

ORDINANCE NO. 2023-13

AN ORDINANCE ESTABLISHING BUSINESS PERMIT FEES AND REQUIREMENTS FOR BUSINESSES OPERATING WITHIN THE POTTSVILLE CITY LIMITS, AMENDING PRIOR ORDINANCES IN CONFLICT THEREWITH, AND FOR OTHER PURPOSES

WHEREAS, the City of Pottsville has determined that it is in the best interest of the city to require that all persons, partnerships, associations, companies, and corporations engaging in or operating a business within the city limits of Pottsville obtain an annual business permit prior to engaging in business. The purpose of said permit requirement is to register all businesses, to ascertain the owner or the person responsible for the business in case of an emergency, and to enhance zoning and code enforcement in all commercial and residential areas of the city.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTTSVILLE, ARKANSAS:

Section 1. Definitions.

- (a) The term "person" as used herein shall refer to any sole proprietorship, partnership, corporation, association, firm or other legal entity which engages in, carries on or follows any trade, business, vocation, profession or calling within the City of Pottsville except such persons who are exempt from payment of occupation taxes and licensing procedure by the laws of the State of Arkansas or the laws of the United States. The term "person" does not include self-employed minors 18 years of age or younger.
- (b) *Temporary or transient business* means any business conducted for the sale of goods, wares or merchandise that is carried on in any building, structure, motor vehicle, railroad car or real estate for a period of less than six months each year.
- (c) *Transient merchant* means any person which engages in, does or transacts any temporary or transient business in the city, either in one locality or in traveling from place to place in the city, offering for sale or selling goods, wares, merchandise, or services, and includes those merchants who, for the purpose of carrying on such business, hire, lease, use or occupy any building, structure, motor vehicle, railroad car or real estate.
- (d) *Full-Time Employee*: means all owners or managers receiving compensation of any kind and all salaried employees and hourly wage employees working over 32 hours per week or working over 1,000 hours per year, and employees compensated by commission, piecework or other manner based on productivity. Self-employed persons that fall into the criteria mentioned in the preceding line shall also count as full-time employees.
- (e) *Part-time Employee*: means all employees who do not qualify as full-time employees. For the purposes of counting part-time employees in determining the permit fee, two (2) part-time employees shall count as one (1) full-time employee.

Section 2. Permit required.

(a) *Generally.* It shall be unlawful for any person within the city limits to engage in, carry on or follow any trade, business, vocation, profession or calling without first having paid therefor what fee may be required for the privilege of engaging in, carrying on or following such trade, business, profession, vocation or calling in said city. Permits for group sales, such as craft fairs, farmers markets, etc., shall be obtained and paid for by the person or agency organizing said event.

(b) *Civil penalty.* Any business which has not obtained a permit before February 1 of each year shall pay a penalty of \$1.00 for each day a permit is not obtained, after January 31, up to a maximum additional civil penalty of \$25.00 per permit, which penalty shall be added to the permit price by the Code Enforcement Officer upon issuance of the permit.

Section 3. Cost of Permit.

The cost of business permits shall be as follows:

1-5 employees: \$25.00

6-15 employees: \$50.00

16-30 employees: \$75.00

31-99 employees: \$100.00

100 or more employees: \$150.000

Section 4. Exceptions.

The following shall be exempt from the provisions of this Ordinance: All City sponsored events and festivals.

Section 5. Procurement of Permit.

All permits provided for in this article shall be issued by the code enforcement officer. The permits shall be issued for a term beginning as of January 1. If a fee is required, any person beginning a business in the city after January 1, but before July 1 of any year, shall pay the full permit fee, but any person beginning a business after June 30 of any respective year, shall be allowed to pay one-half of the annual permit fee, for the balance of the year, but thereafter shall pay the full amounts of the permit fee herein provided. Businesses holding permits that intend to remain in business during the following year should renew their permit during the month of December. Transient merchants shall pay fees as hereinafter set out. Fee schedules shall be as established from time to time by the city.

Section 6. Application.

(a) An application for a permit under this article shall be made to the city in writing, upon blank forms to be furnished by the city. Each application shall indicate the character of business for which permit is asked, but at a minimum shall provide the following:

- (1) Permanent address and name and address of the merchant's registered agent and owner;
 - (2) The number of employees;
 - (3) A description of product type and/or type of business;
 - (4) Location of the business;
 - (5) Proof of state sales tax permit, if applicable;
 - (6) Statement of the proposed length of stay in the community, if registering as a transient merchant;
 - (7) Meet zoning regulations and all other applicable city regulations;
 - (8) If not the owner of the property on which the sales are to be made, supply proof of written permission of the owner of property; and
 - (9) Any other information requested by the Code Enforcement Officer.
- (b) The Code Enforcement Officer shall maintain an alphabetical list of the merchants in the city and the names and addresses of their owners and registered agents. Each registered agent designated by a transient merchant shall be a resident of the city and shall be the agent of the transient merchant upon whom any process, notice, or demand required or permitted by law to be served upon the transient merchant may be served.
- (c) If any transient merchant doing business or having done business in this city shall fail to have or maintain a registered agent in the city, or if such registered agent cannot be found at his permanent address, the city code enforcer officer shall be an agent of such transient merchant for the service of all process notices in compliance with applicable state laws.

Section 7. Enforcement.

The city code enforcement department and the police department, when other duties permit, shall assist in ensuring that all businesses have a permit posted at the location of the business or sale.

Section 8. Nontransferable.

