

## ARTICLE 2. TRANSIENT MERCHANTS.<sup>64</sup>

### Sec. 4-10 Definitions.<sup>65</sup>

**Transient Merchant.** When used in this Article, includes all persons, including individuals, firms, associations, partnerships, limited liability companies and companies, both as principals and agents or their agents, who engage in, do or transact any business within the City of selling goods, wares, merchandise, contracts for construction, alteration or repair or services, and who, for the purpose of carrying on, doing or transacting any such business, do not maintain offices within the City on a bona fide, continuous and regular business. (Special Ord. No. 87, 1994, §1, 12-8-94)

### Sec. 4-11 License Required.

It shall be unlawful for any person to transact business as a transient merchant in this City without first obtaining a license as required by this Article thirty (30) days prior to the sale or offer of sale of said goods wares and merchandise. The following persons are exempt from this requirement:

- a. A person who grows the goods, wares, or merchandise that is sold or offered for sale;
- b. A person who makes crafts or items by hand and sells them or offers them for sale;
- c. An auctioneer who is licensed under *I.C.* § 25-6-1;
- d. A resident of the city in which the sale takes place who conducts a sale of tangible personal property for no more than four (4) days per calendar year;
- e. An organization that is exempt from the Indiana Gross Retail Tax under *I.C.* § 6-2.5-5-26;
- f. A person who:
  - (1) Sells merchandise;
  - (2) Offers to sell merchandise; and
  - (3) Provides proof that the sale is being conducted as part of an activity sponsored by an organization that is exempt from the Indiana Gross Retail Tax under *I.C.* § 6-2.5-5-26;

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<sup>64</sup> *I.C.* § 25-37-1-1, *et seq.*, address the regulation of transient merchants by local government.

<sup>65</sup> Editor's Note: Gen. Ord. No. 2, 1969, passed on July 16, 1969 and Gen. Ord. No. 7, 1931 passed on \_\_\_\_, 1931, was repealed by Special Ord. No. 87, 1995.

- g. A person who:
  - (1) Organizes; or
  - (2) Offers merchandise at; or
  - (3) Offers to sell merchandise at; or
  - (4) Exhibits at a trade show or convention. (Special Ord. No. 87, 1994, § 1 (727.02), 12-8-94)

**Sec. 4-12 Application.**

Any person desiring to transact business as a transient merchant shall file a verified application with the Controller. The application shall include the following information:

a. The name, residence and mailing address of the person, firm or corporation making the application and if a firm or corporation, the names and addresses of any persons owning directly or indirectly five percent (5%) or more of the ownership in said business;

b. The kind of business to be conducted, the length of time for which the application proposes to transact business and if any permanent or mobile building, structure or real estate is to be used for the exhibition or sale of merchandise, the location of such proposed place of business; and

c. The type of merchandise to be sold, a detailed inventory and description including title numbers, goods, wares and merchandise to be offered for sale or to be sold and the proof of ownership of goods, wares and merchandise;

d. Attached to the application, the receipt showing that personal property taxes on the goods, wares and merchandise to be offered for sale to be sold have been paid;

e. The name under which the business is to be conducted;

f. Proof that the applicant holds or has applied for a county transient license in accordance with *I.C. § 25-37-1-1, et seq.*, if applicable;

g. Proof that the applicant has a property interest in or has permission from the owner or occupant of any real estate sought to be used in the conduct of business.

It shall be unlawful for any applicant to omit required information from the application or to provide false information on any application submitted. Failure to provide required information or to provide false information shall be grounds for denial or revocation of a license under this Article. (Special Ord. No. 87, 1994, § 1, & 727.03), 12-8-94)

**Sec. 4-13 Separate Licenses Required.**

Separate licenses and the payment of fees therefore shall be required for each location at which an applicant seeks to transact business under this Article. (Special Ord. No. 87, 1994, § 1, (727.04), 12-8-94)

**Sec. 4-14 Zoning Required.**

It shall be unlawful for any person to transact business as a transient merchant at any place which will not be in compliance with Terre Haute zoning regulations regardless of any permission to use such premises. (Special Ord. No. 87, 1994, § 1, (727.05), 12-8-94)

**Sec. 4-15 Transferability.**

No license issued pursuant to this Article shall be transferable. (Special Ord. No. 87, 1994, § 1, (727.06), 12-8-94)

