passed 6-2 (Wisler, Piff) mayor absent.

ORDINANCE 09-05

TO AMEND TITLE 4 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "BUSINESS LICENSES AND REGULATIONS"
Re: Replacing Section 4.04.110 (Lunch wagon) and Chapter 4.16 (Itinerant Merchants) with Chapter 4.16 (Itinerant Merchants, Solicitors, and Peddlers)

WHEREAS, the City of Bloomington is by State law permitted to establish ordinances to protect the health, safety and general welfare of its residents; and

WHEREAS, the City of Bloomington has adopted ordinances regulating Itinerant Merchants and Lunch Wagons pursuant to the authority granted it by the State; and

WHEREAS, the ordinances regulating Itinerant Merchants and Lunch Wagons need to be modified to promote economic development and competitive enterprise within the City while at the same time protecting residents of the City from sales harassment, unwanted disturbances, unwelcome visits and high pressure solicitation; and

WHEREAS, the primary purpose of public streets, sidewalks, and other public ways is for use by vehicular and pedestrian traffic and, while vending on such public ways promotes the public interest by contributing to an active and attractive pedestrian environment, the current Itinerant Merchant and Lunch Wagon ordinances must be modified in order to establish a reasonable regulation of vending on public ways and to adequately protect the public health, safety, and welfare of the citizens of Bloomington; and

WHEREAS, the Itinerant Merchant and Lunch Wagon ordinances should be modified to include the regulation of and provide protection for solicitors so that the citizens of Bloomington can receive the same protection on private residential streets that they receive on public thoroughfares;

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

SECTION I. Section 4.04.110 of the Bloomington Municipal Code entitled "Lunch Wagon" and Chapter 4.16 of the Bloomington Municipal Code entitled "Itinerant Merchants" shall be deleted and replaced with the following provisions. The codifier shall delete Section 4.04.110 from the table of contents of that chapter .

Chapter 4.16 Itinerant Merchants, Solicitors and Peddlers

4.16.010 Definitions
4.16.020 License Required
4.16.030 License Application
4.16.040 Issuance or Denial of License
4.16.050 License Fee
4.16.060 Effect of Cessation of Business
4.16.070 Insurance and Indemnity
4.16.080 License Identification and Display
4.16.090 Prohibited Locations
4.16.100 Standards of Conduct
4.16.110 Revocation of License
4.16.120 Appeal
4.16.130 Penalty

4.16.010 Definitions.
As used in this chapter, the following words mean, unless otherwise designated:

"Benevolent organization" means an organization which is free from the possibility of profits accruing to the founders, officers, directors or members.

"Itinerant merchant" means any person or persons, firm, limited liability company, corporation or organization, either principal or agent, employer or employee who engages in a temporary or transient business of selling and delivering goods, wares, or merchandise within the City of Bloomington ("City"), and who, in furtherance of such business, leases, uses or occupies any

temporary structure, motor vehicle, trailer, tent, lot, cart, street, alley, sidewalk or any other such place, public or private, within the City for the exhibition and sale of such goods, wares, or merchandise or who provides a service to the community. The person, firm, limited liability company, corporation or organization so engaged shall not be relieved from the provisions of this section by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by reason of conducting such temporary business in connection with or as a party of any local business or in the name of any local dealer, trader, merchant or auctioneer.

"Peddler" means any person or persons, firm, limited liability company, corporation or organization, either principal or agent, employer or employee who sells and makes immediate delivery or offers for sale an immediate delivery of any goods, wares, merchandise or item in the possession of the seller at any place in the City of Bloomington other than a fixed place of business, but shall not include salesmen or agents for wholesale houses or firms who sell to retail dealers for resale or sell to manufacturers for manufacturing purposes or to bidders for public works or supplies.

"Solicitor" means any person or persons, firm, limited liability company, corporation or organization, either principal or agent, employer or employee who engages in the business of going from house to house, place to place, in or along the streets, within the City of Bloomington selling or taking orders for or offering to sell or take orders for goods, wares or merchandize or other things of value for future delivery or for services to be performed in the future.

4.16.020 License Required.

It shall be unlawful to conduct a business of soliciting, peddling, and/or engaging in the business of being an itinerant merchant within the City of Bloomington, unless a valid license has first been issued to the solicitor, peddler and/or itinerant merchant by the City Controller. A license is not required under this Chapter if the business activity only includes the provision of transportation to the general public; however, such business must comply with any and all other applicable state or local laws. A license is also not required for entities exempted under I.C. 25-37-1-10.

