ORDINANCE NO. 501

AN ORDINANCE OF CITY OF SISTERS IMPOSING RULES AND REGULATIONS GOVERNING THE LICENSING AND OPERATION OF TRANSIENT MERCHANTS; IMPOSING PENALTIES; AND AMENDING, REPLACING, AND SUPERSEDING CHAPTER 5.35 OF THE SISTERS MUNICIPAL CODE IN ITS ENTIRETY.

WHEREAS, City of Sisters ("city") has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow city; and

WHEREAS, Chapter 5.35 of the Sisters Municipal Code (the "Code") contains certain regulations governing the licensing and operation of transient merchants within city; and

WHEREAS, city recognizes the importance of (a) protecting the public health, safety, and welfare, (b) preserving, protecting, and enhancing the economic, scenic, historic, and aesthetic values and objectives of city, and (c) protecting and maintaining the safe and free flow of pedestrian and vehicular traffic on city streets, sidewalks, right-of-ways, and other areas open to the public; and

WHEREAS, city finds it necessary to provide a licensing system for transient merchants desiring to operate in city and to charge fees to recover costs of administering such a license; and

WHEREAS, city has determined that Chapter 5.35 of the Code is difficult to efficiently and effectively administer and is in need of certain updates; and

WHEREAS, city desires to establish reasonable and uniform regulations concerning the licensing and operation of transient merchants in city.

NOW, THEREFORE, the City of Sisters ordains as follows:

1. Findings. The above-stated findings are hereby adopted.

2. Purpose; Policy. The purposes of this Ordinance include, without limitation, the following: (a) to protect the public health, safety, and welfare of city's citizens and visitors of city; (b) to preserve, protect, and enhance the economic, scenic, historic, and aesthetic values and objectives of city; and (c) to protect and maintain the safe and free flow of pedestrian and vehicular traffic on city streets, sidewalks, right-of-ways, and other areas open to the public. This Ordinance is intended to (y) establish reasonable and uniform regulations concerning the licensing and operation of transient merchants in city, and (z) impose appropriate fees to ensure recovery of city's costs and expenses incurred to administer and enforce this Ordinance.

3. Short Title. This Ordinance No. 501 may be referred to as the "Transient Merchant Ordinance" and will be cited and referred to herein as this "Ordinance."

4. Definitions. Unless the context requires otherwise, when used in this Ordinance the following terms and phrases have the meanings assigned to them below, whether or not such terms are capitalized:

"Applicant" means the person applying for a license to operate and/or carry on as a transient merchant within city.

"City's representatives" means each present and future officer, employee, agent, contractor, and/or representative of city.

"Council" means the then-appointed Sisters City Council.

"License" means the permission granted by city under this Ordinance to operate, engage, conduct business, and/or carry on as a transient merchant in city.

"License fee(s)" means the license fees described under Section 7.1 of this Ordinance.

"License term" means the duration of time that the transient merchant is permitted to operate as described in Section 8.1 of this Ordinance.

"Manager" means city's then appointed city manager and/or his or her designee(s).

"Person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, incorporated organization, and/or any other entity, whether acting in an individual, fiduciary, and/or other capacity.

"Premises" means the location where the transient merchant is licensed to operate as described in a license approved under this Ordinance.

"Public event permit" means a permit issued under Chapter 5.10 of the Code.

"Right-of-way(s)" means the public streets, alleys, avenues, thoroughfares, highways, places, and grounds located within city which are owned and controlled by city.

"Transient merchant(s)" means any person engaged in the temporary business of purchasing and/or selling food, produce, merchandise, service(s), goods, wares, and/or any other thing of value and who in furtherance of such purpose, hires, leases, uses, and/or otherwise occupies any building, structure, motor vehicle, hotel room, tent, cart, booth, public room, apartment, shop, street, space, alleyway, and/or other device of any other type within city for purposes of engaging in the temporary business. For purposes of this Ordinance, a person is engaged in a "temporary business" when the person (a) is not licensed or otherwise required to be licensed under Chapter 5.05 of the Code, (b) is not regularly engaged in an annual business (as defined in Section 5.05.015 of the Code) of selling food, produce, merchandise, service, goods, wares, and/or any other thing of value in city, and/or (c) operates within the city for less than 30 days in a calendar year.