**Sec. 4-16 License Fees.**

Any applicant for a transient merchant license shall pay to the Controller a non-refundable license fee of Fifty Dollars (\$50.00) for each day or part of a day in which he proposes to transact business. (Special Ord. No. 87, 1994, § 1, (727.07), 12-8-94)

**Sec. 4-17 Compliance with Law.**

Each licensee under this Article shall comply at all times with all statutes, ordinances and regulations relating to the licensed business and the conduct thereof and to the use of the property where the business is conducted. (Special Ord. No. 87, 1994, § 1, (727.08), 12-8-94)

**Sec. 4-18 Investigation of Applicant.**

a. The Controller shall inform the Chief of Police of the receipt of any application for license under the provisions of this Article, and the Chief of Police shall within fourteen (14) days thereafter, cause an investigation of the person's business responsibility and moral character to be made as he deems necessary for protection of the public good and welfare.

b. If, as a result of the investigation, the applicant's character and business responsibility are found to be such as to endanger or be detrimental to the public and its good and welfare, the license shall be denied.

c. If, as a result of an investigation, the character and business reputation of the person applying appear to be such that the carrying on of the business will not be detrimental to the public good and welfare and the welfare and good of the public will not be endangered by the granting of the license, the Chief of Police shall so inform the Controller and, upon the applicant's complying with all other provisions of this Article in regard thereto, a license may be issued by the Controller to the applicant. (Special Ord. No. 87, 1994, § 1, (727.09), 12-8-94)

**Sec. 4-19 Right To Appeal.**

Any person aggrieved by the decision of the Controller in regard to the denial of a license as provided for in this Article shall have the right to appeal to the Board of Public Works and Safety. Appeal shall be taken by filing with the Board, within fourteen (14) days after notice of the decision by the Chief of Police has been mailed to the person's last known address, a written statement setting forth the grounds for the appeal. The Board shall set the time and place for a hearing on the appeal and notice of the hearing shall be given to the person by first class mail at least seven (7) days prior to the hearing. (Special Ord. No. 87, 1994, § 1, (727.01), 12-8-94)

**Sec. 4-20 Display of License.**

a. A transient merchant license shall be conspicuously posted at each specific location of his business.

b. It is the responsibility of the licensee to assure that the approval of the City for each specific location to be used in the business is clearly listed on any license issued under this Article. (Special Ord. No. 87, 1994, § 1, (727.11), 12-8-94)

**Sec. 4-21 Exceptions.**

The provisions of this Article shall not apply to sales made to dealers by commercial agents in the usual course of business, not to bona fide sale of goods, wares or merchandise by sample for future delivery or to sheriffs, constables or other public officers selling merchandise according to the law, to bona fide assignees or receivers appointed in the State of Indiana selling goods, wares and merchandise for the benefit of creditors. (Special Ord. No. 87, 1994, § 1, (727.12), 12-8-94)

**Sec. 4-22 Prohibited Practices.**

a. It shall be unlawful for any transient merchant to make exclusive use of any location on any street, alley, sidewalk, or right of way for the purpose of selling or displaying any goods, wares or merchandise.

b. It shall be unlawful for any transient merchant to operate in a congested area where such operation may impede or inconvenience the public use of any street, alley, sidewalk or right of way. For the purpose of this Article, the judgment of a police officer, exercised in good faith, is conclusive as to whether the area is congested and the public impeded or inconvenienced.

c. It shall be unlawful for any transient merchant to display signs except in accordance with Terre Haute zoning and signage regulations. (Special Ord. No. 87, 1994, § 1, (727.12), 12-8-94)

**Sec. 4-23 Violations and Penalties.**

a. Any sworn police officer of the City shall require any person operating as a transient merchant and who is not known by such officer to be duly licensed to produce such license and shall enforce the provisions of this Article against any person found to be violating the provisions of this Article.

b. Any sworn police officer may prohibit the sale or offer of sale of any property by any person who is in violation of this Article.

c. Any sworn police officer may confiscate any property sold or offered for sale in violation of this Article.

d. Any person violating the provisions of this Article shall be guilty of any infraction and upon conviction thereof, shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) for each violation. (Special Ord. No. 87, 1994, § 1, (727.12), 12-8-94)