

ARTICLE II. - TRANSIENT VENDORS<sup>[2]</sup>

Footnotes:

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**Cross reference**— *Streets, sidewalks and other public places, ch. 98.*

**State Law reference**— *Transient vendors, MCA 1972, § 75-85-1 et seq.*

DIVISION 1. - GENERALLY<sup>[3]</sup>

Footnotes:

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**Editor's note**—*Ord. No. 2012-04, adopted March 6, 2012, amended Div. 1 in its entirety to read as herein set out. Former Div. 1, §§ 30-26—30-32, 30-46—30-63, pertained to peddlers—generally and derived from §§ 19-1—19-7 of the 1977 Code.*

## Sec. 30-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Door to door sales* means any activity that includes entering upon private property and solicitation through individual contact or activity where the seller initiates the contact with the buyer on the prospective buyer's private property.

*Person* means an individual, corporation, association, partnership or other entity.

*Transient vendor* means any person who transacts transient business in this state either in one locality or by traveling from place to place in this state. The term includes a vendor who for the purposes of carrying on such business hires, leases, uses or occupies any building, structure, motor vehicle, railroad car or real property.

*Transient business* means any business conducted for the sale of merchandise or services that is carried on at a particular location for a period of less than six months in each year, even though the owner of such business may conduct the business at another location for more than six months in each year.

(Ord. No. 2012-04, 3-6-12)

## Sec. 30-27. - Exceptions to article.

(1) The provisions of this chapter shall not apply to:

- (a) Civic and nonprofit organizations or wholesale sales to retail merchants by commercial travelers;
- (b) Wholesale trade shows or conventions;
- (c) Sales of goods, wares, services or merchandise by sample, catalogue or brochure for future delivery;
- (d) Fairs and convention center activities conducted primarily for amusement or entertainment;
- (e) Any general sale, fair, circus, auction or bazaar sponsored by a church or religious organization;
- (f) Garage sales held on premises devoted to residential use;
- (g) Sales or repairs of crafts or sales or repairs of items made by hand by the person making the crafts or items;

- (h) Duly licensed flea markets operating from a fixed location;
  - (i) Sales of agricultural, dairy, poultry, seafood or forest management products or services related to forest management or silvicultural activities, nursery products, foliage plants or ornamental trees, except such products or services sold at retail and not grown or produced within Mississippi;
  - (j) Sales of agricultural services.
- (2) A transient vendor not otherwise exempted from this chapter is not exempted from this chapter because of a temporary association with a local dealer, auctioneer, trader, contractor or merchant, or by conducting the transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.

(Ord. No. 2012-04, 3-6-12)

Sec. 30-28. - Refusing to leave.

Any transient vendor who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the premises and not return thereto shall be deemed guilty of a misdemeanor.

(Ord. No. 2012-04, 3-6-12)

Sec. 30-29. - Entrance to premises restricted.

It shall be unlawful for any transient vendor to enter upon any private premises when such premises are posted with a sign stating, "no Transient Vendors allowed" or "no solicitations allowed" or other words to that effect. It shall be unlawful for any transient vendor to sell, distribute, or solicit door to door in residential neighborhoods in the City of Starkville.

(Ord. No. 2012-04, 3-6-12)

**State Law reference—** Transient vendors, MCA 1972, § 75-85-1 et seq.

Sec. 30-30. - Misrepresentations concerning goods or services.

It shall be unlawful for any transient vendor to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

(Ord. No. 2012-04, 3-6-12)

Sec. 30-31. - Locations and hours of business.

It shall be unlawful for any transient vendor at any time to engage in the business of door to door sales in any residential neighborhoods. Transient vendors are allowed in areas of higher density residential zoning, R-3 through R-5; commercial zoning and in form based code transect areas, T-4, T-5 and T-6. Transient vendors shall not conduct business in any areas from the hours of 1:00 a.m. to 6:00 a.m. Transient vendors shall not leave their businesses parked and unattended while occupying any public space for a period longer than 60 minutes.

(Ord. No. 2012-04, 3-6-12)

Sec. 30-32. - Activity in roadways.

