

ORDINANCE NO. 5510

AN ORDINANCE REGULATING TRANSIENT MERCHANTS WITHIN THE CORPORATE LIMITS OF HOT SPRINGS, ARKANSAS.

WHEREAS, it is in the best interest of the City to govern the conduct of transient merchants with the city; and that

WHEREAS, Ordinance No 4509, as amended, regulating transient merchants should be repealed and revised.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Hot Springs, Arkansas, as follows:

SECTION 1. Definitions. The following words and phrases shall have the following meaning for purposes of this ordinance:

- (a) *Day* means a 24-hour period beginning at 12:01 a.m. and ending at 11:59 p.m. on the same date.
- (b) *Mobile Retail Food Establishment* means a vehicle mounted food service establishment designed to be readily movable and approved by law to travel highways, roadway, and/or waterways in the state of Arkansas that is self contained retail food establishment equipped with permanently mounted fresh water holding tanks and waste holding tanks.
- (c) *Non-Profit or Community Organization* means any organization recognized and designated as a not-for-profit organization under the applicable federal and state income tax rules and regulations
- (d) *Parcel of Real Property* means the legal boundary and description of each plot of real property as identified by a unique parcel number in the records of the Garland County Tax Assessor's office.
- (e) *Peddler* means any person, firm, corporation, partnership, or other entity who operates as a transient merchant and shall be considered synonymous with transient merchant.

- (f) *Permanent Business* means any business, trade, profession, vocation, or occupation located within the city operating on a continuing basis, from a fixed local business address, paying the appropriate occupation tax or business license fee and not otherwise temporary, transient, or portable in nature as defined in this ordinance.
- (g) *Prohibited Area* means a corridor two hundred feet (200') in depth along both sides of all state and federal highways within the corporate limits of Hot Springs; provided that if any given parcel of property is greater than 200 feet in depth from said highways, the entire parcel shall be included in the prohibited area.
- (h) *Seasonal food operation* means an establishment operating on a seasonal basis not to exceed 150 day period of time per calendar year, limited to the serving of dispensed drinks, coffee, snow cones, shaved ice, and other similar ice based products.
- (i) *Temporary, Transient or Portable Business* means any business, trade, profession, vocation, or occupation conducted either in one (1) location or in traveling from place to place within the corporate limits of the City, from a motor vehicle, tent, open-air stand, area or table, trailer, concession, or other transient or portable structure, vehicle, or device and offering for sale or selling goods, wares, merchandise, services, entertainment, food or beverages, or any other thing or item of value for fees or remuneration, regardless of duration, and not otherwise established and classified as a permanent business.
- (j) *Transient Merchant* means any person, firm, corporation, partnership, or other entity which engages in, does, or transacts any temporary or transient business, trade, profession, vocation, or occupation within the corporate limits of the city, either in one (1) location or in traveling from place to place, from a motor vehicle, tent, open-air stand, area or table, trailer, concession, mobile retail food establishment, or other transient or portable structure, vehicle or device.

SECTION 2. Regulations. The following regulations shall apply to the conduct of all temporary and transient businesses within the corporate limits of the city:

- (a) "Prohibited Area." Temporary or transient businesses are prohibited anywhere within the "prohibited area" as defined herein.
- (b) "Zoning and Code Compliance." Any temporary or transient business located in areas other than the prohibited area must comply with applicable portions of the zoning code (e.g., set-back requirements, proper zone for type of business, etc.). Any such business operated from a structure shall comply with all applicable building and technical codes (plumbing, electrical, etc.).
- (c) "Business License." All transient merchants shall apply for a transient merchant license which shall only be granted upon payment of the appropriate license fee, presentation of proof of Arkansas sales tax permit (as otherwise required by law) and written permission from the property owner on whose property the temporary or transient business will be located.
- (d) "Operation Days Limited." Transient merchants shall only be permitted to operate on one occasion of not more than 30 consecutive days in any given calendar year.
- (e) "License Fee." The transient merchant license fee shall be as follows and shall be in lieu of any other city occupational tax or license fee:
 - (1) One to seven days of operation \$300; or
 - (2) Eight to thirty days of operation \$500The aforesaid license fee shall be non-refundable and may not be prorated.
- (f) "License Display." Any transient merchant licensed pursuant to this ordinance shall post the license in a conspicuous place on the premises licensed.