5. License Required.

5.1 License. Except as otherwise exempted under Section 5.2, no person may act, operate, and/or carry on as a transient merchant (and/or establish, maintain, conduct, operate, and/or carry on the business of a transient merchant) within city without first applying for and obtaining a license and paying all applicable license and other fees in accordance with this Ordinance. No person with actual, present, supervisory control of any transient merchant for which a license is required under this Ordinance may permit, direct, and/or allow the operation or continuation of such transient merchant activities at any time when there is not then in full force and effect a license issued pursuant to and in accordance with the provisions of this Ordinance. City may require that other licenses or

permits be obtained if the transient merchant's business and/or activity will include other activities requiring permits or licenses under applicable city laws, ordinances, and/or regulations. The need for other licenses or permits will be determined by city during the application review process.

5.2 Exemptions. The following are exempt from the requirements of this Ordinance:

(a) Traveling salespersons, commercial travelers, or similar persons who exclusively or primarily sell to, deliver to, and/or solicit orders from local retailers, businesses, governments, schools, and/or wholesale firms.

(b) The sale of a newspaper subscription in which the seller is a person engaged in both the delivery and sale of the newspaper.

(c) The occasional sales of goods and/or services by local school students related to their school and/or school activities, and/or fundraising sales by local service clubs, groups, and/or charitable nonprofit organizations, such as Elks, Kiwanis, Lions, Boy Scouts, veterans groups, and/or Girl Scouts.

(d) Any person 17 years or younger operating on a part-time basis with annual gross income of less than $500.00.

(e) Any political group seeking funds or membership.

(f) Garage sales, yard sales, rummage sales or swap meets conducted on private property, provided that the sale is not conducted over a period in excess of four consecutive days or more often than three times in a calendar year.

(g) The sale of goods, merchandise, and/or food in, on, and/or about a right-of-way directly adjacent to the licensed brick and mortar business conducting the sale.

6. License Application Requirements; Sanitation; Insurance; Review.

6.1 Application Requirements. Each person desiring to operate, act, and/or carry on as a transient merchant must apply for a license to operate, engage, conduct, and/or carry on as a transient merchant on such application forms and in such manner as the manager may then prescribe. Applications are available at the Sisters City Hall during city's regular business hours and on city's website. Subject to the provisions of this Ordinance, an application for a license must be submitted not less than 30 days prior to commencement of the proposed transient merchant activity. Each application will be evaluated on its own merits. The application must be accompanied by the then applicable license fee. The application must be filed with the manager and, in addition to all other information reasonably requested by the manager, must include, without limitation, the following information and documentation:

(a) The name, permanent address, mailing address, and telephone number of the applicant and the names of all persons having an interest in the transient merchant's business;

(b) A brief description of the nature of the transient merchant activity and

the goods and/or services to be sold, purchased, offered, and/or provided in city;

(c) The location where the transient merchant will operate and, if on private property, the written consent of the property owner;

(d) The days for which the license is desired;

(e) A statement regarding whether the transient merchant will be participating in a permitted public event;

(f) Known consumer complaints made to local or state consumer agencies against the applicant or against any person acting as an employee or agent of the applicant;

(g) Evidence that the applicant has obtained (or will obtain) all applicable federal, state, and/or local licenses, certificates, registrations, and/or permits required for the transient merchant to operate (and the identification of such licenses, certificates, registrations, and/or permits); and

(h) Proof of the required insurance coverage set forth in Section 6.2(b).

6.2 Sanitation; Insurance.

(a) Sanitation. A license may be issued only after adequate waste disposal facilities have been identified and obtained by (or made available to) the applicant. Adequate waste disposal facilities will be as determined by the manager. All waste must be disposed of in compliance with all applicable federal, state, and/or local laws, rules, regulations, policies, and/or ordinances, including, without limitation, any applicable city, Deschutes County, and/or Oregon standards. Transient merchants will pick-up any waste, paper, cardboard, wood, containers, and/or any litter resulting from its business activity that is deposited by any person with 25 feet of the transient merchant's location.