4.16.030 License Application.

Any person desiring a license under this chapter shall submit a fully completed application to the City Controller at least fourteen (14) days prior to the proposed date of conducting the business activity. The application must set forth or have attached the following information as specified below:

(a) The applicant's name, current physical address, telephone number and date of birth;
(b) The name, current physical address, and telephone number of the person, firm, limited liability company, corporation or organization which the applicant is employed by or represents, and the length of time of such employment or representation;
(c) If the applicant is employed by or represents a firm, limited liability company or corporation, the applicant shall provide the name and current physical address of all members of the firm or limited liability company, or all officers of the corporation, as the case may be;
(d) If the applicant is employed by or represents a corporation or a limited liability company then there shall be stated on the application the date of incorporation or organization, the state of incorporation or organization, and if the applicant is a corporation or limited liability company formed in a state other than the State of Indiana, the date on which such corporation or limited liability company qualified to transact business as a foreign corporation or foreign limited liability company in the State of Indiana;
(e) A brief description of the nature of the business in which the applicant is engaged, the length of time for which the applicant desires to transact business, the hours of the day the applicant desires to transact business and the type of products or services to be sold or rendered;
(f) The place or places where said business may be conducted, and a written statement, if applicable, from the owner of such place or places authorizing the applicant to conduct said business;
(g) A detailed inventory and description of the 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;
(h) The category of license the applicant is seeking: itinerant merchant, peddler or solicitor;
(i) The type of license the applicant is seeking: one (1) day; seventy-two (72) hour; one (1) calendar week; thirty (30) day; six (6) month; or one (1) year.
(j) The date, or approximate date, of the latest previous application for a license, if any, was submitted to the City Controller;

(k) A statement whether a license, under the provisions of this Chapter, or any other similar ordinance of the City of Bloomington or any county or municipality, has been revoked, together with the details thereof;

(l) If a motor vehicle and or mobile trailer is to be used, a description of the same, together with the current vehicle identification number and license number of said vehicle and/or trailer as issued by the relevant state agency and any other identification as will serve to identify said vehicle or trailer and its owner;

(m) The designation of a resident of the City of Bloomington as a registered agent for purposes of receiving notices from the City of Bloomington or other service of process, as a result of doing business in the City of Bloomington;

(n) Attached to the application shall be credentials from the person, firm, limited liability company, corporation or organization for which the applicant proposes to do business and authorizing the applicant to act as such representative;

(o) Attached to the application shall be a copy of the Monroe County Health Department permit if the applicant will be using, handling, selling or distributing food.

(p) If the applicant is applying for an itinerant merchant license, a copy of the itinerant merchant license issued by Monroe County, Indiana, shall be attached to the application;

(q) If the applicant will conduct business in the City of Bloomington public right of way, attached to the application shall be a letter of approval from the Board of Public Works. Said applicant shall be required to adhere to any standards or restrictions noted in the letter of approval provided by the Board of Public Works.

(r) If the applicant will conduct business in or on property owned and/or managed by the City of Bloomington Parks Department, attached to the applicant shall be a letter of approval from the City of Bloomington Parks Department. Said applicant shall be required to adhere to any standards or restrictions noted in the letter of approval provided by the City of Bloomington Parks Department.

(s) If the applicant will produce any type of spark, flame or fire in the course of his/her business, he/or she shall attach a copy of an open burning permit issued by the City of Bloomington Fire Department.

(t)) Attached to the application shall be proof of insurance in accordance with the limits described in section 4.16.070 of this Chapter; and

(u) Any additional information that the City Controller may deem necessary to process the application.

4.16.040 Issuance or Denial of License

(a) After consideration of the application and all information and data obtained relative thereto, the City Controller shall issue a license to the applicant if he/she determines that the applicant has the qualifications and meets the requirements of this Chapter, and all other applicable laws, ordinances and policies; if not, the application shall be denied and the applicant shall not engage in or carry out any business herein defined in the City of Bloomington.

