

ORDINANCE NO. 1135

AN ORDINANCE REGULATING TRANSIENT MERCHANTS AND REPEALING ORDINANCE NO. 848

THE PEOPLE of the City of Prineville ordain as follows:

SECTION 1. DEFINITIONS. As used in this Ordinance the following definitions apply:

Transient Merchant – Any person, or entity (partnership, corporation, joint venture, or limited liability company), whether it is the owner, agent, consignee, or employee, whether a resident of the City or not, who engages in a temporary business of buying or selling goods, wares, merchandise, or services within the City, and who, in furtherance of such purpose hires, leases, uses, or occupies any building, structure, parking lot, vacant lot, mobile business, tent, street, or alley for the exhibition and sale of the goods, wares, and merchandise, either privately or at public auction. The person, firm, or corporation so engaged shall not be relieved from complying with the provisions of this Ordinance merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer or by conducting the transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant, or auctioneer.

Mobile Business means any business operating from a vehicle which is self-propelled, or which can be pushed or pulled on a sidewalk, street, or highway, on which food is prepared or processed, or from which food or other goods are sold or dispensed to the public.

SECTION 2. LICENSING; EXEMPTIONS

(A) License Required. The City Council finds and determines that it shall be unlawful for a transient merchant, as defined in Section 1 above, to engage in the business within the City, without first obtaining a license therefore in compliance with provisions of this Ordinance. The City Council also finds and determines that the sales create special problems of enforcing regulations for the protection of the public health, safety, morals, and welfare of the City; that the mobility and temporary nature of the businesses affect the enforcement of traffic, sanitation, building and zoning regulations in the City, and that the businesses should be licensed, regulated, and controlled.

(B) License Application and Issuance.

(1) *License Application.* Applicants for license under this subchapter shall file a written, sworn application signed by the applicant, if an individual; by all partners of a partnership; by a member or manager if a limited liability company; and by the president or authorized officer, if a corporation; with the City Manager, showing the following:

a. The name or names of the person or persons having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the city; the local address or addresses of the person or persons while engaged in the business; the permanent address or addresses of the person or persons; the capacity in which the person or persons will act (that is, whether as proprietor, agent, or otherwise); the name and address of the person, firm, or corporation for whose account the business will be carried on, if any; if a corporation, under the laws of

what state it is incorporated; and if a limited liability company, under the laws of what state it is organized.

b. The place or places in the city where it is proposed to carry on the applicant's business and the length of time during which it is proposed that the business shall be conducted – maximum of three days, maximum of 30 days, or maximum of one year; and the applicant shall present written permission from the property owner where the temporary business will be located.

c. If the business is to be conducted from a mobile business and the business is at any location for more than two hours at one time, the permit application shall include the following additional information:

- Tax assessor's map and tax lot numbers for the sites proposed;
- Names and locations of adjacent streets;
- Addresses and locations of any permanent structures on the site;
- Locations of all driveways on the sites and on the adjacent properties;
- Diagram of on-site parking lot and parking space configuration;
- Proposed location of the business vehicle on the site;
- Distances from proposed vehicle location to all structures, driveways, and streets; and
- Location of any furniture, trash receptacles, etc., to be placed in the immediate vicinity of the vehicle;

d. The last four places, other than the permanent place of business of the applicant, where the applicant has conducted a transient business, stating the nature thereof.

e. A statement of the nature and character (type and whether new or used) of goods, wares, or merchandise to be sold by the applicant in the city; and whether the above will be sold at auction, by direct sale or by the taking of orders for future delivery.

f. A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and, if required by the City Manager, copies of all the advertising, whether by handbills, circulars, newspaper advertising or otherwise, shall be attached to the application as exhibits thereto. Signs permitted under this chapter shall be in accordance with the city signing ordinance set forth in the Code of the City of Prineville. All signs shall be located on private property. Attachment to power poles, light standards, existing sign poles, or other similar locations is prohibited.

g. Whether or not the person or person having the management or supervision of the applicant's business have been convicted of a crime or violation of any municipal ordinance, the nature of the offense and the punishment assessed thereof.

h. Credentials from the person, firm, or corporation for which the applicant proposes to do business, authorizing the applicant to act as the representative.

i. Such other reasonable information as to the identity or character of the person or persons having the management or supervision of the applicant's business or the method or

plan of doing the business as the City Manger may deem proper to fulfill the purpose of this chapter in protection of the public.