No permit issued under this article shall be transferred, except from one location to another location, and no permit shall be transferred in any event from one business to another.

Section 9. Display.

Each permit shall be posted in a conspicuous place where such business or corporation is carried on and the holder of such permit shall immediately show the same to any officer of the city upon being requested to do so. Each transient merchant shall display his permit in a manner such that it may be seen from the curb or roadside by law enforcement and code enforcement.

Section 10. Revocation.

If any holder of a business permit is found to be in violation of this provisions of this Ordinance; to be maintaining a nuisance or unsanitary premises; to be engaging in or permitting disorderly conduct on the premises where the business is permitted; or to be found violating the City's Zoning or Land Subdivision Development Codes, the Code Enforcement Officer is hereby authorized to serve notice of the city's intention to revoke such license. No new business permit shall be issued to the former permittee, and the former permittee, their heirs, successors and assigns, shall not operate the same or similar business within the city until such condition which led to the revocation is corrected.

Section 11. Transient Merchants.

(a) Persons doing business on a transient or itinerant basis or soliciting sales to the ultimate consumer shall be required to post a performance bond in the amount of \$150.00 for the transient or itinerant merchant to conduct business before they shall be permitted to do business within the corporate limits of the City of Pottsville. Transient and itinerant merchants shall be required to designate on their permit application the location of their roadside business. No permit shall be issued unless the transient merchant produces, at the time of application, written permission from the property owner allowing the transient merchant to conduct business at said location.

(b) Any transient merchant permit issued under the provisions of this article may be revoked by the mayor upon a complaint and showing that the licensee has violated state or local law, harassed local residents, or engaged in improper, high-pressure sales tactics. Prior to the revocation of his permit, the merchant shall be entitled to meet with the mayor and provide evidence that he has not violated state law, the provisions of this article, or engaged in improper sales tactics. Should a transient merchant's permit be revoked under the provisions of this article, the license fee previously paid by said merchant shall not be returned.

(c) A transient business permit shall be issued hereunder only when all requirements of this article have been met, such permit shall not be transferable, shall be valid only within the city limits areas under city extraterritorial planning control, shall be valid only for the business stated in the application. A license so issued shall be valid for only one person, unless such person shall be a member of a partnership or employee of a firm or corporation obtaining such permit.

(d) Any person or entity that transacts a transient business without having first obtained a permit in accordance with the provisions of this article or who knowingly advertises, offers for sale, or sells goods, wares, merchandise or services in violation of the provisions of this article, shall be guilty of a violation and subject to the penalties prescribed by law for any criminal offense committed by the permit.

Section 12. Itinerant Merchants.

It shall be unlawful for any person not having an established business in the City of Pottsville:

- (a) To haul or bring into the city, either directly or indirectly, any goods, wares, merchandise, provisions, fruits, or other food products, with the intention of selling or disposing of same from any food truck or vehicle, railroad car, room, store, warehouse, building, lot or in any other manner, whatsoever, either at wholesale or retail, without first obtaining a permit for such purpose, as herein provided; or

(b) To solicit orders therefore from house to house, or from store to store, or taking orders for the future delivery thereof, or selling directly or otherwise, at wholesale, retail, without a bona fide intention of selling or disposing of such goods, wares, fish, meats, provision, fruits, food products, or other such property, through a regularly established place of business within the city, without first obtaining a permit for such purpose, as herein provided.

Itinerant merchants, peddlers, and other "roadside vendors" will be required to designate on their permit application the location of their roadside business. No permit shall be issued unless the roadside vendor produces, at the time of application, written permission from the property owner allowing the vendor to conduct his business at said location.

Section 13. Garage sales, rummage sales, etc.

Property owners shall be allowed to, on a limited basis, carry on the sale of merchandise in the form of garage sales, porch sales, rummage sales, or any similar type sales as long as the provisions of this ordinance are followed.

The property sold at the sale must be personal property owned by the person or persons conducting the sale and shall not be property that was purchased for the purpose of resale. No permit shall be required for a garage sale or other similar sale. Said sales shall be for a maximum of three (3) days and no person shall engage in garage sales of this nature more than three (3) times per year.

No signs advertising said sale shall be placed on utility poles, trees, or street rights-of-way and no such signs shall be placed on private property without written authorization by the owner of said private property. Any signs put up shall be removed within twenty-four (24) hours after termination of the sale.

Section 14. Penalty.

Any person violating the provisions of this ordinance and/or any person who makes a false affidavit or statement or report to the City as a part of the procedures recognized by this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in an amount not less than \$100.00 nor more than \$500.00, and each day of violation shall constitute a separate offense.

Section 15: Any and all prior resolutions, ordinances, or parts of the same, which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 16: If any provision of this ordinance or the application thereof to any person or circumstances is declared to be invalid, such invalidity shall not affect the other provisions or applications of the ordinance which may be given effect without the invalid provision(s) or application(s), and to this end the provisions of this ordinance are declared severable.

Section 17: EMERGENCY CLAUSE: This Ordinance being necessary to facilitate the collection of business permits for the upcoming year, an emergency is declared to exist and this Ordinance shall go into effect immediately upon and after passage by the City Council.

PASS AND APPROVED this 27th day of November 2023.



RANDY TANKERSLEY, MAYOR

ATTEST:

I, Holly Fowler, City Clerk of Pottsville, Arkansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 2023-13 passed by the Pottsville City Council on the 27th day of November 2023.



HOLLY FOWLER

