

BE IT ORDAINED by the Town of Newton Grove, North Carolina that Newton Grove Code is amended by deleting the current Section 113 and adding a new Section to be numbered title XI Business Regulations, Chapter 113, General Licensing Commissions, Section 113, Itinerant Merchants, which shall read as follows:

Sec. 113 Itinerant Merchants

Sec. 113.01- License requirement.

Sec. 113.02- Definition.

Sec. 113.03- Applications.

Sec. 113.04 - Investigation and issuance of license.

Sec. 113.05 - Exhibition of license.

Sec. 113.06- License not transferable.

Sec. 113.07- Duty of Police to enforce.

Sec. 113.08- Revocation of license.

Sec. 113.09- Appeal.

Sec. 113.10- Review of License.

Sec. 113.11- Penalty.

Sec. 113.01. - License required.

It shall be unlawful for a transient merchant, itinerant merchant or itinerant vendor as defined in section 113.02 to engage in such business within the city without first obtaining a license in compliance with the provisions of this chapter.

Sec. 113.02 - Definition.

- (a) For the purposes of this chapter, a “transient merchant”, or “itinerant merchant” is defined as any person, firm or corporation, whether as owner, agent consignee or Employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares, and merchandise within said city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad box car, or boat, public room in hotels, lodging houses, apartment, shops, or any street, alley, or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either Privately or at public auction provided that such definition shall not be construed to include:
- (1) Any person selling at a yard sale defined as an occasional sale (no more than four (4) times within a twelve-month period) if personal property on the residential premises owned or rented for residential purposes by the seller;
 - (2) Any church regularly established, civic organization, or regularly established brotherhoods.

- (b) No person, firm or corporation so engaged shall be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with Any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with as a part or, or in the name of any local dealer, trader, Merchant or auctioneer.
- (c) Itinerant merchant. Every itinerant, not a regular merchant in the city, who shall Expose for sale, either on the street or in a building occupied in whole or in part for that purpose or any place whatever in the corporate limits of the city, any goods, wares, merchandise or magazines or other periodicals, shall pay an annual license tax of two hundred dollars (\$200.00).
- (d) No itinerant merchant shall conduct business on Sunday.

Sec. 113.03 - Applications.

Applicants for license shall pay an application fee of one hundred dollars (\$100.00) and file a written sworn application signed by the applicant, as an individual, by all partners if a partnership, and by the president if a corporation, with the city clerk, showing:

- (a)
 - (1) The name or names of the person or persons having the management or supervision of applicants business during the time that it is proposed that it will be carried on in the city;
 - (2) The local address or addresses of such person or persons while engaged in such business;
 - (3) The permanent address or addresses of such person or personnel the capacity in which such person or person will act (that is, whether as proprietor, agent or otherwise);
 - (4) The name and address of the person, firm, or corporation for whose account the business will be carried on, if any; and if a corporation, under the laws of what state, the corporation is incorporated;
 - (5) Information identifying the individual merchant including: date of birth, social security number, and a copy of a valid driver's license or identification card. This information will be used to conduct the background check.
- (b) The place or places in the city where the applicant proposes to conduct business, the length of time during which it is proposed that said business shall be conducted, proof of permission from the owner or lessee of the property to be used allowing the applicant to conduct business at the proposed.

- (c) The place or places, other than the permanent place of business of the applicant where the applicant was conducting business within the last six (6) months;
- (d) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by the applicant, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or from stock in possession and by sample; at auction, by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced and where such goods or products are located at the time said application is filed.
- (e) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers and copies of said advertising whether by handbills, circular, newspaper advertising, or otherwise, shall be attached to the application. Any public advertising done by an itinerant merchant must disclose the post office box number, if any, and street address, as well as city and state of the itinerant merchant's responsible place of business.
- (f) Whether or not the person or persons having the management or supervision of the applicant's business have been convicted of a crime or the violation of any municipal ordinance the nature of such offense and the punishment assessed thereof;
- (g) Credentials from the person, firm or corporation for which the applicant proposes to do business, authorizing the applicant to act as such representative; and
- (h) Such other reasonable information as to the identity of character of the person or persons having the management or supervision of applicant's business as the city clerk may deem proper to fulfill the purpose of this chapter in the protection of the public goods.

Sec. 113.04- Investigation and issuance of license.

