

## CHAPTER 122: TRANSIENT VENDOR

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#### 122.01 DEFINITIONS

All transient merchants and dealers, as herein defined by paragraph (a), unless exempted by paragraph (b), of this section shall procure a license from the City Controller, or his designee, prior to engaging in business within the City of Richmond. Said license shall be valid for a maximum of 45 days.

##### (a) Definitions

The word "TRANSIENT MERCHANTS OR DEALERS", for the purpose of this section, shall mean and include all persons, both principals and agents, who engage or conduct in this City either in one locality or in traveling from place to place or from door to door or from telephone sources located within the City the business of selling or soliciting orders for the sale of goods, wares, or merchandise to the general public with the intention of continuing in said business in said City for a period of not more than 45 days or who rent, lease, use or occupy, either in whole or in part, for the purpose of carrying on such business use, any room, building, area within the City of Richmond or other public or privately owned building, any lot or parcel of land, any motor vehicle including trucks and semi-trailers for the exhibition and sale of such goods, wares and merchandise.

(b) No City license shall be required of auctions conducted pursuant to law, nor of sales made to commercial dealers by commercial travelers or selling agents in the usual course of business, or where no license may be collected under the provisions of the Constitution or laws of the United States, nor of any sales by or sponsored through societies acting for charities, religious or public purposes, or other legally established not-for-profit organizations, nor of any sales in conjunction with community events given approval by either the Richmond Park Board or the Richmond Board of Public Works and Safety.

(c) This chapter shall not be applicable to residential garage or yard sales conducted at the seller's permanent place of residence.

(d) No sales of goods, wares, or merchandise shall be made on public property or right-of-way unless specifically permitted by either the Board of Public Works and Safety or the Richmond Park Board.

(e) A transient dealer, whether subject to City license or exempt, shall not advertise, represent, or hold forth a sale of goods, wares, or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, executor, administrator receiver manufacturer's wholesale, cancelled order, or misfit sale or closing-out, or a sale of any goods damaged by smoke, fire, or water otherwise, unless before so doing he shall state in writing under oath to the City Controller of the City of Richmond at the time he makes application for a license all the facts relating to the reason and character of such special sales, so advertised, held forth or represented, including a statement of the names of persons from whom said goods, wares, or merchandise were purchased, and the date of delivery of same to the person applying for license, the place where said goods, wares, or merchandise were taken last, and such details necessary to exactly locate and fully identify all goods, wares, or merchandise to be sold, and make such further disclosure to and give such information as may be required by the City Controller of the City of Richmond. Such transient dealer shall also include in said statement names and residences of the owners in whose interest the business is conducted and whether conducted as an individual, firm, association, or corporation.

(f) It shall be unlawful for any transient dealer to sell or exhibit for sale either at public or private sale any goods, wares, or merchandise without first complying with the provisions of this Section, or to make any false statements in references to the matter required in (b) and (e) above, or to fail or refuse to comply with the requirements of any of the provisions of this Section, and every person, whether principal or agent, who by circular, handbills, newspaper, poster, or in any manner advertises such sales as herein contemplated before proper license is issued to said transient dealer and before he has complied with the provisions of this section, shall be guilty of a violation of this section. Provided, however, that nothing in this section contained shall be construed as abridging or denying the right and power of the Board of Public Works and Safety of the City of Richmond to refuse or withhold the granting of any license or to revoke the same, if granted, to a transient dealer upon any hearing thereof when in the discretion of said Board on the basis of the disclosures as aforesaid, or from other information deemed by them sufficient, such action may be deemed necessary or proper to protect or safeguard the public from imposition, mischief of fraud.

(g) It shall be the duty of the prospective vendor to obtain a copy of these licensing provisions to determine its requirements. All questions of coverage shall be directed to the City Attorney. (Ord. 130-1985)

## 122.02 APPLICATIONS

At least 20 days prior to holding of such sale or solicitation, every such transient dealer shall furnish to the City Controller a verified license application setting out the following:

- (a) Name and address of the applicant and also the name of the true owner if the applicant is not such true owner of the goods, wares or merchandise to be sold.
- (b) Name, location, and time of the proposed sale or solicitation along with the zoning designation of the proposed sale site as determined by the Enforcement Authority. The Enforcement Authority must approve the sale site as to zoning, prior to the issuance of a license.
- (c) Inventory of the goods, wares or merchandise, on hand and on order, which the applicant intends to offer for sale at such sale. The inventory shall show the quantity, kind or grade of each item, the price at which each item is proposed to be sold, and the total wholesale and retail value of the inventory based on the foregoing, and if sales are to be made other than from inventory, a copy of the catalogue or other sales materials, and/or a listing of the sample to be displayed.
- (d) Such other information as the City Controller or the Board of Public Works and Safety may prescribe.
- (e) Verifiable street address and telephone number of any permanent place of business in the State of Indiana, or, if there be no permanent place of business in the State of Indiana, a copy of a certificate of the Secretary of the State of Indiana evidencing the fact that the dealer has qualified to do business in Indiana and the name and address of its agent for the service of process in the State.
- (f) Written consent of owner or lessee of real property of the site on which sale or business is proposed to be conducted.
- (g) The above information shall also be displayed at each site of business activity.

