

CHAPTER 3

ITINERANT MERCHANTS

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3-3-1: **DEFINITION:** For the purpose of this chapter a "transient merchant", "itinerant merchant" or "itinerant vendor" is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the county or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the county, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad, boxcar, boat, public room in a hotel, lodging houses, motels, apartments, shops or any street, alley or other place within the county, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction; provided that this definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only and such definition shall further not include or be construed as to prohibit a public auction for the disposal by an established business of its assets or an individual for items of personal and household use. The person so engaged shall not 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 part of, or in the name of any local dealer, trader, merchant or auctioneer.

3-3-2: **LICENSE REQUIRED; FEES; TERM:** It shall be unlawful for a "transient merchant", "itinerant merchant" or "itinerant vendor" as defined in section 3-3-1 of this chapter to engage in such business within the county without first obtaining a license therefor in compliance with the provisions of this chapter. Any person desiring such a license shall pay the county clerk a license fee in the sum of one hundred fifty dollars (\$150.00) per day for the first ten (10) days and thereafter fifty dollars (\$50.00) per day. The fee shall be paid upon application based upon the number of days requested in the application with a minimum of ten (10) days. If the application should be denied, the county clerk shall refund to the applicant all sums so paid except the sum of three hundred dollars (\$300.00) which shall be retained by the county clerk as and for an application fee. If the license shall issue, there shall be no application fee and all sums so paid shall be toward the daily license fee.

3-3-3: **APPLICATION FOR LICENSE:** Applicants for license under this chapter, whether a person, firm or corporation, shall file a written, sworn application not less than sixty (60) days prior to the intended date of commencement of activity, signed by the applicant if an individual, by all partners if a partnership, and the president if a corporation with the county clerk, showing:

- A. Personal Information: The name of the person having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the county; the local address of such person while engaged in such business; the permanent address of such person; the capacity in which such person will act (that is, whether as proprietor, agent or otherwise); the name and address of the person for whose account the business will be carried on, if any; and if a corporation, under the laws of what state the same is incorporated.

- B. Fingerprints; Letters Of Recommendation: The fingerprints of the person having the management or supervision of the applicant's business or in lieu thereof at least three (3) letters of recommendation from property owners in the county certifying as to the applicant's character and business responsibility or such other evidence which establishes to the satisfaction

- of the board of county commissioners the character and business responsibility of such person.
- C. Location And Duration: The place in the county where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that said business shall be conducted.
 - D. Prior Place Of Business: The place other than the permanent place of business of the applicant where such applicant conducted the transient business within six (6) months next preceding the date of the application, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted.
 - E. Nature Of Goods: A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by the applicant in the county.
 - F. Advertising: A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers.
 - G. Conviction Of Crime: Whether or not the person having the management or supervision of the applicant's business has been convicted of any crime, except traffic violations, and the place where the conviction occurred.
 - H. Other Information: Such other reasonable information as the county clerk may deem proper to fulfill the purpose of this chapter in the protection of the public good.
 - I. Clerk To Prepare Application: The county clerk shall prepare a suitable application in compliance with this chapter.

3-3-4: **INVESTIGATION AND ISSUANCE:** Upon receipt of the application, the county clerk shall cause such investigation of the applicant's business responsibility or moral character to be made as he deems necessary in the protection of the public good. The county clerk may use such departments of the county as the clerk deems appropriate in the aid of the investigation. As a result of the investigation, if the applicant's character and business responsibility are found to be unsatisfactory, the application shall be denied. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the county clerk shall so certify in writing and the license shall be issued if all of the requirements of this chapter have been met. The county

clerk shall keep a full record in his office of all licenses issued. Such license shall contain the number of the license, the date the same was issued, the nature of the business authorized to be carried on, the amount of the license fee paid, the expiration date of the license and the place where such business may be carried on under said license, and the name of the person authorized to carry on the same.

3-3-5: **BOND:** Before any license, as provided by this chapter, shall be issued for engaging in a transient or itinerant business as defined in section 3-3-1 of this chapter, such applicant shall file with the county clerk a bond running to the county in the sum of five thousand dollars (\$5,000.00) executed by the applicant, as principal, and two (2) sureties upon which service of process may be made in the state of Idaho; said bond to be approved by the county prosecuting attorney, conditioned that the said applicant shall comply fully with all of the provisions of the ordinances of the county and the statutes of the state of Idaho, regulating and concerning the sale of goods, wares and merchandise, and will pay all judgments rendered against said applicant for any violation of said ordinances or statutes, or any of them, together with all judgments and costs that may be recovered against him by any person for damage growing out of any misrepresentation or deception practiced on any person transacting such business with such applicant, whether said misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the county to the use of the aggrieved person. Such bond must be approved by the county prosecuting attorney, both as to form and as to the responsibility of the sureties thereon.