It shall be unlawful for any person to peddle any goods, wares, merchandise or services, or to solicit any contributions of any kind for any charitable, educational or other purpose, while standing in or upon any public roadway. Transient vendors may establish a temporary location within the boundaries and confines of a single public parking space provided they do not impede the use of the adjacent spaces by authorized users and do not utilize any handicap spaces for their operations. Transient vendors shall not remain stationary in a public parking space for longer than 12 hours within a 24-hour period and shall not be allowed to remain overnight in a public parking space. Transient vendors utilizing a public parking space must adhere to existing posted time limits associated with the parking space that they are occupying. Transient vendors must vacate a public space and shall not be allowed to continue operations in areas that are designated for special events as approved by the board of aldermen from the time of setup for the approved special event to the time of conclusion of the special event.

(Ord. No. 2012-04, 3-6-12)

**State Law reference**— Transient vendors, MCA 1972, § 75-85-1 et seq.

Secs. 30-33. - Signage authorized.

Transient vendors are authorized to utilize signage that is approved for the district in which they are authorized to conduct business. Any free-standing signage will be removed at the end of the business day and may not remain after the time of the authorized permit period has expired.

(Ord. No. 2012-04, 3-6-12)

Secs. 30-34—30-45. - Reserved.

DIVISION 2. - LICENSE

Sec. 30-46. - License required.

A transient vendor may not transact business in the City of Starkville unless the vendor, and the owner of the merchandise or provider of the services to be offered if the merchandise is not owned or the services are not provided by the vendor, has secured a license in accordance with this chapter and otherwise complied with this chapter.

(Ord. No. 2012-04, 3-6-12)

**Editor's note**— Ord. No. 2012-04, adopted March 6, 2012, amended § 30-46 in its entirety to read as herein set out. Former § 30-46, pertained to privilege taxes, bond required, and derived from § 19-19 of the 1977 Code.

**Cross reference**— Local privilege taxes, § 102-26 et seq.

**State Law reference**— Transient vendors, MCA 1972, § 75-85-1 et seq.

Sec. 30-47. - License fee; bond requirements.

- (1) Each applicant for a transient vendor license shall pay a license fee of \$100.00 with the application, which fee shall be deposited in the general fund of the city. The applicant shall also execute a cash bond or a surety bond issued by a corporate surety authorized to do business in the State of Mississippi in an amount that is the lesser of either \$2,000.00 or five percent of the wholesale value of any merchandise or service to be offered for sale by the applicant. The surety bond shall be issued in favor of the City of Starkville and shall be conditioned upon payment of: (a) all taxes due from the

applicant to the state or to a political subdivision of the state; (b) any fines assessed against the applicant or the applicant's agents or employees for a violation of this chapter; and (c) any judgment rendered against the applicant or the applicant's agents or employees in a cause of action commenced by a purchaser of merchandise or services not later than one year after the date the merchandise or services were sold by the applicant.

- (2) The transient vendor shall maintain the bond during the period that the vendor conducts business in the City of Starkville and for a period of one year after the termination of the business. After the transient vendor furnishes satisfactory proof to the city clerk that the vendor has satisfied all claims of purchasers of merchandise from or services offered by the vendor and that all sales taxes and other applicable taxes have been paid, the bond shall be released.

(Ord. No. 2012-04, 3-6-12)

**Editor's note**— Ord. No. 2012-04, adopted March 6, 2012, amended § 30-47 in its entirety to read as herein set out. Former § 30-47, pertained to limitation on issuance, and derived from § 19-20 of the 1977 Code.

**State Law reference**— Transient vendors, MCA 1972, § 75-85-1 et seq.

Sec. 30-48. - Application for license.

