

GENERAL ORDINANCE NO. 97-1216

AN ORDINANCE REGARDING THE REGULATION OF
TRANSIENT MERCHANTS

THE COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:

Section 1. Definitions.

A) "Transient merchant" as used in this ordinance means and includes every person who occupies a fixed location and who is engaged in or participating in a temporary or transient business of selling or exhibiting for sale, or purchasing, goods, wares, or merchandise of any name or nature in the City. The term "transient merchant" shall not be construed to apply to an operator of a concession or business exhibiting for sale, goods, wares, or merchandise of any name or nature as part of or in connection with any athletic event, rodeo, carnival, festival, fair, or public exhibition or event held within or without the City.

B) "Temporary or transient" as used in this ordinance generally means a business not conducted from and within a permanently constructed, fully enclosed structure; however, the term also includes a business conducted from and within a hotel or motel room, or within any space leased or rented on a short-term basis..

Section 2. License Required. No person or other entity shall engage, conduct or participate in the business of a transient merchant in the City without first obtaining a license as provided in this ordinance.

Section 3. License Fee, Application, Issuance. The license fee for a transient merchant as set forth in the attached Exhibit AA@, shall be paid in advance of licensing. Application for such licensing shall be made to the Finance Department in writing and shall contain the name and address of the person or entity to whom the license has been issued, the nature of the business to be conducted, the day or days for which the license is to be granted, the location upon which the business will be conducted, and a description of the business operation adequate to inform City officials of its appearance and manner of operation. The Finance Director or authorized designee shall review the application, and upon verification that the license fee has been paid and all other requirements have been met, the license shall be issued. The transient merchant shall receive a copy of the license and shall display it conspicuously at its place of business.

Section 4. State and County License Required. No license shall be issued to a transient merchant unless the applicant submits with its application documentation that it has obtained all health and sanitary licenses from the State and County where applicable.

Section 5. Signs. Any sign erected or maintained by a transient merchant shall comply with regulations for signs adopted by the City.

Section 6. Agent for Service. The applicant shall appoint a local person, acceptable to the City Attorney, as an agent for accepting service of process, notice or demand required or permitted by law to be served upon the applicant. The applicant shall submit with its application the agent's acknowledged consent to accept such service for the applicant.

Section 7. Conditions. In addition to the requirements herein, conditions of operation which are necessary to protect the public health, safety and general welfare may be imposed on a license.

Section 8. Grounds for Denial. In addition to the requirements listed above, a license shall not be issued if:

- A) Any false or misleading information is supplied in the application or any information requested is omitted from the application.
- B) The applicant has been convicted of a crime involving unlawful trade practices as defined by ORS 646.608, fraud or moral turpitude within the last five (5) years.
- C) The applicant has been the subject of an unlawful trade practices suit or investigation under ORS Chapter 646 which resulted in civil penalties assessed against it.
- D) The applicant's proposed actual business operation presents a danger to the public health, safety and general welfare which cannot be alleviated through the imposition of a condition of operation.
- E) The applicant is unable to provide proof of compliance with all applicable State and County licensing requirements.
- F) The applicant has failed to comply with any other applicable provision of this ordinance relating to the proposed conduct of the business.

Section 9. Transferability. No license issued pursuant to this ordinance shall be transferable.

Section 10. Revocation. A license, once issued, may be revoked upon the following grounds:

- A) Violation of any of the requirements of this ordinance.
- B) The actual operation of the transient business in a manner presenting a danger to the public health, safety and general welfare, or creating a public nuisance.
- C) Fraud, misrepresentation or incorrect statement contained in the application for the license.
- D) Fraud or misrepresentation in the course of conduct of the licensed business.
- E) Conviction of any crime involving fraud or moral turpitude.
- F) Violation of any ordinance of the City of The Dalles.

Notice of revocation shall be delivered to the licensee or its agent setting forth in writing the grounds thereof by the City Attorney. Notice shall be delivered either personally or by certified mail, return receipt requested, to the current address shown on the City's records. Upon receipt of such notice, the licensee's business operation shall be terminated and removed within two (2) hours. Upon revocation, the City shall refund any unused license fees.

Section 11. Violations. Violation of any of the provisions of this ordinance is an infraction, punishable by a fine not to exceed the sum of \$250.00 for each violation thereof. The sale of each article by any transient merchant without a license shall be deemed a separate offense under this ordinance and a separate violation of this section.

Section 12. Appeal. Any transient merchant aggrieved by the denial or revocation of a license or any action taken by the City under this ordinance shall have the right to appeal to the City Council. Such appeal shall be taken by filing with the City Clerk within three (3) days of the action or conduct complained of, a written statement setting forth the grounds for appeal. The City Council shall set a time and place for hearing within thirty (30) days of receipt of such statement and written notice shall be delivered to the appellant and all affected parties in the manner provided herein for delivery of notices of revocation. The decision of the City Council after such hearing shall be in writing, shall set forth findings of facts and shall be final. A certified copy of the decision of the Council shall be delivered to the appellant and all affected parties in the manner indicated above.

Section 13. Action on Expiration of License. Upon the termination of its license, the transient merchant shall remove its business operation, including all signs and vehicles from the licensed location within two (2) hours and shall leave the location in a clean and orderly manner.

Section 14. Exemptions.

A) Any non-profit organization, community organization, service club, or charitable organization or seller of Oregon-grown produce grown by that seller, whose activities fit within the definition of a "transient merchant", shall be exempt from the licensing requirements herein and entitled to a license without a fee on the condition that it submit to the Finance Director in writing:

- (1) The names and addresses of the officers and/or directors of the organization.
- (2) The name and address of the person actually in charge of the operation.
- (3) A description of the operation adequate to inform the Finance Director and other City officials of its appearance and manner of operation.

B) Notwithstanding the exemption described above, any conditions of operation which are necessary to protect the public health, safety, and general welfare may be imposed on a license granted under subsection (A).

C) Notwithstanding the exemption described above, the license of an exempt organization or individual may be denied or revoked upon the grounds set forth in Section 10. All rights of appeal set forth above shall apply to an exempt organization or individual.

Passed by the City Council and approved by the Mayor December 8, 1997.