(b) Insurance. License applicants must obtain and maintain insurance policies that provide adequate coverage for all risks normally insured against by a person carrying on a similar business in a similar location and for any other risks to which the transient merchant is normally exposed. Liability insurance will (a) be the primary insurance policy for all covered losses, (b) name city and city's representatives as additional insureds, and (c) apply to, and provide coverage for, all injuries, claims, demands, actions, suits, proceedings, damages, liabilities, losses, costs, and expenses of any kind, including, without limitation, bodily injury and property damage, arising out of the transient merchant activity. The liability insurance policy(ies) (and endorsements) required under this Section 6.2(b) will be in form and content satisfactory to city and will be provided to city for inspection at the time the application is submitted. Notwithstanding anything contained in this Ordinance to the contrary, the minimum insurance required under this Ordinance (x) will provide coverage in amounts sufficient to meet the minimum tort claim liability limits under applicable law, and (y) may be increased at any time and from time to time through council resolution or manager determination.

6.3 Manager Review. Any application for a license required under this Ordinance will be reviewed by the manager. The manager may approve, approve with conditions, or deny an application for a license. The manager's approval of an application for a license (or any part thereof) is not a guaranty, representation, and/or warranty of the correctness or suitability of the transient

merchant's activities. The manager is authorized to conduct whatever investigation the manager deems necessary or appropriate to determine whether the application is complete, the statements made therein are true and accurate, and whether the transient merchant complies with this Ordinance and all applicable federal, state, and/or local laws, regulations, and ordinances. No license will be knowingly issued to any transient merchant that is prohibited by federal, state, and/or local laws, regulations, and/or ordinances. If the manager determines necessary or appropriate, the manager may waive or modify procedural and substantive conditions and requirements under this Ordinance. Notwithstanding this broad authority, the manager will act reasonably, in compliance with applicable federal, state, and local laws, regulations, and ordinances, and in a manner the manager reasonably believes is in city's best interests. The manager's decision on any given matter will not set any precedent nor bind future decisions of the manager.

7. Fees; Deposit.

7.1 License Fee. The transient merchant license fee will be determined by council resolution. The license fee may be increased or decreased at any time and from time to time by council resolution. The license fee imposed under this Ordinance will be in addition to, and not in lieu of, any other city application, license, and/or permit fees, charges, and/or taxes.

7.2 Deposit. If an applicant has previously violated any provision of this Ordinance and/or any other city laws, regulations, and/or ordinances, city may require a deposit, in an amount determined by the manager, prior to issuing a license. The deposit will be in addition to, and not in lieu of, any other application, license and/or permit fees, charges, and/or taxes imposed by city.

8. General Requirements.

8.1 Hours of Operation; Duration of Operation. No transient merchant will operate and/or conduct the transient merchant's business in city between the hours of 9:00 p.m. and 7:00 a.m. without the manager's prior written approval. Hours of operation will be approved at the time the license is issued. Each person issued a license will be permitted to begin setting up for the day at 7:00 a.m. or at such other time authorized by the manager. Subject to the provisions of this Ordinance, a license will be valid and effective for a period not to exceed three consecutive days, six times per calendar year on the same property.

8.2 Public Events. Notwithstanding the limitations concerning hours and duration of operation contained in Section 8.1, transient merchants authorized to participate in a public event permitted under Chapter 5.10 of the Code will be subject to and comply with the prescribed hours and duration of operation identified in public event permit if different than those in Section 8.1. Any days during which a transient merchant is authorized to participate in a public event will not apply toward the durational limitations contained in Section 8.1. In accordance with Section 8.6 of Ordinance No. 500, the applicant for a public event permit required under Ordinance No. 501 will submit to city a list of each transient merchant participating in the proposed public event, which list will include, without limitation, (a) each transient merchant's name, contact information, and type of business and/or activity to be conducted during the public event, and (b) such other information the manager deems necessary or appropriate. No license application under this Ordinance will be required of any transient merchant participating in a permitted public event; provided, however, each transient merchant participating in a public event will be subject to and comply with the provisions of this Ordinance.

8.3 Display of License; Signage. Any person licensed to operate as a transient merchant must display the license, together with any conditions, at all times on the premises and in a location visible to customers. All signage and display of merchandise must comply with all applicable laws including the requirements of the Code. A maximum of two signs on the premises are allowed, regardless of the number of transient merchants operating from the premises. A transient merchant may not place signs on property other than that being used by the transient merchant.