- (1) Applicants for transient vendor licenses shall file with the city clerk a sworn application giving the following information:
    - (a) The name and permanent address of the transient vendor making the application and some form of identification;
    - (b) A statement describing the kind of business to be conducted, the length of time for which the applicant desires to transact the business, and the proposed location of the business;
    - (c) The name and permanent address of the applicant's registered agent or office; and
    - (d) Proof that the applicant has acquired all other required city, county and state permits and licenses. Such proof shall include a Mississippi sales tax number and, if the transient vendor desires to transact business in a municipality, such number shall include such municipality's sales tax diversion code.
    - (e) If the applicant is an association or a corporation, the applicant must also include the names and addresses of the members of the association or the officers of the corporation. If the applicant is a corporation, the application must state the date of incorporation and the state in which it was incorporated. If the applicant is a corporation organized under the laws of another state, the applicant must state the date on which the corporation qualified to transact business as a foreign corporation in this state.
    - (f) If a vehicle is to be used, a description of such vehicle, together with the license number, copy of the driver's license or other means of identification.
    - (g) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any city ordinance, the nature of the offense and the punishment or penalty assessed therefore.
    - (h) Transient vendors or vendors selling prepared food must have the required licenses from the applicable state or local entity for such activity.
  - (2) The city clerk shall obtain the necessary forms from the state tax commission and shall use same.
- (Code 1977, § 19-21; Ord. No. 2012-04, 3-6-12)

**State Law reference**— Transient vendors, MCA 1972, § 75-85-1 et seq.

Sec. 30-49. - Driver's license.

The applicant, at the time of filing his application for a permit required by this division, shall present his driver's license, if he has one, to the chief of police.

(Code 1977, § 19-22)

Sec. 30-50. - Giving false information on application.

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit required by this division.

(Code 1977, § 19-23)

Sec. 30-51. - Registered agent.

- (1) Each applicant for a transient vendor license shall designate a registered agent on the license application. The registered agent must be a resident of the county or municipality for which the license is sought and shall be the agent on whom any process, notice or demand required or permitted by law to be served on the licensee may be served. The registered agent must agree in writing to act as the agent. The license applicant shall file a copy of the agreement with the license application.
- (2) The city clerk shall maintain an alphabetical list of all transient vendors in the municipality and the names and addresses of their registered agents.
- (3) If a transient vendor who does business in a municipality fails to have or to maintain a registered agent or if the designated registered agent cannot be found at the stated permanent address, the city clerk is the agent of the transient vendor for service of process, notices or demands. Service on the city clerk is made by delivering to that office duplicate copies of the process, notice or demand. If such a process, notice or demand is served on the city clerk, one copy shall immediately be forwarded by registered or certified mail to the permanent address of the transient vendor.
- (4) This section does not limit or otherwise affect the right of any person to serve a process, notice or demand in any other manner authorized by law.

(Ord. No. 2012-04, 3-6-12)

**Editor's note**— Ord. No. 2012-04, adopted March 6, 2012, amended § 30-51 in its entirety to read as herein set out. Former § 30-51, pertained to service of process, and derived from § 19-24 of the 1977 Code.

**State Law reference**— Transient vendors, MCA 1972, § 75-85-1 et seq.

Sec. 30-52. - Investigation of applicant.

Upon receipt of an application for a permit required by this division, the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good.

(Code 1977, § 19-25)

Sec. 30-53. - Denial authorized; notice.

If, as a result of the investigation authorized by section 30-52, the applicant's character or business responsibility is found to be unsatisfactory, the chief of police shall endorse on such application his disapproval and his reasons for such disapproval, and return the application to the city clerk, who shall notify the applicant that his application is disapproved and that no permit will be issued.

(Code 1977, § 19-26)

Sec. 30-54. - Issuance.

If, as a result of the investigation authorized by section 30-52, the character and business responsibility of the applicant are found to be satisfactory, the chief of police shall endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return the permit, along with the application, to the city clerk, who shall, upon payment of the prescribed privilege license fee, deliver to the applicant his permit and issue a license.

(Code 1977, § 19-27)

Sec. 30-55. - Contents.

Every license issued under this division shall contain the signature and seal of the city clerk and shall show the name and address of the licensee, the class of permit and license issued and the kind of goods to be sold thereunder, the date of issuance and the length of time such license shall be operative.

(Code 1977, § 19-28; Ord. No. 2012-04, 3-6-12)

Sec. 30-56. - Record.

