

Ordinance # 2004-3

Transient Merchant License; Exemption

THE COUNTY BOARD OF MEEKER COUNTY DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Purpose and Authority

- 1.1 The purpose of this Ordinance is to establish standards and authority to protect the public health, safety and general welfare of the people of Meeker County pursuant to the powers granted under United States Constitution, Minnesota Constitution, Minnesota Statutes Chapter 329 and other applicable law. Whenever, and if, this Ordinance conflicts with other applicable laws, regulations and ordinances, the most restrictive shall prevail.
- 1.2 This ordinance shall set forth the procedures for obtaining a license to do business as a transient merchant in Meeker County.

Section 2. Definitions

- 2.1 Transient Merchant. The term “transient merchant” includes any person who engages in or transacts any temporary and transient business in this county, selling goods, wares, and merchandise; and who, for the purpose of carrying on such business, hires, leases, occupies, or uses a building, structure, vacant lot, or railroad car for the exhibition and sale of such goods, wares, and merchandise. The term “transient merchant” does not include:
 - a. A seller or exhibitor in a firearms collector show involving two or more sellers or exhibitors;
 - b. An auctioneer licensed pursuant to Minn. Stat. Ch. 330; or
 - c. A person whose residence or principal place of business, for at least six months preceding the sale, is within Meeker County.
- 2.2 Person. The term “person” includes any individual, sole proprietorship, co-partnership or partnership of any kind, limited liability company, corporation or unincorporated association, whether functioning or acting as principal or agent.

Section 3. License

- 3.1 Any transient merchant desiring to transact business by auction or otherwise in this county shall file an application for a license with the county auditor or other designated county office, at least thirty (30) days prior to the event. The application shall provide the following information
 - a) Name of the applicant;
 - b) Proposed place of business;

- c) The kind of business proposed to be conducted;
 - d) The length of time desired to do business;
 - e) Applicant's residence and business address for prior two-year period;
 - f) Type of business applicant was engaged in during previous two years;
 - g) Name and address of auctioneer or salesperson who will conduct the sale. No such sale shall be conducted in the name of any person other than the bona fide owner of the merchandise.
 - h) An itemized list of merchandise to be offered for sale, with a description including the serial number if any, the owner's actual cost, and a designation by number corresponding with a number to be affixed to each item by a tag until the item is sold shall be attached to the application.
- 3.2 The license fee of \$150.00 shall be filed with the application in the appropriate county office. The license may be renewed on an annual basis upon the filing of updated information contained in the initial application, a current certificate of insurance and a \$50.00 renewal fee. If the applicant has not had a valid license for five years, the initial \$150.00 fee shall apply.
- 3.3 A bond in the amount to be determined by the county auditor, between \$1,000 and \$3,000, shall be filed with the application.
- 3.4 The bond shall be conditioned that the merchant will in all things conform to the laws relating to transient merchants and further conditioned on full compliance with all material oral or written statements and representations made by the seller, the seller's agents, representatives, or auctioneers with reference to merchandise sold or offered for sale and on faithful performance under all warranties made with reference thereto. In lieu of a bond, the applicant may provide a certificate of insurance showing commercial general liability coverage including products liability in the amount of \$1,000,000.00 per occurrence, and product warranties for any products to be sold. The insurance must be written by an insurance company with an "A" rating or higher by A. M. Best Co. The certificate must entitle the County to thirty (30) days written notice prior to cancellation or other reduction in coverage. Any bond or certificate of insurance provided in relation to issuance of a transient merchant license shall remain valid for at least one year.
- 3.5 Upon receipt of the bond or certificate of insurance and the license fee, the county treasurer shall issue receipts to the merchant. The receipts shall be filed with the county auditor, who shall then issue the transient merchant license based upon the application.
- 3.6 The license is valid for one year from date of issue. A renewal is valid for one year from the date of issue.
- 3.7 The county auditor shall keep a record of all transient merchant licenses issued within the county in a book for that purpose. The book shall be open for public inspection at such reasonable times as determined by the county.

- 3.8 No license shall be issued unless the merchant produces evidence that the merchant is the holder of a valid seller's permit issued under section 297A.83, Minnesota Statutes or a written statement from the merchant that the merchant is not offering for sale any item that is taxable under Chapter 297A.

Section 4. Agent for Service of Process

- 4.1 Prior to the issuance of the license and approval of the bond or certificate of insurance, the applicant shall in writing appoint the county auditor as the applicant's agent to accept service of process in any action commenced against the applicant arising out of the sale for which the license is sought. In lieu of the county auditor, the applicant may appoint any other county resident as an agent for service of process or may appoint a nonresident agent provided an affidavit consenting to service of process by mail on such nonresident agent is submitted to the County Auditor. For any agent for service of process, other than the County Auditor, the applicant shall provide the address of such agent where service of process may be affected.
- 4.2 Any action commenced against the applicant arising out of the sale for which the license is sought shall be brought in the county where the sale was held.