Nothing herein contained shall be construed to relieve any person or other legal entity from any license fee liability, tax liability, interest penalty or forfeiture incurred as of the effective date. (Ord. 130-1985)

### 122.03 DEPOSITS AND BOND

Every applicant for a transient dealer's license shall execute and file with the City Controller, or his designee, a good and sufficient bond in the sum of \$5,000.00 or 10% of anticipated sales, whichever is greater, with the surety thereon a surety company authorized to do business in the State of Indiana approved by said City Controller and shall be payable to the City of Richmond to the extent that any taxes or fines as determined by the Controller of the City to be due are not paid, upon judicial determination those authorized to file suit thereunder, and shall be conditioned upon faithful observance of all the condition of this section, and the payment of city, county and state license, sales, use, income or occupational license taxes due or to be withheld and paid by the licensee hereunder, and shall also indemnify any purchaser at such sale who suffers any loss by reason of defective merchandise or any misrepresentation is said sale. Said bond shall also provide that the City of Richmond, Wayne County and State of Indiana may file suit in their own name against the licensee and/or the surety on said bond for any taxes, fees or fines due from the licensee which are not paid within 30 days of the termination of the sale and that any purchaser at such sale may maintain an action against the licensee and/or said surety for claims arising from such a sale. Said bond shall also provide that it shall continue in effect for one year after the termination of the sale for which it is made and until all actions are concluded and the judgment or judgments, if any, have been paid and fully satisfied, or the amount of the bond exhausted by such payments. This bond shall be in addition to all deposits required under other ordinances of the City, including but not limited to the sales and use tax ordinances. The above bond and certificate of qualification to do business in Indiana shall be public records open to examination upon request and copies thereof shall be furnished on request upon payment of a fee of \$0.25 per page. (Ord. 130-1985)

### 122.04 FINES

Violation of any of the provisions of this chapter shall be punishable by a fine of \$1,000.00 for each offense. Each day such violation occurs shall be deemed a separate offense. In addition a business activity violating this chapter shall be subject to expulsion from the City of Richmond. The Police Department and such other persons as authorized by the Board of Public Works and Safety are hereby authorized to enforce this section. (Ord. 130-1985)

### 122.05 FEES

The license fee shall be \$100.00 for each 45 day period.

## 122.06 EXEMPTIONS

Notwithstanding the provisions of Section 122.01, farmers who sell fruit, vegetables, and other farm produce grown and raised by themselves shall be exempt from the City license requirement for sales conducted at the City Farmer's Market and for sales conducted at an established private property location provided that the sales are in conformance with zoning laws and the seller has written commitment with the private property owner to remain at the location at least 25 days of a 45 day consecutive period for the purpose of selling fruit, vegetable, and farm produce. (Ord. 130-1985)

## 122.06 NOTICE OF REQUIREMENTS

- (a) The Board of Public Works and Safety may cause to be erected, at its discretion, signs at various locations in the City giving notice of the requirements of this chapter.
- (b) In addition to the above requirements, transient merchants must adhere to all applicable Federal, state, and local laws, rules and regulations and must comply with all requirements for licenses, permits, registration, taxes, and zoning laws. Violations of other applicable laws or failure to comply with other applicable laws shall be deemed to be a violation of this code chapter. The granting of an exemption under this Section shall not relieve the exempted person, group, or organization from complying with other applicable laws and regulations.
- (c) Persons or organizations claiming an exemption from licensing under this ordinance must display such information supporting an exemption at each point of sale or solicitation, and must make such information available upon request to City officials.
- (d) Any business intending to remain 45 days or more shall be considered a "permanent resident business" and must strictly comply with all applicable zoning and other laws. (Ord. 130-1985)

## 122.07 SEVERABILITY

The provisions of this ordinance are severable. If any section, paragraph, sentence, clause or phrase of this ordinance is declared invalid by any court of competent jurisdiction, such declarations of invalidity shall not affect the remainder of this ordinance, which shall continue in effect. (Ord. 130-1985)