8.4 Location; Setback. Each license will be issued for a single fixed location. No transient merchant will change location except as provided otherwise in a license. Transient merchants are prohibited from locating and/or operating, and no transient merchant may engage in the transient merchant's business, (a) in, on, about, and/or within 126 feet of Cascade Avenue (or any portion thereof) between Pine Street and Locust Street, and/or (b) in, on and/or within 15 feet of any portion of Wychus Creek in city. For purposes of this Section 8.4, "within 126 feet" means a straight-line measurement in a radius extending for 126 feet or less in every direction as measured from any point on the boundaries of the portion of the East U.S. Highway 20/OR-126/Cascade Avenue right-of-way commencing at the centerline of South Locust Street (at the intersection with East U.S. Highway 20/OR-126) and continuing along East U.S. Highway 20/OR-126, East Cascade Avenue, and West Cascade Avenue and ending at the centerline of Pine Street; "within 15 feet" means a straight-line measurement in a radius extending for 15 feet or less in every direction as measured from any point of the stream bank of Wychus Creek in city.

8.5 Removal of Structures. Any structure(s), cart(s), vending unit(s), tent(s), table(s), and/or other appurtenance(s) used by a transient merchant must not be located or relocated on the premises until commencement of the license term (or as identified in the license), and must be removed from the premises promptly upon expiration of the license term.

8.6 Impediment; Noise. Each transient merchant must locate and conduct all transient merchant activities outside of the public right-of-way, including, without limitation, sidewalks and roads, and must not impair, impede, or otherwise interfere with the free flow of pedestrian and/or vehicular traffic on public or private property. No transient merchant will make any loud or unreasonable noise of any kind by vocalizing or otherwise for the purpose of advertising and/or attracting attention to the transient merchant's business activity.

8.7 Release; Indemnification. Nothing contained in this Ordinance will be construed as imposing on city and/or its officials or employees any liability or responsibility for any injury, damage, and/or destruction to person or property caused or in any way connected to the transient merchant and/or transient merchant's activities. City and city's representatives will not be deemed to have assumed any liability and/or responsibility by reasons of inspections performed and/or the issuance of any license. By accepting a license issued under this Ordinance, each person issued a license under this Ordinance will, on a joint and several basis, release, defend, indemnify, and hold harmless city and city's representatives for, from, and against all injuries, claims, demands, actions, suits, proceedings, damages, liabilities, losses, costs, and expenses of any kind whatsoever, including, without limitation, attorney fees and costs, arising out of or resulting from, whether directly or indirectly, the following: (a) the acts or omissions of the license holder and/or its affiliates, officers, directors, shareholders, managers, members, employees, agents, representatives, vendors and/or contractors in the establishment, maintenance, operation, and/or participation in the transient merchant activity; and/or (b) license holder's failure to comply with the requirements of this Ordinance.

8.8 Compliance with Laws. Each transient merchant, including, without limitation, a business or operation exempted under Section 5.2, must operate in accordance with all applicable federal, state, and local laws, regulations, and/or ordinances, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), and any ordinances, codes, rules, and/or regulations promulgated by city. The issuance of a license does not authorize a transient merchant to operate in violation of any applicable federal, state, and/or local laws, regulations, and/or ordinances. Issuance of a license by city is not evidence that the applicant and/or transient merchant is in compliance with, or exempt from, any applicable federal, state, and/or local laws, regulations, and/or ordinances. Issuance of a license will not be construed to constitute permission to engage in any activity prohibited by federal, state, and/or local laws, regulations, and/or ordinances, or a waiver of any other regulatory or license requirement imposed under applicable federal, state, and/or local laws, regulations, and/or ordinances.

9. No Vested Rights or Privileges; Transfer. Nothing contained in this Ordinance may be construed as vesting any right or privilege in a license or license holder or a contractual obligation on the part of city. The license may not be transferred without the manager's prior written approval.

10. License Denial, Suspension, Revocation, and Review; Appeals; Penalties.

10.1 Grounds for Denial, Suspension, Revocation. The manager may deny, suspend, and/or revoke a license for the following: (a) the application is incomplete and/or fails to meet the requirements under this Ordinance; (b) fraud, misrepresentation, and/or false and/or misleading statement(s) contained in the application for a license and/or willful withholding of information or incomplete disclosure concerning any matter required to be furnished in connection with any such application for a license; (c) fraud, misrepresentation, and/or false and/or misleading statement(s) made in the course of carrying on the transient merchant activity; (d) a violation of this Ordinance and/or the terms and conditions imposed under the license; (e) conducting the licensed transient merchant activity in an unlawful manner and/or in such a manner as to present an immediate danger to the health, safety, and/or general welfare of persons or property; (f) failure to comply with any applicable federal, state, and/or local law, regulation, and/or ordinance, and/or any agreement with city; and/or (g) failure to obtain all applicable federal, state, and/or local licenses, certificates, registrations, and/or permits required for the transient merchant to operate. After revocation, the license holder may not operate as a transient merchant or otherwise conduct the transient merchant business in city, or if the transient merchant has commenced operations, will immediately cause the transient merchant's operations to be terminated in a safe, proper manner.

