

## Chapter 5.70 TRANSIENT MERCHANTS<sup>1</sup>

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### **5.70.010 Findings and Purpose.**

It is hereby found that Transient Merchants operate businesses or conduct activities, in most cases, as retail operations or with a personal profit purpose. It is also found that Transient Merchants have operated temporary businesses or conducted activities in violation of municipal laws, have created traffic and parking problems, have trespassed on property, have disturbed or annoyed residential and commercial districts, and have perpetrated frauds and misrepresentations to the public. It is further found by the Governing Body that it is necessary, in the interest of the public health, safety, and welfare, for the Governing Body to regulate the time, place, and manner of Transient Merchant activities in the City.

It is the purpose of this Chapter to therefore regulate Transient Merchant activities, to require a licensing procedure, to assist in identifying Transient Merchants, to protect consumers, and to protect property owners and the integrity of residential and commercial districts within the City. (History: Ord. TM-2954 §1, 2012; TM-1315 §1, 85)

### **5.70.020 Definitions; Exceptions.**

For purposes of this Chapter the following definitions shall apply:

- A. **“Person”** means any individual, corporation, partnership, association or other entity. When appropriate, it shall also include said Person’s owners, employees or agents.
- B. **“Transient Merchant”** means any Person who conducts or operates:
  - 1. A temporary or transient business for the sale or offer for the sale of goods, wares, merchandise or services which is carried on in any temporary or unenclosed structure, vehicle or railroad car, or on any real estate, for a period

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<sup>1</sup> See also the *Transient Merchant Licensing Act* at K.S.A. 19.2231 et seq. (as may be amended) for statutory provisions regarding the licensing and regulation of transient merchants by the State and County.

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of less than six (6) months in each year; or

2. Meetings open to the general public where franchises, distributorships, contracts, or business opportunities are offered to participants.

(History: Ord. TM-2954 §2, 2012; TM-1539,A §1, 88; TM-1539 §1, 88; TM-1315 §2, 85)

### **5.70.025 Exemptions.**

For purposes of this Chapter, a Transient Merchant shall not include the following activities:

- A. Door-to-door sales, canvassing, or solicitations as regulated by Chapter 5.64 of this Code.
- B. Exhibitions, street fairs, expositions, promotional ventures, or entertainment where a special event permit has been obtained, where regulated by Chapter 5.08 of this Code, or where such activity is sponsored in part by the City.
- C. Auctions where the items being auctioned are from a permanent business or residence and being auctioned at that business or residence.
- D. Garage sales as regulated by Chapter 5.44 of this Code.
- E. Amusement enterprises as regulated by Chapter 5.08 of this Code.
- F. Christmas tree sales as regulated by Chapter 5.16 of this Code.
- G. Sales of agricultural or farm, garden or aquacultural products, except nursery products and foliage plants, grown upon and sold or offered for sale from residential premises inhabited by the individual raising or producing such products.
- H. Sales conducted within the following structures: hotels, motels, trade centers, convention centers, and shopping malls.
- I. Vendors in a farmers' market, art festival or craft fair operated or sponsored by the City on City property or where a special event permit has been obtained.
- J. Sales or offering of sales by a local not-for-profit or community school group on non-residential property with the permission of the property owner or property manager when the following conditions are met:
  1. The sales or offering of sales at the property by any such group does not exceed two (2) days in any ten (10) day period;
  2. The sales or offering of sales occurs near the entrance of the property's existing business and away from other existing businesses and the rights-of-way; and
  3. The sales or offering of sales only occupies a nominal amount of space and does not interfere with or detrimentally impact pedestrian and vehicular traffic or parking.  
*(Note: If a tent or a significant portion of the parking lot is used, then this exemption shall not apply.)*

Provided, this Section shall in no manner exempt any Person from any applicable federal, state, or city code, ordinance or regulation, including, but not limited to, the City's food code regulations, any Uniform Development Ordinance provision, any sales tax requirement, or any activity causing a traffic or sight distance hazard or any other type of public hazard or danger.

(History: Ord. TM-2954 §3, 2012; TM-1539,A §1, 88; TM-1539 §1, 88; TM-1315 §2, 85)

**5.70.030 License Required.**

It shall be unlawful for any Person to operate or conduct the business or activities of a Transient Merchant without first having obtained a license from the City.

(History: Ord. TM-2954 §4, 2012; TM-1315 §3, 85)

**5.70.040 License Fee.**

The license fee to operate or conduct the business or activities of a Transient Merchant shall be established by the Governing Body by resolution.

(History: Ord. TM-2954 §5, 2012; TM-2954 §5, 2012; TM-1315 §4, 85)

**5.70.050 Expiration of License; Nontransferable.**

- A. A license shall not exceed a period of fourteen (14) days.
- B. A license is not transferable to any other Person and cannot be used for any business or activity or at a location other than those listed on the application and approved for licensing.