(b) An application shall be denied if the applicant, any person who is to participate in the business or any person who will be responsible for the management or supervision of the applicant's business has, at any time, had a license under this Chapter revoked by the City or any other governmental agency or body. An application shall also be denied if the purpose of the business is otherwise unlawful.

(c) An application may be denied if the applicant, any person who is to participate in the business or any person who will be responsible for the management or supervision of the applicant's business has, within ten (10) years, violated the provisions of this Chapter.

4.16.050 License Fee

(a) Each applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a consecutive period of time):

(1)	One (1) Day License:	$15.00
(2)	Seventy-two (72) Hour License:	$40.00
(3)	One (1) Week License:	$75.00
(4)	Thirty (30) Day License:	$120.00
(5)	Six (6) Month License:	$175.00
(6)	One (1) Year License:	$240.00

(b) The following listed organizations and/or entities are exempt from payment of a licensing fee, so long as the proceeds thereof are to be used exclusively for religious, charitable, educational or scientific purposes, but are nonetheless required to adhere to all other requirements of this chapter:

(1) Churches;
(2) Schools;
(3) Benevolent organizations;

(4) Fraternal organizations; and
(5) Other similarly situated organizations.

(c) Participants at the following special events are exempt from the provisions of this Chapter:

(1) City of Bloomington's Farmers' Market;
(2) City of Bloomington's Holiday Market;
(3) The Taste of Bloomington;
(4) Lotus World Music and Arts Festival;
(5) The Fourth Street Festival;
(6) City of Bloomington A Fair of the Arts;
(7) Strawberry Festival;
(8) Canopy of Lights;
(9) Fourth of July Parade; and
(10) Any other special events approved by the City Controller.

4.16.060 Effect of Cessation of Business

No deductions shall be allowed from the fee for a license issued pursuant to this Chapter for any part of the term of which the licensee does not engage in such business.

4.16.070 Insurance and Indemnity

(a) Each applicant for a license shall provide a certificate of liability insurance to the City Controller upon a form approved by the Corporation Counsel for the City of Bloomington, insuring the applicant, and naming the City of Bloomington, as co-insured, against the following liabilities and in the following amounts relative to such retail activity:

(1) Personal injury: $100,000.00 per occurrence and $300,000.00 in the aggregate; and
(2) Property damage: $25,000.00 per occurrence and $50,000.00 in the aggregate.

(b) Each applicant shall provide a document, approved by the Corporation Counsel for the City of Bloomington, in which the applicant agrees to indemnify and hold harmless the City of Bloomington for losses or expenses arising out of the operation of his/her business.

4.16.080 License Identification and Display

(a) Any itinerant merchant, peddler and/or solicitor being duly licensed according to the provisions of this Chapter shall wear on his/her person at all times, and in plain view while operating in the City of Bloomington, a license furnished by the City Controller. This license shall serve as notice to the public that such itinerant merchant, peddler and/or solicitor is duly licensed by the City of Bloomington and has the necessary approval of the City Controller;

(b) All itinerant merchants, peddlers and/or solicitors shall prominently display the license issued by the City Controller and shall exhibit the same whenever he/she is requested to do so by any police officer or any person who approaches the itinerant merchant, peddler and/or solicitor for purposes of engaging in or carrying on the business defined therein; and

(c) Failure to display or exhibit a license in accordance with this section may be grounds for suspension or revocation of said license.

4.16.090 Prohibited Locations

(a) No itinerant merchant, peddler or solicitor may be located in any public park, plaza or parking lot/facility, without written authorization from the City of Bloomington; and

(b) No itinerant merchant, peddler or solicitor may conduct business on the same side of the street and within fifty (50) feet of a primary entry way into a ground level retail establishment which offers the same type of goods, wares, services, foods, or products as the itinerant merchant, peddler or solicitor; and

(c) No itinerant merchant, peddler or solicitor may be located nor any such sales be made in a street, a street median strip or an alleyway; and

(d) Itinerant merchants, peddlers and/or solicitors shall locate themselves a reasonable distance from any posted bus stop, taxi stand, crosswalk, driveway, alleyway, right-of-way lines of two (2) or more intersecting streets or building entrance or walk-up window; and

(e) Itinerant merchants, peddlers and/or solicitors shall locate themselves a reasonable distance from another cart or stand. Where two (2) or more carts or stands are so located, the cart or stand which has been most recently located in violation of this provision shall be required to move so as not be in violation; and

(f) No itinerant merchant, peddler or solicitor may sell or peddle any ware at a location directly in front of the primary entrance to a retail business, office building or church. The area in which an itinerant merchant, peddler or solicitor may not sell or peddle any wares is defined by the doorway line, lines running on either side of the door to the nearest curb, and the curb lines.

