Ordinance 84-14

To Amend Title 4 of the Bloomington Municipal Code Entitled "Business Licenses and Regulations" and Title 14 Entitled "Peace, Safety, and Morals" of the Bloomington Municipal Code

WHEREAS, under the authority of I.C. 25-37-1-11, the Common Council intends to prescribe for itinerant merchants the same license requirements which will be similar to state requirements in I.C. 25-37-1 et seq, regardless of when they deliver or where they sell goods; and

WHEREAS, certain sections of the Municipal Code dealing with businesses are in need of revision or deletion;

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA THAT:

SECTION I. Chapter 4.16 "Itinerant Merchants--Seller of Goods for Later Delivery" shall be amended to read as follows:

Chapter 4.16

ITINERANT MERCHANTS

(a) 4.16.010 Definitions. Shall be deleted in its entirety.

(b) 4.16.020 Seller of goods for later delivery--license and bond required. Shall be amended to read as follows:

4.16.020 Seller of goods or services for simultaneous or later delivery-License required. Any person, firm, or corporation who engages in or transacts any temporary or transient business for profit in this city, either in one locality or in traveling from place to place offering for sale or selling goods, wares, merchandise or services, except those sellers who are supervised sellers at commercial malls or similar facilities with on-site management of such sellers and a permit application process requiring information equivalent to that required in this chapter, and including those who, for the purpose of carrying on such business, hire, lease, or occupy any permanent or mobile building, structure, or real estate for the exhibition by means of samples, catalogues, photographs and price lists, and who accepts or intends to accept payment for such goods either upon simultaneous or later delivery to the buyer, violates this chapter and is subject to the penalties provided by Section 1.01.130 of this code unless licensed and bonded or exempted from licensing or bonding as provided by this chapter.

(c) 4.16.030 Exemptions from bonding. Shall be amended to read as follows:

An individual or organization who is required by this chapter to obtain a bond is exempt from bonding if he has obtained a county license and posted bond with the County Auditor in accordance with IC 25-37-1 et seq.

(d) 4.16.040 License application. Shall be amended to read as follows:

4.16.040 Application for license Any itinerant merchant or seller of goods or services for simultaneous or later delivery shall file application for a license for that purpose with the City Controller. The application shall state the following facts:

(1) The name, residence and post-office address of the person, firm or corporation making the application, and if a firm or corporation, the name and address of the members of the firm or officers of the corporation, as the case may be.

(2) If the applicant is a corporation then there shall be stated on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than the state of Indiana, the date on which such corporation qualified to transact business as a foreign corporation in the state of Indiana.

(3) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact business, and if for the purpose of transacting such business any permanent or mobile building, structure or real estate is to be used for the exhibition

by means of samples, catalogues, photographs and price lists or sale of goods, wares or merchandise, the location of such proposed place of business, and a verified statement from the owner(s) of such real estate that seller has permission to use said real estate for the sale of such goods for the time period indicated.

(4) A detailed inventory and description of such goods, wares and merchandise to be offered for sale, the manner in which the same is to be advertised for sale and the representations to be made in connection therewith, and any and all details necessary to locate and identify all goods, wares and merchandise to be offered for sale.

(5) If the applicant has not obtained an itinerant merchant's license from the County Auditor, attached to the application shall be a receipt showing that personal property taxes on the goods, wares and merchandise to be offered for sale have been paid.

(6) If the applicant has not obtained an itinerant merchant's license from the County Auditor, attached to the application shall be a copy of a notice, which ten (10) days before said application has been filed, shall have been mailed by registered mail by the applicant to the Indiana department of state revenue of the state of Indiana or such other department as may be charged with the duty of collecting gross income taxes or other taxes of a comparable nature of which may be in lieu of such gross income taxes. The said notice shall state the precise period of time and location from which said applicant intends to transact business, the approximate value of the goods, wares and merchandise to be offered for sale, and such other information as the Indiana department of state revenue of the state of Indiana or its successor may request or by regulation require, or a receipt showing that the applicant has filed an application for an itinerant merchant's license with the County Auditor.

(7) If for the purpose of transacting such business any permanent or mobile building, structure, lot or other real estate is to be used, a permit for temporary use of said property issued by the Engineering Department pursuant to 20.07.10.00 of the Bloomington Municipal Code.

(8) Said application shall be verified.

(e) 4.16.050 Additional requirement Shall be deleted in its entirety.

(f) 4.16.060 Fee. Shall be amended to read as follows:

4.16.060 Fee The applicant shall pay a fee of ten dollars ($10.00) per day for each day or part thereof that he proposes to transact business, which the Controller of the city of Bloomington shall deposit in the city general fund to pay for costs of licensing and regulating sellers.

(g) 4.16.070 Deposit or bond. Shall be amended to read as follows:

4.16.070 Deposit or bond.

(1) A seller of goods or services for simultaneous or later delivery who is not exempt under Section 4.16.030 of this chapter shall at the time of filing said application, deposit with the City Controller a five hundred dollar ($500.00) deposit or a bond with sureties approved by said controller in the sum of five hundred dollars ($500.00) valid for three hundred sixty five (365) days payable to the City, or deposit an amount equal to two (2) times the value of the goods, wares, merchandise or services to be offered for sale, or sold as shown by the inventory filed, running to the City of Bloomington, with sureties approved by the City Controller in said amount, whichever sum is greater, for the use and benefit of any purchaser of any such goods, wares or merchandise who might have a cause of action of any nature arising from or out of any such sale; the said deposit or bond shall be further conditional on the payment by the applicant of all taxes that may be payable by or due from the applicant to the State of Indiana or any department thereof or any subdivision of the State of Indiana, municipality or otherwise, the payment of any fines that may be assessed by any court against the applicant or its agents or employees for violation of the provisions of this chapter, and the satisfaction of all causes of action commenced within one (1) year from the date such sale is made;

(2) Upon being presented evidence of a judgment against the seller or organization which he represents, the controller shall forward a copy of the court order to the surety to serve as notice of the judgment. The surety shall thereupon mail a check or money order to the controller made payable to the individual or organization that has obtained the judgment. Failure by the surety to promptly pay claims submitted by the controller shall disqualify it from participating in this bonding process until such time as it has satisfied all of its obligations on outstanding judgments.

