

ORDINANCE NO. 2002-08

**AN ORDINANCE TO PROVIDE FOR THE LICENSURE
AND REGULATION OF TRANSIENT MERCHANTS AND
FOR OTHER PURPOSES.**

WHEREAS, the State of Arkansas has adopted Act 587 of 1983, which provides for the licensing and regulation of transient merchants by counties; and

WHEREAS, said Act provides that cities may levy additional license fees and may require additional bonding for transient merchants; and

WHEREAS, the City of Clinton desires to enact an ordinance requiring transient merchants to obtain a license to conduct their business in the city limits of Clinton, Arkansas.

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

Section 1. Definitions:

- a) Person: Any individual, corporation, partnership, association or other entity.
- b) Temporary or transient business: 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: Any person, firm, corporation, partnership, or other entity which engages in, does or transacts any temporary or transient business in the city limits of the City of Clinton, either in one locality or in traveling from place to place in the city, offering for sale or selling goods, wares, merchandise or services, and includes those merchants who, for the purpose of carrying such business, hire, lease, use, or occupy any building, structure, motor vehicle, railroad car, or real estate.

Section 2. Exemptions:

The provisions in this Ordinance shall not apply to:

- a) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
- b) Wholesale trade shows or conventions;
- c) sales of goods, wares, or merchandise by sample catalogue or brochure for future delivery;
- d) Fairs and convention center activities conducted primarily for amusement or religious organization;
- e) Any general sale, fair, auction, or bazaar sponsored by any church or religious organization;

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- f) Garage sales held on the premises devoted to residential use;
- g) Sales of craft items made by hand and sold or offered for sale by the person making the crafts or handmade items;
- h) Sales of agricultural products, except nursery products and foliage plants;
- i) Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises;
- j) School-sponsored bazaars and sales, concessions at school athlete 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 shows, sales by charitable organizations, and expositions sponsored by government entities or by nonprofit trade associations.
- k) A transient merchant not otherwise exempted from the provisions of this subchapter shall not be relieved or exempted from the provisions of this subchapter 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 3. Enforcement:

It shall be the duty of the Clinton Police Department and the City Attorney to enforce the provisions of this Ordinance.

Section 4. License required:

It is unlawful for any transient merchant to transact business in the City of Clinton, Arkansas, unless the merchant and the owners of any goods, wares, or merchandise to be offered for sale or sold, if such are not owned by the merchant, shall have first secured a license and shall have otherwise complied with the requirements of this ordinance.

Section 5. Penalties:

Any person or entity that transacts a transient business as defined in A.C.A. 17-49-103, without first having obtained a license in accordance with the provisions of this subchapter, or who knowingly advertises, offers for sale, or sells any goods, wares, merchandise, or services in violation of the provisions of this subchapter, shall be guilty of a violation and subject to a fine of up to \$500.00.

Section 6. Application:

- a) Any transient merchant desiring to transact business in the City of Clinton shall make application for and obtain a license.
- b) The application for license shall be filed with the City Clerk and a copy of a current, valid transient merchant license issued by Van Buren County shall be attached.

- c) The application for license shall include the following information:
 - 1) The name and permanent address of the transient merchant making 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) Proof that the applicant has acquired all other required city, county, and state permits and licenses; and
 - 6) There shall be attached to the application a receipt or statement showing that any personal property taxes due on goods, wares or merchandise to be offered for sale have been paid;
- d) The City Clerk shall design and cause to be printed appropriate forms for applications for licenses and for the license certificates to be issued to applicants under this subchapter.

Section 7. Fees:

- a) The application for a transient merchant license shall be accompanied by a fee of One Hundred Dollars (\$100.00) and by a cash bond or a 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) or five percent (5%) of the wholesale value of any goods, wares, merchandise, or services to be offered for sale, whichever sum is lesser.
- b) The surety bond shall be in favor of the City of Clinton and shall assure the payment by the applicant of all taxes that may be due from the applicant to the city, the payment of any fines that may be assessed against the applicant or its agents or employees for violation of the provisions of this subchapter, and for satisfaction of all 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 one (1) year from the date of sale by the transient merchant.
- c) The bonds shall be maintained so long as the transient merchant conducts business in the City of Clinton, Arkansas, and for a period of one (1) year after the termination of the business. The bonds shall be released only when the transient merchant furnishes satisfactory proof to the City Clerk that it has satisfied all claims of purchasers of goods, wares, merchandise, or services from the merchant and that all city sales taxes and other taxes have been paid.


Section 8. Issuance and terms of license.

- a) A transient business license shall be issued hereunder only when all requirements of this subchapter have been met.
- b) The license shall:
 - 1) Not be transferable;
 - 2) Be valid only for a period of ninety (90) days; and
 - 3) Be valid only for the business stated in the application.
- c) A license so issued shall 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.

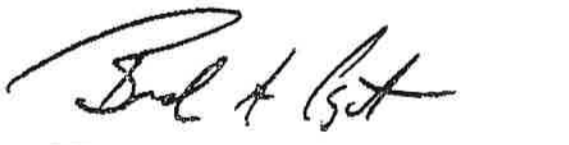
PASSED: October 10, 2002.


James Beavers, Mayor

ATTEST:


Merl Eoff, City Clerk

APPROVED AS TO LEGAL FORM:


Brad A. Cazort, City Attorney

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