SECTION 3. Exceptions. The provisions of this ordinance shall not apply to:

- (a) Salespersons. Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
- (b) Trade Shows. Transient merchants registered with and part of a trade show or convention and conducted within the confines of the trade show or convention area;
- (c) Catalogue Sales. Sales of goods, wares, or merchandise by sample catalogue or brochure for future delivery;

- (d) Fairs, Amusement Parks, Sporting Events or Special Events. Activities conducted primarily for or in support of amusement or entertainment activities or events and located within confines of the county fairgrounds, the convention center complex, City-owned Parks or Plazas, or any established amusement park or sporting complex;
- (e) Non-Profit Events & Concessions. Any general sale, trade show, fair, auction, concession stand, fund raiser or bazaar sponsored and operated solely by any school, church, religious or other local non profit or governmental organization;
- (f) Garage Sales. Garage sales held on the premises devoted to residential use;
- (g) "Seasonal Food Operation. Any establishment operating on a seasonal basis not to exceed 150 day period of time per calendar year, limited to the serving of dispensed drinks, coffee, snow cones, shaved ice, and other similar ice based products and licensed as a "seasonal operation" by the Arkansas State Board of Health;
- (h) Public Marketplaces. Permanent and transient merchants registered with and participating in an approved public marketplace operating pursuant to A.C.A. § 14-140-101 et seq; and
- (i) Agricultural Products. Sales of vegetables, grain, fruit, or other farm products or livestock of any description (A.C.A. §26-77-201(c)).
- (j) Home Sales. Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises or to "home solicitation sales" (ref. A.C.A. §4-89-102); and
- (k) "Other Ordinances. It is the intention of this ordinance to regulate temporary and transient business within the city of Hot Springs. It is not the purpose of this ordinance to restrict activities otherwise permitted or regulated by the applicable governing authority. In this regard, the provisions of Ordinance No. 5158 (Zoning Code – Seasonal Parking Lots), Ordinance No. 4052 (Solicitations in the Vicinity of Oaklawn Park), Ordinance No. 3514 (Soliciting Funds for Religious or Charitable Purposes), Ordinance No. 3386 (Solicitation of Funds upon Streets), Ordinance No. 4691 (Fireworks Stands), Ordinance No. 4246 (Outdoor Solicitations) and Ordinance No. 4352 (Solicitation within the C.B.I.D. No. 2) shall supersede the requirements of this ordinance; and this ordinance shall not be applicable to any activity regulated by said ordinances, as such regulations may now or hereafter exist.

SECTION 4. Association. 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, non-profit organization, or merchant or by conducting such temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader contractor, non-profit organization, or merchant.

SECTION 5. Activities of a Temporary Nature. Any otherwise permanent business which engages or attempts to engage in activities that are temporary, transient, or portable in nature (e.g., roadside stands), regardless of the intended duration, shall comply with the requirements of this ordinance for that portion of business that is temporary, transient, or portable in nature. Any business, including but not limited to mobile retail food establishments or seasonal food operations, not otherwise exempt, which attempts to operate as a permanent business from a temporary or portable structure shall be considered a transient merchant and subject to the provisions of this ordinance.

SECTION 6. Permit Revocation. Any license issued under the provisions of this ordinance may be revoked for any of the following reasons:

- (a) Violation of the condition and regulations under which the license was granted;
- (b) Failure to give full, complete and accurate information on the license application; and
- (c) Violation of any city ordinance or state law including, but not limited to, any provision of this ordinance.

The full amount of the license fee shall be forfeited and no part thereof shall be refunded for any license revoked.

SECTION 7. Penalty. The penalty for violation of this ordinance shall, upon conviction in the Hot Springs District Court, or any other court of competent jurisdiction, be such fines and penalties as established by the general penalty clause for the Hot Springs Code of Ordinances as may now or hereafter be enacted by the Hot Springs Board of Directors.

SECTION 8. Effective Date. This ordinance shall be in full force and effect from and after April 1, 2007.

SECTION 9. Repealer. Ordinance No. 4509, adopted October 2, 1995, Ordinance No. 4655 adopted September 2, 1997, Ordinance No. 5172 adopted March 17, 2003, and Ordinance No.

5214 adopted August 18, 2003, and Ordinance No. 5498 adopted October 16, 2006, are hereby repealed in their entirety.

SECTION 10. Codification. This ordinance shall be codified in the Code of Ordinances and the sections may be renumbered or relettered to accomplish such intention.

PASSED: December 4, 2006

APPROVED: MMW

MIKE BUSH, MAYOR

ATTEST: Lance Hudnell
LANCE HUDNELL, CITY CLERK

December 4, 2006

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