The city clerk shall keep a permanent record of all licenses issued under the provisions of this division.

(Code 1977, § 19-29; Ord. No. 2012-04, 3-6-12)

Sec. 30-57. - Disposition of receipts.

The taxes and penalties collected under this division shall be paid into the city general fund in the same manner as other taxes collected by the city clerk.

(Code 1977, § 19-36; Ord. No. 2012-04, 3-6-12)

Sec. 30-58. - Posting of sales tax number, license number and statement concerning sales receipt; vendor to keep a running total of sales.

While transacting the business, a transient vendor shall post in a prominent place, so that they may clearly be seen by purchasers of the merchandise or services which being offered, the state sales tax number, transient vendor license number, and a statement that the vendor is required to give purchasers, at the time of payment, receipts for purchases that include sales tax. The postings required in this section shall be written in bold, legible letters and numbers not less than one inch in height. The transient vendor shall keep a running total of sales.

(Ord. No. 2012-04, 3-6-12)

**Editor's note**— Ord. No. 2012-04, adopted March 6, 2012, amended § 30-58 in its entirety to read as herein set out. Former § 30-58, pertained to display, and derived from § 19-31 of the 1977 Code.

**State Law reference**— Transient vendors, MCA 1972, § 75-85-1 et seq.

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Sec. 30-59. - Issuance of license; validity of license; renewal of license

- (1) The city clerk shall issue a transient vendor license under this chapter only if all requirements of this chapter have been met. The license is not transferable and is valid only within the territorial limits of the municipality. A license expires 90 days after the day of issuance.
- (2) A license may be renewed on payment of a \$25.00 renewal fee and filing for renewal with the city clerk's office before the expiration of the current license. A license may be renewed only one time after which a licensee must once again purchase a new license pursuant to the provisions of MCA 1972, § 75-85-13, and the City of Starkville Code of Ordinances.

(Ord. No. 2012-04, 3-6-12)

**Editor's note**— Ord. No. 2012-04, adopted March 6, 2012, amended § 30-59 in its entirety to read as herein set out. Former § 30-59, pertained to duration, and derived from § 19-33 of the 1977 Code.

**State Law reference**— Transient vendors, MCA 1972, § 75-85-1 et seq.

Sec. 30-60. - Revocation.

Any license issued under the provisions of this division may be revoked for the violation by the permittee of any applicable provision of this Code, state law or city ordinance. Upon such revocation, such license shall immediately be surrendered to the city clerk, and failure to do so shall be a misdemeanor.

(Code 1977, § 19-34; Ord. No. 2012-04, 3-6-12)

Sec. 30-61. - Appeals.

Any person aggrieved by the action of the city clerk in the denial of an application for a transient vendor's license or in the decision with reference to the revocation of a transient vendor's license as provided in this division shall have the right of appeal to the mayor and board of aldermen. Such appeal shall be taken by filing with the mayor and board of aldermen, within ten calendar days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The mayor and board of aldermen shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant.

(Code 1977, § 19-35; Ord. No. 2012-04, 3-6-12)

Sec. 30-62. - Not transferable.

No peddler's permit shall be used at any time by any person other than the one to whom it was issued.

(Code 1977, § 19-30)

Sec. 30-63. - Altering prohibited.

It shall be unlawful for any person to alter or deface any license issued pursuant to this division.

(Code 1977, § 19-32; Ord. No. 2012-04, 3-6-12)

Sec. 30-64. - Penalties.

Any person who knowingly or intentionally operates a transient business without a valid license as provided by this chapter or who knowingly or intentionally advertises, offers for sale, or sells any merchandise or services in violation of this chapter shall, upon conviction, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500.00 or be imprisoned for not more than

six months, or be both fined and imprisoned. Such person may also be proceeded against by suit, and the city clerk may seize and sell any property of the person liable for the tax and penalty in the same manner as property of taxpayers delinquent for the payment of ad valorem taxes due on personal property may be distrained and sold.

(Ord. No. 2012-04, 3-6-12)

**State Law reference**— Penalties, MCA 1972, § 75-85-19.

Secs. 30-65—30-90. - Reserved.