

ORDINANCE NO. 999

AN AMENDMENT OF ORDINANCE NO 613 ALSO REFERRED TO AS THE ZONING ORDINANCE OF THE CITY OF WILLISTON, AMENDING CHAPTER 25 "SUPPLEMENTARY REGULATIONS" OF THE WILLISTON ZONING ORDINANCE AMENDING SECTION O "TEMPORARY USES AND STRUCTURES" TO CLARIFY AND ESTABLISH FURTHER RESTRICTIONS FOR SUCH USES WITHIN THE CITY LIMITS AND THE EXTRA-TERRITORIAL JURISDICTION

BE IT ORDAINED, by the Board of Commissioners of the City of Williston, North Dakota, as follows:

O. TEMPORARY USES AND STRUCTURES

1. DEFINITIONS

Political Subdivision- a unit of government within a state, including a county, city, township, or village.

Transient Merchant, Itinerant Merchant, or Itinerant Vendor- a person, firm, or corporation, whether as owner agent, consignee or employee, who temporarily sets up business on private property, or out of a vehicle, trailer, tent, other portable shelter, or vacant store front for the purpose of exposing or displaying for sale, selling or attempting to sell, goods, wares, products, or merchandise.

2. PURPOSE

To allow for the administrative review for temporary uses and structures, which have seasonal or temporary durations, which render the display and transaction of goods or services outside of a building or vacant store front. These activities shall be regulated to avoid incompatibility between uses in the surrounding area and control the types of temporary uses which occur on private property or parking lots throughout the City.

3. TEMPORARY USE PERMIT REQUIRED

A temporary use permit shall be required for all temporary uses and structures listed in this section. Applications for these permits shall be reviewed and if approved, filed with the Planning Director in the Planning & Zoning Department. Temporary uses and structures may be subject to additional permits, licenses, inspections, and interdepartmental review as needed.

a) Application requirements:

- i. A completed application form;
- ii. Address, legal description of the property where the temporary use or structure is to be located;
- iii. A site plan or drawing of the property illustrating the lot, all existing structures, parking spaces, and where such temporary use or structure is to be located.

- iv. A complete description of the proposed temporary use or structure, including hours of operation, proposed method of merchandise display, proposed signage, list of all goods to be sold and material and equipment to be used in the proposed operations;
- v. Permission from the property owner which pertains to the authorization for the use of the site and other facilities or services necessary to provide for the safe operation of the temporary use;
- vi. A copy of the State Sales and Use Tax Permit; and
- vii. A copy of the State Transient Merchants License.

b) Exemptions include the following uses:

- i. Rummage sales, yard sales, and garage sales held at the home of the vendor;
- ii. Merchants or vendors participating in farmers market, flea market, fairs, carnivals circuses, or other similar activity; and
- iii. Mobile businesses or mobile commercial businesses, transient merchants, itinerant merchants, and itinerant vendors who are invited to events approved by the City, that are organized, and managed by a fair association, convention bureau, or other political subdivision including the City itself. Such events include but are not limited to the Chokecherry Festival, Band Day, Holiday Lights, and Clean City.
- iv. Mobile business operations recognized by the City to have been operating and in existence at the time of the City's adoption of Ordinance 974 and 990, an ordinance establishing a temporary moratorium prohibiting the use of future mobile commercial businesses, which was approved by the City Commission on 9/24/13 and up until the adoption of this ordinance, shall be exempt from Ordinance 999 until January 1, 2016, at which time the exemption described herein shall sunset.
 - i. After January 1, 2016, all mobile commercial businesses, whether previously exempt in accordance with Subsection 3(b)(iv) shall be brought into compliance by January 1, 2016.
 - ii. Any mobile commercial business not in compliance with Ordinance 999 by January 1, 2016 shall be deemed to have violated Ordinance 999 and subject to enforcement described in Section 10 "Enforcement"

4. PERMITTED USES

A temporary use permit may be issued for the following uses:

