

## Ordinance O-18-09

### AN ORDINANCE REGULATING TRANSIENT (TEMPORARY) MERCHANTS ENGAGING IN BUSINESS WITHIN IN THE CITY OF ARKADELPHIA, ARKANSAS

**WHEREAS**, it is in the best interest of the City of Arkadelphia to govern the conduct of transient merchants within the city.

**NOW THEREFORE, BE IT ORDAINED** by the Board of Directors of the City of Arkadelphia, 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 12:00 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, roadways, and/or waterways in the State of Arkansas that is a 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 Clark 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 itinerant vendor.
- f) *Permanent business* means any business, trade, profession, vocation, or occupation located within or conducting business 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 Arkadelphia; 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 and licensed as a "seasonal operation" by the Arkansas State Board of Health.
- 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 or 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 (or otherwise required by law), State Health Department certifications, as appropriate; and written permission from the property owner on whose property the temporary or transient business will be located.
- d) *“Registration and Permitting”*
1. Transient merchants shall apply for a license from the Arkadelphia Building Department.
  2. Transient merchants desiring to work within the city shall sign a consent form for an online criminal background check via the Arkansas State Police system.
  3. Each transient merchant and his/her coordinator shall pay a fee in the amount of \$25.00 for the cost of the background check.
  4. Each transient merchant shall have an identification badge including the individual’s name and company’s name for easy identification by the public. Names must be visible from a distance of four (4) feet with a minimum font size of sixteen (16) points.
  5. Cellular phone numbers shall be provided for contacting each transient merchant.
  6. The Building Department shall send copies of issued permits to the Arkadelphia Police Department for their notification.
- e) *“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.
- f) *“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 \$500
- The aforesaid license fee shall be non-refundable and may not be prorated.
- g) *“License Display.”* Any transient merchant licensed pursuant to this ordinance shall post the license in a conspicuous place on the premises licensed, or on one’s body.
- h) *Door to door sales* permitted from 8:00 a.m. – 5:00 p.m. only.

- i) *All transient merchants* excluding exceptions, shall apply for and obtain a license at the Arkadelphia Building Department. The Arkadelphia Building Department will provide license(s) for display.

Transient merchants permitted by this ordinance shall comply with the following additional regulations:

- a) *Zoning and building code compliance.*
- b) *Association.* A transient merchant not otherwise permitted by 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 3. Exceptions.** The provisions of this ordinance, unless otherwise stated in this section, 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, a convention center complex, city-owned parks or plazas, or any established amusement park or sporting complex;
- e) *Non-profit events and 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 nonprofit 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 a 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. 14-140-101et 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) *Mobile retail food establishment.* Any mobile retail food service establishment duly licensed and operated in accordance with the rules and regulations of the Arkansas State Board of Health. Mobile retail food establishments and mobile food vendors shall comply with O-18-\_\_\_\_ as may be amended.
- k) *Other mobile food services.* Establishments engaged in selling meals, snacks or confections for immediate consumption from motorized vehicles directly to the consumer. Such establishments must be either mobile in nature traveling throughout the city such as neighborhood ice cream trucks or located on the premises of a specific client

such as a commercial or industrial institution. Mobile food services may not otherwise stage or sell from a fixed location to the general public;

- l) *Mobile food delivery*. Establishments engaged in the sale and delivery of packaged foods directly to the consumer at the consumer's establishment or residence;
- m) *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" (A.C.A. §4-89-102); and
- n) *Services and professions*. Any otherwise permanent service or profession which is performed by invitation of a customer at the customer's place of residence, business or work.
- o) *Fireworks Stands*.(O-12-08)

**Section 4. Other ordinances.** It is the intention of this ordinance to regulate temporary and transient business within the City of Arkadelphia. It is not the purpose of this ordinance to restrict activities otherwise permitted or regulated by the applicable governing authority.

**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 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 business license issued to a transient merchant 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;
- c) Violation of any city ordinance or state law, including-but not limited to any provision of this ordinance; and
  - i. Convictions of certain types that shall cause harm to the residents of the City of Arkadelphia, as follows:
    - A. Crimes of violence including homicide, murder, assault, manslaughter, sexual assault, rape, robbery, negligence, endangerment, kidnapping, abduction, extortion, disorderly conduct, and harassment;
    - B. Crimes of theft including breaking and entering, burglary, embezzlement, larceny, looting, robbery, shoplifting, theft and fraud.
- d) Receiving excessive complaints or committing egregious acts shall result in automatic revocation for the business and all associated licensees.

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

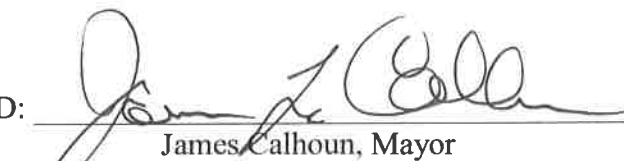
**Section 7. Penalty.** The penalty for violation of this ordinance shall, upon conviction in the Clark County District Court, or any other court of competent jurisdiction shall be a fine of up to \$1,000 and a one year jail term.

**Section 8. Repealer.** All Ordinances or parts of ordinances in conflict herewith are hereby repealed. Specifically repealed is O-11-10.

**Section 9. Effective Date.** This ordinance shall be effective from and after passage and publication.

**Section 10. Severability.** If any section of this ordinance shall be declared unconstitutional or unlawful, only that section of the ordinance shall be affected and all other provisions of the ordinance shall remain in full force and effect.

PASSED THIS 4<sup>th</sup> day of December, 2018

APPROVED:   
James Calhoun, Mayor

ATTEST:   
Jessica Davis, City Clerk