(History: Ord. TM-2954 §6, 2012; TM-1539 §2, 88; TM-1315 §5, 85)

**5.70.055 License for Farm and Aquaculture Products.**

A Transient Merchant who is a producer, grower or agent or employee of such grower engaged in the sale of agricultural, farm, garden or aquacultural products grown by such growers within this state shall be required to obtain a license from the City and comply with all requirements as set forth in this Chapter; provided, however, that, in compliance with K.S.A. 12-1617 (as may be amended), the license shall be valid for a period of time of not less than six (6) months; and further provided, that the license fee shall be waived.

(History: Ord. TM-2954 §7, 2012)

**5.70.060 License Application.**

A Transient Merchant may obtain a license through the City Clerk's office. A license may be issued only upon the completion of a license application provided by the office of the City Clerk. The application shall require the following information:

- A. Name and permanent address of the applicant, showing proof of identification. If the applicant is not an individual, the names and addresses of the officers of the corporation or the members or the partnership, association or other entity, as the case may be;
- B. A description of the nature of the business or activities, including the items, goods, wares, merchandise, or services being sold or offered for sale;
- C. A sketch or drawing of the proposed site showing the dimensions of the area being used, the proximity to buildings, parking lots, right-of-ways or other such areas, and description of any structure, implement, stand, display prop, or other such items used for the activity including signs, banners or other attention getting devices;
- D. Proof of a current sales tax license from the State of Kansas or proof of exempt status from state sales tax;

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- E. Proof of payment of Commercial Inventory Tax paid to the Johnson County, Kansas, Treasurer's Office and any required County license, if any;
- F. The name, address, telephone number, and authorized signature of the owner or manager of the property where the business or activity is to take place. Such signature shall indicate that the owner or manager of the property has reviewed the application, understands the nature of the business or activity, and authorizes the use of the described property for the same;
- G. Identification of zoning classification for the area of the proposed business or activity as provided by an authorized City official. Such identification shall not constitute an approval of such business or activity in that zoning classification by the City;
- H. Dates and time the business or activity will operate or be conducted;
- I. Information concerning any felony, misdemeanor, or municipal ordinance conviction in this state or any other state or subdivision thereof or of the United States by the applicant or any agent or employee who will be on site, other than minor traffic offenses;
- J. Name and permanent address of any agents or employee who will be on site, and any companies or organizations being represented in relation to the business or activities; and
- K. Signature of applicant indicating that all of the information provided is true and correct. (History: Ord. TM-2954 §8, 2012; TM-1315 §6, 85)

### **5.70.070 Issuance of License; Revocation.**

- A. A license may be issued only upon completion of the application and payment of fees. The application shall be reviewed to confirm that the applicant complies with the requirements of this Chapter and that the applicant is not proposing to operate in violation of the prohibited acts stated in this Chapter or in violation of any federal, state, or local law.
- B. No license shall be issued to any Transient Merchant for the operation of any temporary business or activity at a location for which a license has been previously issued unless the prior license expired at least ninety (90) days before the present application.
- C. The issuance of a license shall not constitute approval of the business or activity or otherwise prohibit enforcement of this Chapter or any other laws, city code or regulations.
- D. If a license is not issued, the City Clerk's office shall indicate in writing the reason for denial and inform the applicant of the applicant's right to an appeal of the denial.
- E. The license shall be revoked if the applicant fails to provide true and correct information on the application or upon a violation of any provision of this Chapter or any city code or regulation applicable or related to the license. Revocation may be appealed in the same manner as a denied application; however, any appeal taken from an order revoking the license shall not suspend the order of revocation during the pendency of the appeal. (History: Ord. TM-2954 §9, 2012; TM-1539 §3, 88; TM-1315 §7, 85)

**5.70.080 Display of License.**

A licensee shall be required to display the license while any business or activities pursuant to the license are being conducted. The license shall be posted in plain view to all Persons, including law enforcement officers.

(History: Ord. TM-2954 §10, 2012; TM-1315 §8, 85)

**5.70.090 Prohibited Acts.**

It is unlawful for any transient merchant to:

- A. Operate or conduct business or activities in violation of any zoning requirements of the City, including but not limited to, set back requirements.
- B. Operate or conduct business or activities except in areas zoned C-3, CP-3, M-2, MP-2, CP-3J, IP-2J, PEC-3J, or PRB-3J, and where the conduct of such business or activities shall be within two hundred (200) feet of any residentially zoned property used for residential purposes.
- C. Operate or conduct business or activities until one-half hour before sunrise or after one-half hour past sunset or at any time that would cause the need for the use of artificial lighting other than existing lighting.
- D. Fail to provide safely accessible and sufficient parking for customers and employees of the Transient Merchant. For the purposes of this Section, “safely accessible” parking means a parking area configured so that the Transient Merchant’s employees and customers can safely enter and exit the public and private right-of-way without creating a traffic, sight distance or any other type of hazard or danger. For the purposes of this Section, “sufficient” parking means a number of parking spaces equal to or exceeding the number of employees on site plus customer parking in a quantity that is reasonably likely to prevent customer parking overflows given the nature of the Transient Merchant’s business or activities.
- E. Locate the Transient Merchant business or activities, including business vehicles, structures, signs and parking, in a manner that causes congestion, interferes with the traffic flow, or prevents the normal use of parking facilities by existing businesses in the same area. In no event shall a Transient Merchant located entirely or partly in a parking lot used by an existing business reduce the number of available parking spaces to a level more than ten (10%) percent below the total number of parking spaces required by the zoning regulations.
- F. Use any electronic device for sound amplification in an outdoor area, or to otherwise violate any applicable noise ordinance or regulation.
- G. Provide any false or misleading information in completing the license application, or to fail to obtain permission of the property owner or property manager where such business or activity is being conducted.

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- H. Fail to provide at the request of a customer a written receipt for purchases exceeding FIVE DOLLARS in cash or tangible property which receipt shall be electronically printed or signed by the Person making the sale and shall set forth: the name and contact information of the Transient Merchant, a brief description of the goods, wares, merchandise or services sold, the total purchase price, the amount of applicable sales tax, the amount of payment, and the balance due and terms of payment (if any).
- I. Fail to provide any Person the Transient Merchant's name, the name of the company or organization represented, or the name of the goods, wares, merchandise or services sold, or to make any representation as to identity which is false or misleading.
- J. Fail to allow authorized law enforcement officers or City officers to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business.
- K. Fail to remove any structure, device, trash, or debris caused, created or associated with the Transient Merchant's business or activities in an outdoor area.
- L. Operate or conduct business or activities if the licensee or any agent or employee has been convicted of a felony, misdemeanor, or ordinance violation involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of solicitation, peddling, hawking, canvassing, or merchandising within the past five (5) years in this state or any other state or subdivision thereof or of the United States.
- M. Erect or display more than one sign or any sign greater than sixteen (16) square feet in total area. When approved with the license, a separate sign permit shall not be required. Any attention attracting device or any other prohibited sign as set forth in O.P.M.C. Section 18.440.050 (as may be amended) are prohibited from use.
- N. Erect or construct any structure, tent, or building greater than one hundred and twenty (120) square feet.
- O. Operate or conduct business or activities within fifty (50) feet of any driveway entrance or access lane from a public street to an existing business.
- P. Operate or conduct more than one Transient Merchant business or activity on the same property at any one time.
- Q. Operate or conduct business or activities in the public right-of-way or in or upon any park or other public property.
- R. Operate or conduct business or activities that create a traffic or sight distance hazard or any other type of public hazard or danger.

(History: Ord. TM-2954 §11, 2012; NOI-2287 §9, 2001; TM-1539 §4, 88; TM-1315 §9, 85)

### **5.70.095 New Goods Public Auction Law.**

Any Person subject to the provisions of the New Goods Public Auction Law (set forth at K.S.A. 58-1014 et seq., as may be amended) for the sale, disposal of, or offering for sale at public auction any new goods, wares or merchandise shall not be required to obtain a Transient Merchant's license in accordance with the other provisions of this Chapter, but shall instead be required to obtain a public

auction license in accordance to the New Goods Public Auction Law. Accordingly, the provisions of the New Goods Public Auction Law (as may be amended) are incorporated herein by reference, and the City Clerk is authorized to issue a license for the same in accordance with the provisions thereof.

(History: Ord. TM-2954 §12, 2012)

**5.70.100 Appeal.**

Any applicant who is denied a license may appeal to the Director of Planning and Development Services or authorized designee. Such appeal must be filed in writing with the City Clerk within three (3) calendar days of the denial stating the specific reasons for the appeal. Upon receipt of the appeal, a hearing shall be scheduled within three (3) business days. The Director or designee shall issue a decision in writing within five (5) business days of the hearing. It is the responsibility of the appellant to provide sufficient information to the City Clerk so that the appellant may be timely notified. Otherwise all notices will be sent to the permanent address appearing on the application.

(History: Ord. TM-2954 §13, 2012; ROCR-2245 §8, 2001; TM-1315 §10, 85)

**5.70.110 Violations; Penalty.**

In addition to any action that may be taken pursuant to Section 5.70.070, any Person violating any of the provisions and sections of this Chapter is guilty of a public offense and upon conviction thereof shall be punished as provided in Section 1.12.010.

(History: Ord. TM-2954 §14, 2012; TM-1539 §5, 88)

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