

ORDINANCE NO. 2004-13

**AN ORDINANCE REPEALING TRANSIENT MERCHANT
ORDINANCES 2002-08 AND 2003-11 AND DECLARING
AN EMERGENCY**

WHEREAS, The State of Arkansas enacted the Transient Merchant Licensing Act of 1983 codified as Ark. Code Ann. §17-49-101 et seq. whereby county officials are required to implement a regulatory regime for transient merchants operating in Arkansas; and,

WHEREAS, Said Act also authorizes cities within the State of Arkansas to regulate transient merchants over and above the requirements imposed by the counties and the state; and,

WHEREAS, The City of Clinton exercised the authority granted to by the Act and passed Ordinances 2002-08 and 2003-11 in an effort to regulate transient merchants within the city limits of Clinton; and,

WHEREAS, The Constitutionality of the Arkansas statute as it was enforced in Pulaski County, Arkansas, was challenged in the United States District Court for the Eastern District of Arkansas in the case of Homier Distributing Co. vs. Carolyn Staley, et al., case no. 4:02-CV-464; and,

WHEREAS, On September 3, 2003, a decision was handed down by the Judge in the Homier case that found that all parts of the Act were unconstitutional as violative of the Commerce Clause of the United States Constitution which includes the authority of cities to impose additional regulations on transient merchants; and,


WHEREAS, The decision in the Homier case is binding throughout the Eastern District of Arkansas which includes the City of Clinton and Van Buren County; and'

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF CLINTON, ARKANSAS:**

Section 1. Ordinances 2002-08 and 2003-11 are hereby repealed in their entirety.

Section 2. The constitutional application of all laws within the City of Clinton being is essential to the public welfare of all persons residing or conducting business within the city, therefore an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after the date of approval.

PASSED: August 12, 2004.



Chip Ellis, Mayor

ATTEST:



Merl Eoff, City Clerk

APPROVED AS TO LEGAL FORM:



Brad A. Cazort, City Attorney