- a) Halloween pumpkin patches, and Christmas trees lots;
- b) Mobile businesses or mobile commercial businesses operating under temporary provisions and performing public service operation only; and
- c) Transient merchants, itinerant merchants, and itinerant vendors

5. FINDINGS

The Planning Director may approve a temporary use permit application only when all of the following findings of facts can be made in a positive manner:

- a) That the operation of the requested temporary use or structure at the location proposed will not jeopardize, endanger or otherwise constitute a nuisance to the public health, safety or general welfare or be injurious or detrimental to properties served, adjacent to, or in the vicinity of the nearby area with respect to the existing land use and zoning designation;
- b) That the proposed site is adequate in size and shape to accommodate the temporary use or structure;
- c) That adequate parking to accommodate vehicular traffic to be generated by such use will be available on-site and not take away from the minimum parking requirement established for the existing uses.
- d) That the proposed egress and ingress for the site is adequately served by unobstructed fire lanes, driveway aisles, streets, or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that such temporary use or structure could reasonably generate;
- e) That the proposed location of setup and operation shall not be located in the public right of way.
- f) That the proposed signage for the temporary use or structure is limited to one (1) sign, not to exceed sixteen (16) square feet. The sign shall be attached to the vehicle or structure associated with the temporary use. No off-premise signs or dynamic messaging signs are allowed;
- g) That the proposed temporary use or structure is limited to one (1) temporary use or structure per site;
- h) That the proposed temporary use or structure is limited to 1 event consisting of up to 14 days and 3 events per calendar year, not to exceed 42 days. Days not utilized in a single event will not be carried over to the next event;
- i) That the property owner of the site is restricted to host no more than 1 event consisting of up to 14 days and 3 events per calendar year, not to exceed 42 days. Days not utilized in a single event will not be carried over to the next event; and

- j) In approving an application for a temporary use permit, the Planning Director may impose such conditions as are deemed necessary to insure that the permit will be in accord with the intent and purpose of this chapter.

6. ZONING

Such permitted uses shall only be located on commercial (C-1, C-2, C-3) or light industrial (M-1) zoned properties.

7. FEES

The fee for such permit under shall be established by resolution and adopted by the City Commission.

8. EXPIRATION OF PERMIT

Temporary use permits allow for a period of up to 14 days and 3 events per calendar year, not to exceed 42 days. Days not utilized in a single event will not be carried over to the next event. Upon expiration of the permit, all associated materials and equipment shall be promptly removed from the property.

9. REVOCATION

A temporary use permit may be revoked if the Planning Director finds that one or more of the following conditions exists:

- a) Circumstances have changed to such a degree that one or more of the findings of fact contained in Section (O)(5) can no longer be made in a positive manner;
- b) The temporary use permit was obtained in a fraudulent manner;
- c) One or more conditions of the temporary use permit have not been complied with.

10. ENFORCEMENT

Any use which is established, operated erected, moved, altered, enlarged or maintained contrary to the provisions of this title or any condition of approval, is hereby declared to be unlawful and shall be subject to the remedies and penalties set forth in Section 26(D) of the City of Williston Zoning Ordinance.

11. EFFECTIVE DATE

The proposed effective date of this ordinance is September 24, 2014.

Commissioner Brostuen moved the adoption of the foregoing Ordinance. The motion was seconded by Commissioner Cymbaluk. On roll call vote of the Commissioners, the following Commissioners voted "AYE": Bekkedahl, Piesik, Cymbaluk, Brostuen and Klug. The following Commissioners voted "NAY": none. Absent and not voting: none.

WHEREUPON, the Motion was passed and the Ordinance declared adopted this 9th day of September, 2014.

ATTEST:

APPROVED:

John Kautzman, City Auditor

Howard Klug, President
Board of City Commissioners

PASSED FIRST READING: August 26, 2014

PASSED SECOND READING: September 9, 2014

PUBLISHED: September 22, 2014

ADOPTED THIS 9th Day of September, 2014