

PARKE COUNTY
ORDINANCE 2009- 12

AN ORDINANCE adopting the provisions of I.C. 26-37-1, et. Seq., amending Parke County Ordinance# 1993-6, 1994-05 and 2005-02; and made effective in Parke County for the purpose of providing an enforcement procedure for the regulation and licensing of transient merchants.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF PARKE COUNTY, INDIANA THAT:

SECTION 1: JURISDICTIONAL AREA

Section 1: The provisions of I.C. 25-37-1, et. Seq. apply to the incorporated and the unincorporated areas in Parke County, Indiana.

SECTION 2: DEFINITIONS

Section2: "Transient merchant" when used herein, includes all persons, firms, limited liability companies and corporations, both as principals and agents, who engage in, do or transact any temporary or transient business in Parke County, either in one (1) locality or in traveling from place to place in Parke County, offering for sale or selling goods, wares or merchandise, and those who, for the purpose of carrying on such business, hire, lease or occupy any permanent or temporary mobile building, structure, or real estate for the exhibition by means of samples catalogues, photographs, and price lists or sale of such goods, wares or merchandise. The term does not include the following:

- a) Any person, individual, co-partner, limited liability company or corporation which grows the goods, wares or merchandise that is sold or offered for sale by the same person, individual, co-partner limited liability company or corporation;
- b) a person who makes crafts or non-consumable items by hand and who sells them or offers them for sale;
- c) an auctioneer who's licensed under I.C. 25-6-1;
- d) a resident of Parke County in which the sale takes place who conducts a sale of tangible personal property for not 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 and which organization receives the substantial portion of revenues from the activities;
- 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 described in subdivision (e) and that said organization receives the substantial portion of revenues from said sales;

- g) a person who:
 - 1) organizes;
 - 2) sells merchandise at;
 - 3) offers to sell merchandise at or;
 - 4) exhibits at;
- a trade show or convention

SECTION 2.5: LOCAL DEFINITION OPTION

Section 2.5: Parke County hereby requires, under I.C. 25-37-1-15, that holders of a registered retail merchant's certificate transacting any temporary or transient business in Parke County be required to obtain and pay the necessary fees for a transient merchant's license unless otherwise exempted above or excluded below.

SECTION 3: LICENSE REQUIRED

Section 3: It shall be unlawful for any transient merchant to transact business in Parke County, Indiana, unless such transient merchant and the owners of any goods, wares or merchandise to be offered for sale or sold, if such are not owned by the vendor shall have first secured a license as herein provided and shall have complied with the other requirements of this ordinance. All transient merchants, including those excluded under Section 2 of this ordinance, must obtain and display transient merchant license.

SECTION 4: APPLICATION FOR LICENSE – NOTICE TO STATE REVENUE DEPARTMENT – REPRESENTATIONS

Section 4: Any transient merchant desiring to transact business in Parke County, Indiana, shall file an application for a license for that purpose with the auditor of Parke County. The application shall state the following facts by attachments or signed representations:

a) The name, address, including County of residence and post office address of the person, firm, limited liability company or corporation making the application, and if a firm, limited liability company or corporation, the name and address of the members of the firm or limited liability company or officers of the corporation as the case may be.

b) If the applicant is a corporation or limited liability company, then there shall be stated on the application form the date of the incorporation or organization, the State of incorporation or organization and if the applicant is a corporation or a limited liability company formed in a State other than the State of Indiana, the date on which such corporation or limited liability company qualified to transact business as a foreign corporation or foreign limited liability company in the State of Indiana.

c) A statement showing the kind of business proposed to be conducted. The length of time for which the applicant desires to transact business, and if for the purpose of transacting such business any permanent or mobile building, structure or real estate is to be used for the exhibition by means of samples, catalogues, photographs and price lists or sale of goods, wares or merchandise, the location of such proposed place of business.

d) A detailed inventory and description of such goods, wares and merchandise to be offered for sale or sold, the manner in which the same is to be advertised for sale and the representations to be made in connection therewith, the names of the persons from whom the goods,

wares and merchandise so to be advertised or represented were obtained, the date of receipt of such goods, wares and merchandise by the applicant for the license, the place from which the same were last taken, and any and all details necessary to locate and identify all goods, wares and merchandise to be sold.

e) Attached to the application shall be a receipt showing that personal property taxes on the goods, wares and merchandise to be offered for sale or sold have been paid, or such representation will be attested to by the applicant on the application form.

f) A copy of the completed application form shall have been mailed by registered mail by the applicant to the Indiana Department of Revenue or such other department as may be charged with the duty of collecting gross income taxes or other taxes of a comparable nature or which may be in lieu of such gross income taxes at least ten (10) days before such application has been filed with the Parke County Auditor. The application shall state the precise period of time and location from which said applicant intends to transact business, the approximate value of goods, wares and merchandise to be offered for sale or sold and such other information as the Indiana Department of State Revenue or its successor may request or by regulation require. Such representations that the applicant has complied with the above provisions shall be attested to by the applicant on the application form.

g) Said application shall be verified or attested to by the applicant.

h) Falsification of any of the above is grounds for refusing to issue a license or for the revocation of same.

i) Such applicant shall pay a processing or administration fee of Twenty Dollars (\$20.00), except that said fee is not required of an applicant who is either a resident of Parke County or an applicant who pays real estate taxes on real estate located in Parke County.

j) If the applicant has been issued a license, but is not in possession of the license while transacting business in Parke County, said applicant will be required to pay a fee of Five Dollars (\$5.00) in order to have a replacement license issued.

