

**AN ORDINANCE TO ADOPT THE REQUIREMENT FOR TRANSIENT VENDORS/PEDDLERS IN THE CITY OF BYRAM, MISSISSIPPI AND FOR ENFORCEMENT THEREOF BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF BYRAM, MISSISSIPPI AS FOLLOWS:**

**WHEREAS, §27-17-1 OF THE Mississippi Code of 1972 authorizes the governing authorities of municipalities to adopt a transient vendor/peddler law and related matters, the City of Byram, Mississippi, adopts the following regulations:**

**Section 1. Definitions**

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

*Transient business* means any business conducted for the sale of merchandise or services that is carried on at a particular location for a period of less than six months in each year, even though the owner of such business may conduct the business at another location for more than six months in each year.

*Transient vendor(a.k.a. peddler)* means any person who transacts business in this state either in one locality or by traveling from place to place in this state. The term includes a vendor who for the purposes of carrying on such business hires, leases, uses or occupies any building, structure, motor vehicle, railroad car or real property.

**Section 2. Exemptions**

(a) The provisions of this ordinance, except sections 7, 12 through 20, shall not apply to:

- (1) Civic and nonprofit organizations or wholesale sales to retail merchants by commercial travelers;
- (2) Wholesale trade shows or conventions;
- (3) Sales of goods, wares, services or merchandise by sample, catalogue or future delivery;
- (4) Fairs and convention center activities conducted primarily for amusement or entertainment;
- (5) Any general sale, fair, circus, auction or bazaar sponsored by a church or religious organization;
- (6) Garage sales held on premises devoted to residential use;

(7) Sales or repairs of crafts or sales and repairs of items made by hand by the person making the crafts or items;

(8) Duly licensed flea markets operating from a fixed location;

(9) Sales of agricultural, dairy, poultry, seafood or forest management products or services related to forest management or silvicultural activities, nursery products, foliage plants or ornamental trees, except such products or services sold at retail and not grown or produced within the state; and

(10) Sales of agricultural services

(b) A transient vendor not otherwise exempted from this article is not exempted from this article because of a temporary association with a local dealer, auctioneer, trader, contractor or merchant, or by conducting the transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.

#### **Section 4. Registered Agent**

(a) Each applicant for a transient vendor license shall designate a registered agent on the license application. The registered agent must be a resident of the city and shall be the agent on whom any process, notice or demand required or permitted by law to be served on the licensee may be served. The registered agent must agree in writing to act as the agent. The license applicant shall file a copy of the agreement with the license application.

(b) The tax collector will maintain an alphabetical list of all transient vendors in the city as the case may be, and the names and addresses of their registered agents.

(c) If a transient vendor who does business in the city fails to have or to maintain a registered agent in the city, or if the designated registered agent cannot be found at the stated permanent address, the tax collector, as the case may be, is the agent of the transient vendor for service or process, notices or demands. Service on the tax collector is made by delivering to his office duplicate copies of the process, notice or demand. If such a process, notice or demand is served on the tax collector, he shall immediately forward one copy by registered or certified mail to the permanent address of the transient vendor.

(d) This section does not limit or otherwise affect the right of any person to serve a process, notice or demand in any other manner authorized by law.

#### **Section 5. Application for license**

(a) A person desiring a transient vendor/business license in the city shall file an application with the city clerk, including the following:

(1) The name and permanent address of the transient vendor making the application.

(2) A statement describing the kind of business to be conducted, the length of time for which the applicant desires to transact business, and the proposed location of the business.

(3) The name and permanent address of the applicant's registered agent or office

(4) Proof that the applicant has acquired all other required city, county and state permits and licenses. Such proof shall include a state sales tax number and shall include the city sales tax diversion code.

(b) If the applicant is an association or corporation, the applicant must also include the names and addresses of the members of the association or the officers of the corporation. If the applicant is a corporation, the application must state the date of incorporation and the state in which it was incorporated. If the applicant is a corporation organized under the laws of another state, the applicant must state the date on which the corporation qualified to transact business as a foreign corporation in this state.

#### **Section 6. Fees**

(a) Each applicant for a license under this ordinance shall include a license fee of \$250.00 with the application, which fee shall be deposited into the general fund of the city. The applicant shall execute a cash bond or surety bond issued by a corporate surety authorized to do business in the state in an amount that is the lesser of either \$2,000.00 or five percent of the wholesale value of any merchandise or service to be offered for sale by the applicant. The surety bond shall be issued in favor of the state, and shall be conditioned upon the payment of:

(1) All taxes due from the applicant to the state or to a political subdivision of the state;

(2) Any fines assessed against the applicant or the applicant's agents or employees for any violations of this article; and

(3) Any judgment rendered against the applicant or the applicant's agents or employees in a cause of action commenced by a purchaser or merchandise or services not later than one year after the date the merchandise or services were sold by the applicant.

(b) The transient vendor or transient business shall maintain the bond during the period that business is conducted in the city, and for a period of one year after the termination of such business. After the transient vendor or transient business furnishes satisfactory proof to the city clerk that the vendor has satisfied all claims of purchasers of merchandise from, or services offered by, the vendor, and that all sales taxes and other applicable taxes have been paid, the bond shall be released.