Prior to issuance of a permit, the Newton Grove Police Department will conduct a background check on the applicant **through Sampson County Dispatch.**

- (a) The Sampson County Dispatch will conduct a criminal history check of the applicant utilizing the SBI/DCI network. **The information obtained from the check will be given to the Newton Grove Police Department for delivery to the Town Clerk.**
 - (1) The criminal history check will be conducted to verify the applicant's qualifications, pursuant to the conditions of this article, for issuance of the requested permit.

- (2) Prior to denial or revocation of license based upon CHRI received from the Sampson County Dispatch, the Town of Newton Grove shall verify the existence of a record by either obtaining a certified public record or by submitting a fingerprint card of the individual to the CIIS for verification that the CHRI record belongs to the individual.
 - (3) Results of the criminal history check will be provided to the Town Clerk, or his/her designee, **by the Newton Grove Police Department** provided all necessary agreements with the State Bureau of Investigation's Division of Criminal Information (DCI) have been executed.
- (b) If, as a result of such investigation, the applicant's character and business responsibility are found to be unsatisfactory, the applicant shall be denied. A permit may not be issued:
- (1) To any person who has been convicted of any felony or misdemeanor involving drugs and/or fraud:
 - (2) To any person previously denied or having had a permit revoked pursuant to this ordinance.
- (c) If, as a result of the investigation, the applicants character and business reputation appear to be satisfactory, the police department shall so certify in writing, and a license shall be issued by the finance department.
- (c) The Town Clerk shall keep a full record of all licenses issued. Such license shall contain the number of the license, the date issued, the nature of the business authorized to be carried on, the amount of the license fee paid, the expiration date of said license, the place where said business may be carried on under said license, and the names of the person authorized to carry on the business.

Sec. 113.05- Exhibition of License.

The license issued under this chapter shall be posted conspicuously in the place of business names herein. In the event that the applicant desires to do business in more than one (1) place within the city, separate licenses may be issued for each place of business, and shall be posted conspicuously in each place of business.

Sec. 113.06- License not transferable.

No license issued under this chapter shall be transferable.

Sec. 113.07- Duty of police to enforce.

It shall be the duty of the police officers to the city to enforce the provisions of this chapter.

Sec. 113.08- Revocation of License.

- (a) Any license revoked pursuant to this chapter may be revoked by the Town Clerk after notice and hearing, for any of the following causes;
 - (1) Any fraud, misrepresentation or false statement contained in the application for license;
 - (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
 - (3) Any violation of this chapter;
 - (4) Conviction of the licensee of any felony or a misdemeanor involving moral turpitude; or
 - (5) Conducting the business licensed under this ordinance in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety and general welfare of the public.
- (b) Notice of hearing for revocation to a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee, at his last known address, at least five (5) days prior to the date set for hearing.

Sec. 113.09 - Appeal.

Any persons aggrieved by a decision of the Town Clerk to deny an application for a license or to remove a license may appeal to city council. Such appeal shall be taken by filing with the city council within fourteen (14) days after notice of the decision by the Town Clerk has been filed to such person's last known address, a written statement setting forth the grounds for the appeal. The council shall set the time and place for a hearing on such appeal and notice of such hearing shall be given to such persons in the same manner as provided in section 113.08 for notice of hearing or revocation. The order of this council on such appeal shall be final.

Sec. 113.10- Review of License.

- (a) All licenses issued under the provisions of this chapter shall be reviewed by the Town Clerk every ninety (90) days during the license period.
- (b) Any applicant requesting a review of license issued under the provisions of this chapter must:
 - (1) Make a written application for review, stating that the person or persons managing the business are the same as those listed in the original application, that the place or places where the applicant

proposes to conduct business have not changed, and a statement explaining any material changes in circumstances from the information given in the original application.

Sec. 113.11- Penalty.

- (a) Any violation of this chapter shall subject the offender to a civil penalty in the amount of two hundred fifty dollars (\$250.00). Violators shall be issued a written citation, which must be paid within seventy-two (72) hours.
- (b) Each day's continuing violation shall be a separate and distinct offense.
- (c) Notwithstanding subsection (a) above, provisions of this chapter may be enforced through equitable remedies issued by a court of competent jurisdiction.
- (d) In addition or in lieu of remedies authorized in subsection (a) and (c) above, violations of this chapter may be prosecuted as a misdemeanor in accordance with G.S. 160a-175. Conviction of a misdemeanor prosecution under this chapter shall subject the offender to a fine of fifty dollars (\$50.00).

Enacted this _____ day of _____, 2013.

GERALD DARDEN, Mayor

ATTEST:

TOWN CLERK