If a deposit has been placed with the controller, the controller shall be authorized to pay all final judgments against the seller or the organization which he represents without notice. For the purposes of this section, a judgment against the seller or the organization which he represents is limited to a judgment rendered on a claim founded upon a transaction entered into by the seller. Any amount of the deposit not so used within the 365 day period shall be returned to the seller.

(3) In such bond, the applicant and surety shall appoint the City Controller the agent of the applicant and surety for service of process. In the event of such service of process, the agent on whom such service is made, shall mail a true copy of the service of process served upon him to each party for whom he has been served, addressed to the last known address of such party.

(h) 4.16.080 Thirty day validity. Shall be amended to read as follows:

4.16.080 Fifteen day validity A license issued under this chapter is valid for a period of fifteen (15) days; the license may, within 48 hours prior to expiration, be renewed for an additional period of up to fifteen (15) days.

(i) 4.16.090 Exemption. Shall be amended to read as follows:

4.16.090 Exemption An itinerant merchant required by this chapter to be licensed is exempt from licensing if he sells only goods or produce manufactured or grown by that individual or his immediate family. In addition, the provisions of this chapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business 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.

(j) 4.16.100 Issuance of License--Limitations The license issued under provisions of this chapter shall not be transferable and no license shall be good for more than one person, unless such persons shall be co-partners or employees of a firm or corporation obtaining such license. No license shall be good for more than one location if the merchant is, for the purpose of such sale, occupying any permanent or mobile building, structure, or real estate in the city.

SECTION II. Chapter 4.17 "Itinerant Merchants--Seller of Goods for Simultaneous Delivery" shall be deleted in its entirety.

SECTION III. Section 14.28.110 of Chapter 14.28 Advertising of the Bloomington Municipal Code shall be amended to read as follows:

It is unlawful for any person or firm to place any advertising sign or display any merchandise upon any sidewalk, tree plot, or public right of way, except as permitted by this Code.

SECTION IV. Chapter 4.04 Business Licenses Generally of of the Bloomington Municipal Code shall be amended to delete the following:

4.04.040 Airplane exhibit
4.04.050 Boxing/wrestling match
4.04.080 Dance hall
4.04.090 Fire or bankrupt sales by nonresidents

SECTION V. Section 4.20.020 Secondhand dealers shall be amended to delete the sum of fifty cents and add the sum of five dollars as the annual license fee.

SECTION VI. Chapter 4.04 Business Licenses Generally shall be amended to add the following sections:

4.04.190 General procedure for revocation of license

a) In the absence of a specific revocation procedure contained in any chapter herein, any license issued pursuant to this Title may be revoked by the Board of Public Works of the City of Bloomington 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 Title;
4) conducting the business licensed under this ordinance in an unlawful manner or in such 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 for revocation of 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 ten (10) days prior to the date set for the hearing.

4.04.200 General appeal procedure

In the absence of specific appeal procedure contained in any chapter herein, any person aggrieved by the decision of the City Controller in regard to the denial of application for a license as provided for in this Title, or by a decision of the Board of Public Works in connection with the revocation of a license as provided herein, shall have the right to appeal to the Common Council. Such appeal shall be taken by filing with the Council within fourteen (14) days after notice of the decision of the Controller or Board of Public Works has been mailed 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 person by registered or certified mail, return receipt requested, at least ten (10) days prior to such hearing date. The order of the Council on such appeal shall be final.

SECTION VII. Chapter 4.18 Alternative Compliance Shall be deleted in its entirety.

SECTION VIII. Severability. If any section, sentence or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, and to this end the provisions of this chapter are declared to be severable.

SECTION IX. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor and promulgation as required by law.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 4th day of April, 1984.

Patricia A. Gross
Patricia Gross, President
Bloomington Common Council

ATTEST:

Patricia Williams
Patricia Williams, City Clerk

PRESENTED by me to the Mayor upon this 6th day of April, 1984.

Patricia Williams
Patricia Williams, City Clerk

SIGNED and APPROVED by me upon this 6 day of April, 1984.

Tomilea Allison
Tomilea Allison, Mayor
City of Bloomington

SYNOPSIS

This ordinance combines the regulations for licensing itinerant merchants previously covered by Chapters 4.16 and 4.17. It adopts definitions and requirements from state law. Sellers who sell at one location are subject to the ordinance as well as those going from door to door.

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An appeal procedure from administrative decisions refusing a license and revoking a license is added. The old, unused alternative compliance procedure, a second bonding requirement, and licensing for four categories of businesses are deleted. Fees for itinerant merchants are increased to the state's fee of $10 per day; fees for secondnand dealers are increased from $0.50 to $5.00 annually.

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4/11/84 Via Simpson
Legal
Controller
Major
Police
Planning