location shall be thirty dollars (\$30.00) per day , \$100.00 for a 90 calendar day period or \$175.00 for a six month (6) calendar day period and shall be payable during regular business hours at Perryville City Hall. License will not be transferable, be valid only for the time stated in the application, be valid only for the business/individual stated in the application and will be valid for only one (1) person unless the person shall be a member of a partnership or employee of a firm or corporation obtaining the license. Any person or business that conducts business in the City of Perryville for a consecutive six month (6) period will no longer be considered a transient or temporary merchant.

SECTION 6

- (a) Each application for a transient or temporary merchant license shall be accompanied by cash or surety bond issued by a corporate surety authorized to

do business in the state of Arkansas in the amount of two thousand dollars (2,000.00).

- (b) The surety bond shall be in favor of the City of Perryville and shall assure the payment by the applicant of all taxes that may be due from the applicant to the state or any political subdivision of the state including Perry County and the City of Perryville. The surety bond will also be for the payment of any fines that may be assessed against the applicant of its agents or employees for violation of the provisions of this ordinance, violations of tax laws or other state or local laws and for the full or partial satisfaction of judgments that may be rendered against the transient merchant or its agents or employees in any cause of action commenced by any purchaser of goods, wares, merchandise, or services within six months (6) from the date the permit is issued. The transient merchant will be responsible for all expense or costs if the bond is not sufficient to satisfy the judgment or action,
- (c) The bonds shall be maintained so long as the transient merchant conducts business in the city and for a period of six months (6) after the termination of the business. The bonds shall be released only after the transient merchant furnishes satisfactory proof to the city that it has satisfied all claims of purchasers of goods, wares, merchandise, or services from the merchant and that all state and local sales taxes and other taxes have been paid.

SECTION 7

Any transient merchant desiring to transact business in the city of Perryville will apply for and obtain a license at Perryville city hall.

The application for license will include the following:

1. The name and permanent address of the transient merchant making the application and, if the applicant is a firm or corporation, the name and address of the members of the firm or the officers of the corporation, as the case may be.
2. If the applicant is a corporation, there shall be stated on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than the State of Arkansas the date on which the corporation qualified to transact business as a foreign corporation in the State of Arkansas.
3. A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact such business, and the location of the proposed place of business.
4. The name and permanent address of the transient merchant's registered agent or office.
5. There shall be a receipt or statement showing that any personal property taxes due on goods, wares, or merchandise to be offered for sale have been paid.

SECTION 8

Any person, business or entity that transacts a transient business as defined in this ordinance or Arkansas state code without having first obtained a license in accordance with the provisions of this ordinance, or who knowingly advertises, offers for sale, or

sells any goods, wares, merchandise, or services in violation of the provisions of this ordinance shall be assessed a fine of up to \$500.00 a day with each day treated as a separate violation.

SECTION 9

- (a) It will be the duty of the Perryville police department and any other authorized law enforcement officer to enforce the provisions of this ordinance
- (b) This ordinance shall not be construed to permit a transient merchant to conduct any activity that is otherwise prohibited by state law or local ordinance.

SECTION 10

In the event that any portion of this ordinance or Arkansas State Code 14-54-1407 are declared invalid or unconstitutional for any reason the remaining portions are to remain in full force and effect.

SECTION 11

It being necessary for the preservation of the protection of the safety and welfare of the residents of the City of Perryville and to allow transient merchants to conduct business in the city in compliance with state law, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its passage and publication.

BE IT SO ENACTED AND ADOPTED BY THE PERRYVILLE CITY COUNCIL ON THIS 8th DAY OF THE MONTH OF January IN THE YEAR OF 2004 BY A VOTE OF 4 YES 0 NO

ATTEST:

Kenneth Brandon
Mayor

Joel D. Wolf
Recorder/Treasurer

14-54-1407. Transient vendors.

(a) All municipalities shall have power to define, license, regulate, or tax transient and itinerant vendors, or transient dealers in merchandise, or transient dealers in horses and mules.

(b) No one who conducts the same business in the same municipality for six (6) consecutive months shall be classed as a transient.

History. Acts 1875, No. 1, § 17, p. 1; 1917, No. 376, § 1; C. & M. Dig., § 7532; Pope's Dig., § 9601; A.S.A. 1947, § 19-2329.