(2) *License Issuance*

a. The application statement shall be reviewed by the City Manager, Chief of Police, and Planning Director to determine whether the proposed business will comply with the zoning, building, sanitation and traffic laws of the City, and whether operation of the business will be hazardous or injurious to the public or adjoining property by reason of traffic, or sanitation, and whether or not the business will be unsightly, having reference to the condition and standards of the neighborhood.

b. The fees for the license provided herein shall be set by Resolution of the City Council for a license issued for a maximum of three days, a maximum of 30 days, and a maximum of one year. If the City Manager, Chief of Police, and Planning Director shall not file any objection to the issuance of a license, and if it shall be determined that the business would not be in violation of any of the laws of the City, then, after payment of the fees provided herein, the City Manager shall issue a license for the business, stating therein the location or locations of the business and the time during which the business shall be operated.

c. There shall be a three-business day waiting period prior to issuance of the license provided herein to allow for proper handling and investigation for the license.

(C) License Placement. The license issued under this Ordinance shall be valid for three days, 30 days, or one year depending on the applicant's request and must be displayed in plain sight at the transient merchant's place of business in the City.

(D) License Revocation: Upon determination that a permitted transient merchant within the city violates City ordinances, state or federal laws, or that the application contains false or misleading information, the City Manager may revoke the permit upon five days written notice to the transient merchant. The notice shall state the reasons for the revocation.

(E) License Suspension: Upon determining that a permitted transient merchant presents an immediate danger to persons or property, the City Manager may suspend the permit. The suspension takes effect upon the transient merchant's receipt of the suspension notice, or upon delivery of the notice to the establishment of the permittee's business address. The notice shall state the reason for the suspension. The City Manager may continue a suspension as long as the reason for the suspension exists, or until a determination to an appeal regarding the suspension is made.

(F) Appeals: In the event that an application for a license under this chapter shall be denied, the license issued by the City Manager revoked or suspended after issuance, the applicant may file notice with the City Manager of intent to appeal to the Council of the City. The Council shall hear and determine the appeal at the next regular Council meeting that is at least four days after the receipt of the notice of appeal; and the decision of the Council at the hearing shall be final and conclusive. The appeal shall state the name and address of the applicant, the nature of the determination being appealed, the reason the determination is incorrect, and what the correct determination of the appeal should be.

(G) Exemptions: The provisions of this chapter requiring applications for license shall not apply to the following:

- (1) Sales required by law;
- (2) Rummage, yard, garage, or estate sales by persons or entities not engaged in the business of sales of the items being sold.
- (3) Sales to benefit non-profit groups, where the proceeds of the sale do not inure to the direct benefit of an individual member of the organization. A non-profit group is defined as an organization that is tax exempt under IRS Rules and Regulations.
- (4) Sales to benefit private or public schools or private or public school organizations.
- (5) Sales as part of or in connection with any athletic event, rodeo, carnival, festival, fair, public exhibition or event or similar activity held within the city.
- (6) Self-employed minors engaged in intermittent or casual economic activity.

SECTION 3. MOBILE BUSINESS REQUIREMENTS

Mobile businesses and mobile business vehicles shall comply with the following standards:

- (1) At no time shall the business vehicle or operation block the public right or way or vision clearance;
- (2) The mobile business operator shall be responsible for the pick up of all litter generated from the business and/or within 50 feet of the vehicle location throughout the period of operation on the site;
- (3) All temporary structures, equipment, furniture, waste baskets, and other stand-alone items must be placed in the immediate vicinity of the business, and must be removed from the site upon cessation of business operation at the site.
- (4) The mobile vehicle used in the operation of the business must comply with all applicable federal, state, and local laws and regulations.

SECTION 4. INVALIDITY

Any findings by any court of competent jurisdiction at any portion of this Ordinance is unconstitutional or invalid, shall not invalidate any other provision of this Ordinance.

SECTION 5. REPEAL

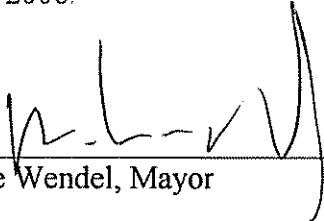
Ordinance No. 848 is hereby repealed.

SECTION 6. PENALTIES

Violations of any provisions of this Ordinance, upon conviction, may be punished by a fine of not more than \$500. Each day of violation is a separate offense.

Passed by the City Council this 21st of September, 2006.

Signed by the Mayor this 26th day of September, 2006.



Mike Wendel, Mayor

ATTEST: 

Robb Corbett, City Manager/Recorder