SECTION 5: BOND

Section 5:

a) Except as provided in Section 5.5 of this Ordinance, at the time of filing the application, the applicant shall also file and deposit with the County Auditor a bond with sureties to be approved by the County Auditor in the penal sum of Seven Hundred Fifty Dollars (\$750.00) for three (3) times the value of the goods, wares and merchandise to be offered for sale or sold as shown by the inventory filed, whichever sum is greater, running to the state. The bond shall be forfeited and used for the benefit of:

1) any purchaser of goods, wares or merchandise sold by the applicant, if the purchaser is awarded a judgment as a result of a cause of action against the applicant that was commenced within one (1) year of and that arose out of the sale;

2) the operating budget of the County's Prosecuting Attorney, if the applicant is found by a court to have violated Section 9 of this Ordinance, although the amount is forfeited under this subdivision may not exceed one-third (1/3) of the bond;

3) the state, any of its departments or subdivisions, or any local unit of government, if the applicant fails to pay all taxes due from the applicant to that governmental entity; or,

4) a court in payment or partial payment of any fines that may be assessed by the Court against the applicant, its agents, or employees for violation of this ordinance.

However, the aggregate liability of the surety for all taxes, fines, disbursements, and causes of action may not exceed the amount of such bond. There shall be no limitation of liability against the transient merchant or the applicant for the license.

b) In such bond, the applicant and surety shall appoint the Auditor of Parke County the agent of the applicant, and the surety for the service of process. In the event of such service of process, the agent on whom such service is made shall, within five(5) days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he has been served, addressed to the last known address of such party. Failure to mail the copy shall not, however, affect the court's jurisdiction.

c) The state or any department or subdivision, municipal or otherwise, thereof or any person having a cause of action arising from or out of any sale or sales of goods, wares or merchandise or against the applicant may joint the applicant and the surety on such bond in the same action or may sue either such applicant or the surety alone.

SECTION 5.5: LOCAL BOND OPTION

Section 5.5:

a) Notwithstanding Section 5 of this Ordinance, the Parke County Commissioners may annually:

1. set the amount of the bond required under Section 5 of this Ordinance in any amount that is not greater than the amount required in Section 5 of this Ordinance; or,

1) waive the bond required under Section 5 of this Ordinance.

b) If the County Commissioners reduce or waive the bond under subsection (a) they must inform the County Auditor of the following:

1) whether a bond is to be required to be filed with an application with the Auditor for a transient merchant license;

2) the amount of the bond is required;

c) An applicant filing for a transient merchant license must do the following:

1) If the filing for the transient merchant license with the County Auditor who has been informed of a reduced bond under subsection (b), the applicant must file:

A. an application; and

B. the bond;

2) If the filing for a transient merchant license with the County Auditor who has been informed

that a bond has been waived under subsection (b), the applicant must file only an application.

d) A bond required under subsection (a)(1), although not in the amount required under Section 5

Of this Ordinance, will for all other purposes be treated like a bond issued under Section 5 of this Ordinance.

SECTION 6: LICENSE FEE

Section 6: Except as provided in Section 6.5 of this Ordinance, the applicant desiring to file an application with the Auditor for a transient merchant license shall pay to the Parke County Treasurer a license fee of \$100.00 for each six (6) month period in which the applicant proposes to transact business. The applicant shall thereupon file the Treasurer's receipt for such payment with the Auditor of the County with whom the application is filed.

SECTION 6.5: LOCAL FEE OPTION

Section 6.5:

a) Notwithstanding Section 6 of this Ordinance, the County Commissioners may annually:

1) set the county license fee and any late fee required under Section 6 of this Ordinance in any

amount that is not greater than the amount required in Section 6 of this Ordinance; or,

2) waive the county license fee required under Section 6 of this chapter.

b) If the County Commissioners reduce or waive the county license fee under subsection (a) they

must inform:

1) the treasurer of the county; and

2) the auditor of the county;

Whether a license fee is required to be filed with an application with the auditor for a transient

merchant license and the amount of the license fee if a license fee is required.

c) A treasurer who is informed of a fee change under subsection (b) shall:

1) require each applicant submit the lesser fee set by the County Commissioners; and,

2) issue a receipt to the applicant.

d) An applicant filing for a transient merchant license must do the following:

1) If filing for a transient merchant license with the county auditor who has been informed of a

Reduced license fee under subsection (b), the applicant must file:

A. an application; and

B. a receipt from the county treasurer.

2) If filing for a transient merchant license with a county auditor who has been informed that a

License fee has been waived under subsection (b), the applicant must file only an application.