3-3-6: **SERVICE OF PROCESS:** Before any license as herein provided shall be issued for engaging in business as an itinerant merchant, as herein defined, in the county, such applicant shall file with the county clerk an instrument nominating and appointing the county clerk his true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of said applicant in respect to any matters connected with or arising out of the business transacted under said license and the bond given as required by section 3-3-5 of this chapter, or for the performance of the conditions of said bond or for any breach thereof, which said instrument shall also contain recitals to the effect that said applicant for said license consents and agrees that service of any notice or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served

upon the person applying for the said license under this chapter, according to the law of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the county clerk, as herein provided, the county clerk shall send to the licensee at his last known address, by registered mail, a copy of said process.

3-3-7: **EXHIBITION OF LICENSE:** The license issued under this chapter shall be posted conspicuously in the place of business named therein. In the event that such person applying for said license shall desire to do business in more than one place within the county, separate licenses may be issued for each place of business, and shall be posted conspicuously in each place of business.

3-3-8: **TRANSFER OF LICENSE:** No license shall be transferred without written consent from the board of county commissioners as evidenced by an endorsement on the face of the license by the county clerk showing to whom the license is transferred and the date of the transfer.

3-3-9: **ENFORCEMENT:** It shall be the duty of the law enforcement of the county to examine all places of business and persons in their respective territories subject to the provisions of this chapter, to determine if this chapter has been complied with and to enforce the provisions of this chapter against any person found to be violating the same.

3-3-10: **RECORDS:** The county clerk shall deposit the record of fingerprints of the licensee, together with a license number, with the county sheriff's office; the sheriff's office shall report to the county clerk any complaints against any person licensed under the provisions of this chapter and any conviction for violation of this chapter; the county clerk shall keep a record of all such licenses and such complaints and violations.

3-3-11: **GREEN RIVER ORDINANCE:**

A. Nuisance Declared: The practice of going in and upon private residences in the county by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, where the owner or occupant of said

private residence has posted a "no solicitation" notice within reasonable view at the access to the premises, for the purpose of soliciting orders for the sale of goods, wares and merchandise, and for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance and punishable as such nuisance as a misdemeanor.

- B. Enforcement: The county sheriff's office and county officers are hereby required and directed to suppress the same and to abate any such nuisance as is described in subsection A of this section.

3-3-12:

REVOCACTION OF LICENSE:

- A. Causes: The permits and licenses issued pursuant to this chapter may be revoked by the board of county commissioners after notice and hearing, for any of the following causes:
1. Misrepresentation In Application: Any fraud, misrepresentation or false statement contained in the application for license;
 2. Misrepresentation Of Sales: Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
 3. Violation: Any violation of this chapter;
 4. Conviction Of Licensee: Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
 5. Misconduct Of Business: Conducting the business licensed under this chapter 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 or general welfare of the public.
- B. Notice Of Hearing: Notice of hearing for revocation of the 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 the hearing.

3-3-13: **APPEAL:** Any person aggrieved by the decision of the county clerk in regard to the denial of application for a license as provided for in section 3-3-4 of this chapter or in connection with the revocation of a license as provided for in section 3-3-12 of this chapter shall have the right to appeal to the board of county commissioners. Such appeal shall be taken by filing with the board, within fourteen (14) days after said notice of the decision by the county clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The board shall set the time and place for a hearing on such appeal and notice of such hearing shall be given to such as provided in section 3-3-12 of this chapter for notice of hearing on revocation. The order of the board on such appeal shall be final.

3-3-14: **EXEMPTION FROM PROVISIONS:** There is hereby exempted from the application of this chapter any of the following that are located in the county of Cassia, state of Idaho: civic clubs; schools; churches; governmental licensees; or charitable organizations qualifying as a charity under the internal revenue code. Each such exempt organization intending to conduct an activity as defined in this chapter shall advise the county clerk in writing of the intended activity and the time or times that the activity will be conducted.

3-3-15: **PENALTY:** Any person, firm, corporation, or individual whether as principal, agent, employee, or otherwise who shall violate the terms of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as set forth in section 1-4-1 of this code.