#### **Section 7. Application by exempt person**

Any transient vendor or transient business otherwise exempt from the provisions of this article shall submit a registration application to the city clerk prior to transacting any business within the city. There shall be no fee for the registration application.

#### **Section 8. Issuance, transfer of license**

The city tax collector shall issue a transient vendor license under this article only if all requirements of this article have been met. The license is not transferable and is valid only within the corporate limits of the city.

#### **Section 9. Renewal of license**

A license may be renewed on payment of a renewal fee of \$25.00 and filing for renewal with the city tax collector, before the expiration of the current license. A license may be renewed only one time after which a licensee must once again purchase a new license pursuant to the provisions of this ordinance.

#### **Section 10. Expiration**

A license issued under the provisions of this ordinance shall expire 90 days after its date of issuance.

#### **Section 11. Compliance with law**

Prior to offering any merchandise or services for sale, transient vendors must report to the city clerk and the planning department and obtain written approval in order to ensure that the terms and provisions of state law and this Code regulating transient vendors and this article have been met.

#### **Section 12. Prior Convictions**

Transient vendors/peddlers or transient business, or their duly authorized representatives, who have been previously convicted of a felony are hereby prohibited from obtaining a license due to the threat of public safety and welfare.

#### **Section 13. Hours, days of sales**

Transient vendors shall not conduct sales of any of their products or services at residential premises except during the hours of 10:00 a.m. to 3:00 p.m., Monday through Saturday. Transient vendors are not allowed to make such sales of products or services at residential premises on Sundays, nor during any hours not set forth in this section.

#### **Section 14. Use of commercial premises required**

Transient businesses shall not conduct sales of any of their products or services except on property zoned for commercial use in accordance with the city zoning ordinance.

#### **Section 15. Separation of premises**

Transient businesses shall be located on a separate parcel from an existing business, except when acting in a temporary nature for a special event.

#### **Section 16. Permission from owner of premises**

Transient businesses shall not sell any products or services on any property without having first obtained written permission from the owner or legal occupant of the premises upon which such sales of products or services may be offered.

#### **Section 17. Sales on rights-of-way prohibited**

Transient vendors /businesses are prohibited from selling their products or services on any public right-of-way of the city, state or county.

#### **Section 18. Prohibited on all state and federal highways**

Transient business shall not conduct sales of any of their products or services from property located adjacent to any state or federal highway traversing the city.

#### **Section 19. Signs**

Should a transient vendor or business utilize any sign in conjunction with his sales, such signs shall comply with provision of the zoning ordinance.

#### **Section 20. Certification for food sales**

Transient vendors/businesses that prepare or process food in any way shall furnish the city with a certificate from the health department showing that all applicable requirements have been met.

#### **Section 21. Possession and display of documents**

Transient vendors/businesses shall keep a copy of the completed, approved and/or duly issued registration application and privilege license, if applicable, in their possession at all times while conducting business. The transient vendor/business shall post in a prominent place, so that it may clearly be seen by purchasers of the merchandise or services offered by a transient vendor/business his state sales tax number, his transient vendor license number, a statement that he is required to give purchasers at the time of payment, receipts of purchases that include sales tax, in accordance with MCA 1972 §75-85-17.

#### **Section 22. Violations, penalties**

Any person who knowingly or intentionally operates a transient business without a valid license as set forth in this article, or who knowingly or intentionally advertises, offers for sale or sells any merchandise or services in violation of this ordinance shall upon conviction, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1000.00 and/or be imprisoned in

the county jail for not more than 90 days. Such person may be proceeded against by suit, and the city clerk may seize and sell any property of the person liable for the tax and penalty in the same manner as property of taxpayers delinquent for the payment of ad valorem taxes due on personal property may be distained and sold.

**Section 23. Effective Date**

Because the City of Byram is a newly-incorporated municipality in need of adopting its own ordinances, the Board of Aldermen finds that good cause exists for the immediate passage and effect of this Ordinance in accordance with Miss. Code Ann. § 21-13-11 (Rev. 2007). Thus, this Ordinance is adopted by unanimous vote of all members of the Board of Aldermen of the City of Byram and is effective from and after its passage by a unanimous vote of all members of the Board of Aldermen. In accordance with Miss. Code Ann. § 21-13-11 (Rev. 2007), this Ordinance shall become effective immediately upon the adoption thereof, and prior to being recorded in the ordinance book and published in the same manner as required by state law of other ordinances.

The above and foregoing Ordinance was introduced by Alderman White who moved for its adoption. Alderman Marble seconded the motion to adopt the Ordinance, and after discussion, no member of the Board of Aldermen having requested the Ordinance to be read by the City Clerk, and the question being put to a roll call vote, the result was as follows:

Alderman Kent Alday	<u>nay</u>
Alderman Amy Douglas	<u>aye</u>
Alderman D. L. Ford	<u>nay</u>
Alderman Theresa Marble	<u>aye</u>
Alderman Richard White	<u>aye</u>
Mayor Nick Tremonte	_____

Whereupon the Mayor declared the Motion carried and the ordinance approved and adopted.

The foregoing ordinance was approved this the 13th day of October, 2011.

CITY OF BYRAM

Signed/By: Nick Tremonte, Mayor

ATTEST:Signed/By: Angela Richburg, City Clerk

Duly recorded in Minute Book 1 Page 370