Section 5. Prohibited Sales.

- 5.1 No transient merchant or seller, except an authorized manufacturer's representative, shall offer for sale at a flea market any of the following items:
- a) Infant formula or other food intended primarily for consumption by a child under the age of two years; and
 - b) Over-the-counter drugs, medical devices, and cosmetics.
- 5.2 It shall be prohibited for any transient merchant to advertise, represent, or hold forth as being sold for an insurance, bankrupt, insolvent, assignee, trustee, testator, executor, administrator, receiver, syndicate, wholesale or manufacturer, or closing out sale, or as a sale of any goods, wares and merchandise, damaged by smoke, fire, water, or otherwise, or in any similar form, unless such transient merchant shall file with the county auditor at the same time the application for a license is filed, an affidavit showing all the facts relating to the reasons and character of such sale so to be advertised or represented and showing that such sale is in fact as is to be advertised and represented.
- 5.3 The affidavit shall include a statement of the names of the persons from whom the goods, wares, and merchandise so to be advertised or represented were obtained, the date of the delivery to the person applying for the license, and the place from which the goods, wares, and merchandise were last taken, and all details

necessary to exactly locate and fully itemize all goods, wares, and merchandise to be sold. If such affidavit shall fail to show that such sale is of the character as the same is intended to be advertised or represented as shown in such affidavit, and fails to disclose the facts as herein required, then such auditor shall refuse the applicant a license for such sale.

- 5.4 Any license issued under the conditions set forth in sections 5.2 and 5.3 above shall so state on the license itself.
- 5.5 The affidavit shall be sworn to before a person authorized to administer oaths by the applicant or, if a partnership, by a member of the partnership, or, if a corporation or limited liability company, by an officer of the corporation or limited liability company. Every person making a false statement of any fact in such affidavit is deemed to have violated this ordinance and shall be subject to criminal and/ or civil liability and penalties as provided in Section 9 below.
- 5.6 When it appears that any stock of goods, wares, and merchandise has been brought into this county by a person not a resident herein, and it is claimed that such stock is to be closed out at reduced prices, such facts shall be prima facie evidence that the person so offering such goods for sale is a transient merchant.

Section 6. Certain Sales Excepted

- 6.1 This ordinance does not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares, and merchandise by sample, catalog, or brochure, for future delivery, or to hawkers on the street or to peddlers from vehicles, baskets, or packs carried on their backs, or to sheriffs, constables, or other public officers selling goods, wares, and merchandise according to law; nor to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors, nor to person who may sell or peddle the products of the farm or garden occupied and cultivated by themselves, nor to sales made by a seller at a residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.

Section 7. Exemption From License Provision

- 7.1 Certain classes of transient merchant events may be excluded from the provisions of this ordinance, or Minnesota Statutes, Chapter 329, requiring a license to transact business in the county. The County Board has determined that there are other means of providing consumer protection to the county's residents and visitors without regulating those events that are sufficiently regulated by other governmental bodies. The considerations supporting an exemption are meant to preserve consumer protection without needlessly imposing duplicative regulation or creating an absence of regulation inconsistent with the language and policy of

Minnesota Statutes, Chapter 329. A transient merchant may apply for a certificate of exemption for an event based on the following provisions:

7.1.1 Unincorporated and Unregulated Areas. In unincorporated areas, i.e. townships and unorganized territories, in which no duly enacted township ordinance applies or exists, at least sixty (60) days prior to the sales event a transient merchant may apply for a certificate of exemption from all or any portion of the requirements imposed by this ordinance in a form provided or directed by the County Auditor. At a minimum, such application must be in writing, state the location of the sales event, list the merchandise to be sold, include a copy of any product warranties that apply to the merchandise to be sold, a certificate of insurance showing commercial general liability coverage¹ including products liability in the amount of \$1,000,000 per occurrence, or another amount deemed appropriate by the County Board, list the requirements from which an exemption is sought and state the applicant's reasons supporting the exemption request. The Auditor shall submit the application to the County Board for public hearing and decision upon ten (10) days published notice in the County's official newspaper. At the close of the public hearing, the County Board may grant all or a portion of the exemption requested or grant a modified exemption. Any exemption granted under this subdivision shall be by resolution of the County Board. Upon such approval the County Auditor shall issue a certificate of exemption consistent with the decision of the County Board.