10.2 Investigation. If city receives complaint(s) about any transient merchant, the applicable license may be reviewed by the manager.

10.3 Notice of Denial, Revocation, or Suspension. The manager must provide to the applicant or license holder notice of any license denial, suspension, and/or revocation and the reasons thereof within a reasonable period of time after the manager's determination. All notices must be in writing and must be delivered to the applicant or license holder at the address set forth in the license application. Any notice will be deemed delivered upon actual receipt if delivered personally, via email or facsimile (with electronic confirmation of delivery), or an overnight delivery service, or at the end of the third business day after the date deposited in the United States mail, postage pre-paid, certified, return receipt requested. If the violation ends prior to the manager's notice of a license denial, suspension, and/or revocation, the manager may discontinue any revocation proceedings. The notice will inform the

applicant or license holder of its appeal rights under this Ordinance.

10.4 Appeal. A decision to deny, issue subject to conditions, suspend, and/or revoke a license may be appealed by delivering written notice of appeal to the manager within 10 days of the notice of denial, suspension, and/or revocation. Failure to file notice of appeal within the 10-day appeal period is deemed a waiver of all rights to object to a license denial, issuance subject to conditions, suspension, and/or revocation determination. Unless the manager has declared that immediate danger to the health, safety, and/or general welfare of persons or property exists, the manager's decision to revoke or suspend is stayed pending appeal. The manager will transmit the notice of appeal together with the file of the appealed matter to council. Upon receipt of the notice and file, council will fix a time and place for hearing the appeal. Council will give the appellant not less than 10 days' prior written notice of the time and place of the hearing. Council will hear and determine the appeal on the basis of the written statement and any additional evidence council considers appropriate or relevant, including any information provided by the manager. At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel, and any additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of council is final and conclusive.

10.5 Penalties. City may maintain an action in a court of competent jurisdiction to enforce the provisions of this Ordinance. Violation of or failure to comply with any provision of this Ordinance is punishable upon conviction by a fine not less than $100.00 and not to exceed $1,500.00 per violation, per day. City will be entitled to collect from any person violating or otherwise failing to comply with this Ordinance city's reasonable attorney fees and other fees, costs, and expenses incurred by city to enforce this Ordinance. Each violation, and each day that a violation continues, constitutes a separate civil infraction. The remedies available under this Ordinance are not exclusive of any other remedies available under any applicable federal, state, and/or local laws, regulations, and/or ordinances. It is within city's discretion to seek cumulative remedies for a violation of this Ordinance.

11. Administration. The manager is responsible for the administration of this Ordinance. The manager may establish reasonable rules and regulations necessary or appropriate to carry out the purpose and intent of this Ordinance. Violations of any rules and/or regulations established by the manager pursuant to this Ordinance will be subject to the penalties described in this Ordinance. No person may violate or fail to comply with any rule or regulation established by the manager or willfully make any false or misleading statement to the manager regarding information relevant to the issuance of a license.

12. Amend, Replace, and Supersede. This Ordinance amends, replaces, and supersedes Chapter 5.35 of the Code and all ordinances, resolutions, and/or policies in conflict with this Ordinance; provided, however, (a) this Ordinance does not relieve any person of any obligations that may have accrued under Chapter 5.35 of the Code prior to the effective date of this Ordinance, and (b) city may continue the enforcement, prosecution, conviction, and/or punishment of any person who has or will violate Chapter 5.35 of the Code prior to the effective date of this Ordinance.

13. Severability; Corrections; Effective Date. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. Except as expressly

provided otherwise, reference to "day(s)" means calendar days, with any deadline falling on a day other than a business day being extended to the next business day. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of council to cure editorial and/or clerical errors. This Ordinance will become effective 30 days after its passage by council and approval by the mayor.

This Ordinance was PASSED and ADOPTED by the Sisters City Council by a vote of 4 for and 1 against and APPROVED by the mayor on January 22,2020.

Chuck Ryan, Mayor

ATTEST:

Kerry Prosser, City Recorder