SECTION 7: ISSUANCE OF LICENSE – VALIDITY – LIMITATIONS

Section 7:

a) Upon the filing of such application and after the applicant has established that he has fully

Complied with all the provisions of this ordinance, the auditor of Parke County may issue to the applicant a license authorizing the said applicant to transact business as proposed in said application. Such license shall not be transferable and shall be valid only in Parke County and shall not be valid in any town or city which has enacted an ordinance licensing transient merchants, unless a license from such city or town is also obtained. No license shall be good for more than one (1) person, unless such persons shall be co-partners or employees of a firm, limited liability company or corporation of such license. No license shall be good for more than one (1) location in Parke County, if said transient merchant is transacting business in a building or structure in Parke County.

- b) The auditor shall keep a record of such license in a book provided for that purpose, which shall

at all times be open to public inspection.

- c) No particular form or license shall be required to be issued by said auditor. However, any

license issued shall state the name of the person, firm, limited liability company or corporation which is licensed, and the number of days for which the license is issued.

SECTION 8: EXPIRATION OR LICENSE, REPORT TO AUDITOR AND STATE REVENUE DEPARTMENT

Section 8: Within ten (10) days after said license expires the holder thereof shall file in duplicate with the county auditor an inventory of all goods, wares and merchandise sold and the price received therefore, which inventory shall be verified by the person who filed the application for the license with the said auditor. The county auditor shall immediately after receiving such report and inventory forward a copy thereof to the Indiana Department of State Revenue or its successor.

SECTION 9: PENALTY FOR VIOLATION

Section 9: A transient merchant who:

- a) Transacts business without having first obtained a license under this chapter; or,
- b) Knowingly advertises, offers for sale, or sells any goods, wares or merchandise contrary to this

ordinance;

commits a Class B Infraction for each day the violation occurs.

SECTION 10: EXCEPTIONS

Section 10: The provisions of this chapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business nor to bona fide sale of goods, wares and merchandise by sample for future delivery, or to sheriffs, constables or other public officers selling goods, wares and merchandise according to law, nor to bona fide assignees or receiver appointed in Indiana selling goods, wares and merchandise for the benefit of creditors.

SECTION 11: ADDITIONAL CITY OR TOWN TAX, LICENSE AND REGULATION AUTHORIZED

Section 11:

- a) The towns and cities of Parke County may tax, license, and regulate transient merchants and charge a fee for the transaction of business by them, and such towns and cities may provide for the punishment of violators, subject to the limitations of I.C. 36-1-3.
- b) A city or town license may not be in lieu of a county license. However, this Ordinance

does not supersede any local ordinance regulating transient merchants.

SECTION 12: DISPOSITION OF LICENSE RECEIPTS

Section 12: All fees collected by Parke County under this Ordinance shall be paid into the general fund of Parke County.

**SECTION 13: COMPLIANCE WITH ORDINANCE REQUIRED
NOTWITHSTANDING ASSOCIATION WITH EXEMPT PERSON**

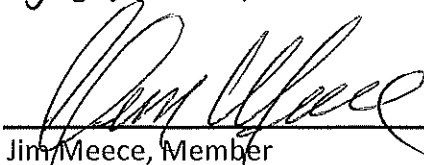
Section 13: A temporary association or partnership with a person excluded from the definition of transient merchant under Section 2 of this Ordinance does not relieve a transient merchant from complying with this Ordinance.

BE IT FURTHER ORDAINED that this Ordinance is in full force and effect upon passage by the Parke County Board of Commissioners and legal publication thereof.

DULY ADOPTED this 21ST day of SEPTEMBER, 2009.


PARKE COUNTY BOARD OF COMMISSIONERS


George V. Nicholas, President


Jim Meece, Member


Greg Harbison, Member

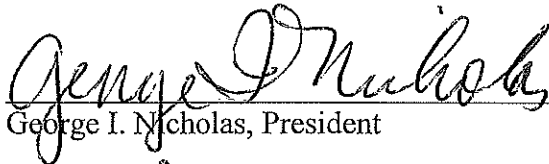
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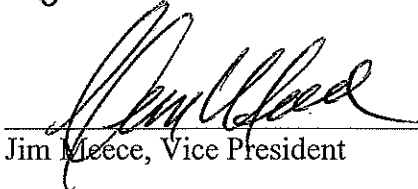

Diana Hazlett, Auditor

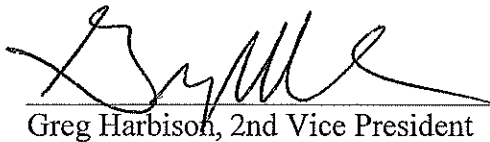
**MOTION TO ADOPT ORDINANCE
ON SAME DAY AND AT SAME MEETING**

It is hereby moved that the proposed Ordinance, hereto attached may be considered, put upon its passage, and adopted on this same day and at this same meeting where it has first been introduced. We, the undersigned members of the Parke County Board of Commissioners, being all the members present at this time, hereby unanimously adopt this motion and consent to said action on the proposed ordinance per I.C. 36-2-4-7.

Dated this 21st day of SEPT, 2009.


George I. Nicholas, President


Jim Meece, Vice President


Greg Harbison, 2nd Vice President

ATTEST:


Diana L. Hazlett, Auditor