7.1.2 Township Regulated Areas. Any transient merchant holding a sale located within the jurisdictional limits of a township that has imposed a separate license requirement pursuant its own duly enacted ordinance, may at least thirty (30) days prior to the sales event apply for an exemption from all or any portion of the requirements imposed by the this ordinance in a form provided or directed by the County Auditor. At a minimum, such application must be in writing, state the location of the sales event, list the merchandise to be sold, include a copy of any product warranties that apply to the merchandise to be sold, a certificate of insurance showing commercial general liability coverage² including products liability in the amount of \$1,000,000 per occurrence, or another amount deemed appropriate by the County Board, list the requirements from which an exemption is sought and state the applicant's reasons supporting the exemption. In addition, the applicant shall provide a copy of any license issued by the township, along with a copy of the township ordinance imposing the licensing requirement and any other regulatory requirements. The Auditor shall submit the application to the County Board for decision. The County Board may grant all or a portion of the exemption requested or grant a modified exemption. No public hearing shall be required for an

¹ The insurance company must be rated "A" or higher by A.M. Best Co.

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exemption granted under this section. Any exemption granted under this subdivision shall be by resolution of the County Board. Upon such approval the County Auditor shall issue a certificate of exemption consistent with the decision of the County Board. No exemption granted under this section is intended or shall be construed as discharging or eliminating an applicant's obligations or responsibilities under any applicable township ordinance.

- 7.1.3 Incorporated Areas. If a sales event proposed within the incorporated limits of any city is subject to licensure by any duly enacted city ordinance, then the applicant may at least thirty (30) days prior to the sales event apply for an administrative exemption from the provisions of this ordinance in a form provided or directed by the County Auditor. At a minimum, the applicant shall provide a copy of any license issued by the city, along with a copy of the city's ordinance imposing the licensing requirement and any other regulatory requirements. A license issued by a city to a transient merchant for a sales event located within that city is presumed to constitute an exemption from the requirements of Minn.Stat. §329.11 as allowed pursuant to Minn.Stat. §329.15, provided that the County Auditor is satisfied that the city's licensing requirement complies with the intent of Minn. Stat. §329.11. Upon application for an administrative exemption certificate, the County Auditor shall mail a copy of said certificate to the city clerk, administrator or manager for the city in which the sales event will occur and that issued the license. If no written objection is received by the County Auditor from the City within ten (10) days of mailing the certificate, then the certificate shall be issued to the applicant by the Auditor. If written objection is received from the City within the ten (10) day period, then the exemption certificate shall not issue and the applicant shall either seek an exemption from the City or apply for a license consistent with the requirements of this ordinance. If in its application for administrative exemption a transient merchant produces a license from the city with a written endorsement, or other such written and certified document, explicitly exempting the applicant from the requirements of Minn.Stat. §329.11, then the ten (10) day notice period to the city is deemed waived and the administrative exemption certificate may issue immediately. Likewise, if a city files written notice that it has exempted transient merchant, or certain classes of transient merchant sales, from the requirements of Minn. Stat. §329.11, then ten (10) day notice period to the city is deemed waived and the administrative exemption certificate may issue immediately.

Section 8. Posting Requirements

- 8.1. A transient merchant shall post, or have available for inspection, any license or certificate of exemption issued pursuant to this ordinance.

Section 9. Penalties.

9.1 Any transient merchant who violates any of the provisions of this Ordinance, or who fails, neglects or refuses to comply with the provisions of this Ordinance, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00 or by imprisonment not to exceed 90 days, or both.

9.2 Each day upon which a violation occurs may be deemed a separate offense. Nothing in this ordinance shall be construed as limiting the County's, or any other governmental unit's, ability to exercise any right or remedy provided at law or in equity. All such rights and remedies are deemed cumulative and may, in accordance with law, be exercised and pursued in such a manner and with such frequency as is determined by the governmental entity possessing such right or remedy.

Section 10. Severability and Savings Clause.

10.1 Should any section, paragraph, provision, term or condition of this ordinance be found invalid or unconstitutional by a court of competent jurisdiction, then such invalid or unconstitutional section, paragraph, provision, term or condition shall be severed from this ordinance and all remaining sections, paragraphs, provisions, terms and conditions shall remain in full force and effect.

11.1 This Ordinance shall be in full force and effect after its passage and publication as provided by law.

Dated this 19th day of October 2004.

Meeker County Board of Commissioners
/s/ Amy Wilde
Its Chairperson

Attest:
/s/ Barbara Loch
Meeker County Auditor
Public Hearing Date: October 19, 2004
Adopted on a vote of 5 in favor and 0 opposed.