If an itinerant merchant, peddler or solicitor has the prior written approval of the retail business, office building or church it wishes to sell or peddle its wares in front of, this section need not apply; and

(g) No itinerant merchants, peddlers or solicitors may be located nor any such sales be made on the following portions of the City of Bloomington B-Line Trail:

(1) From the north side of Country Club Road to the south side of Dodds Street
(2) From the north side of 2nd Street to the south side of 3rd Street
(3) From the north side of 4th Street to the south side of 6th Street; and

(h) No itinerant merchant, peddler or solicitor may be located nor any such sales be made on public property within a one block radius of the following special events during the hours of their operation unless prior written consent has been provided by the coordinator or director of the special event:

(1) City of Bloomington Farmers' Market
(2) City of Bloomington Holiday Market
(3) The Taste of Bloomington
(4) Lotus World Music and Arts Festival
(5) The Fourth Street Festival
(6) Arts Fair on the Square
(7) Strawberry Festival
(8) Canopy of Lights;
(9) Fourth of July Parade; and
(10) Any other special events approved by the City Controller; and

(i) No itinerant merchant, peddler or solicitor may be located in a public parking space unless prior approval has been granted by the Board of Public Works; and

(j) No itinerant merchant, peddler or solicitor may be located in a manner which would significantly impede or prevent the use of any City of Bloomington property, or which would endanger the safety or property of the public.

4.16.100 Standards of Conduct

All itinerant merchants, peddlers and solicitors engaged in or carrying on the business defined herein shall conform to the following standards of conduct:

(a) Itinerant merchants, peddlers and solicitors shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Bloomington Noise Ordinance as stated in Title 14 of the Bloomington Municipal Code;

(b) A device may not be used which would amplify sounds nor may attention be drawn to the itinerant merchant's, peddler's or solicitor's business by an aural means or a light-producing device;

(c) Itinerant merchants, peddlers and solicitors shall, within a reasonable time, clearly reveal to the prospective buyer, the product or service they are selling or securing orders for future delivery, the company they are employed by or represent, and the exact price and conditions of the proposed sale;

(d) No cart or stand may be permanently or temporarily affixed to any fixed object, and no cart or stand may be permanently or temporarily affixed to any object, including but not limited to buildings, trees, signs, telephone poles, streetlight poles, traffic signal poles or fire hydrants;

(e) No cart or stand may be used to advertise any product or service which is not authorized to be sold from that cart or stand;

(f) No itinerant merchant, peddler or solicitor may display a sign that is greater than 1 ½ square feet in total area;

(g) No cart or stand may make use of any public or private electrical outlet while in operation;

(h) Efforts shall be made by each itinerant merchant, peddler or solicitor to protect against littering; each cart or stand must have an adequate trash receptacle which is emptied sufficiently often to allow disposal of litter and waste by the public at any time; the trash receptacle on the cart or stand shall not be emptied into trash receptacles owned by the City of Bloomington; and liquid from a cart or stand may not be discharged on or in a City sewer or drain or elsewhere on City property, nor on private property without the express written consent of the owner thereof;

(i) Pedestrians shall not be exposed to any undue safety or health hazard nor shall a public nuisance be created;

(j) Each cart or stand shall be maintained free and clear of dirt, and finishes shall not be chipped, faded or unduly marred;

(k) Foods which present a substantial likelihood that liquid matter or particles will drop to the street or sidewalk during the process of carrying or eating the food shall be sold in proper containers; and

(l) It shall be unlawful for any licensee to enter upon any residential premises in the City of Bloomington where the owner, occupant or person legally in charge of the premises has posted, at

the entry to the premises, or at the entry to principal building on the premises, a sign bearing the words, "No Peddlers," "No Solicitors," or other words of similar import.

(m) Itinerant merchants, peddlers and/or solicitors who use a grill or a device that may result in a spark, flame or fire shall adhere to the following additional standards:

(1) Stand approximately twenty (20) feet from a building or structure;

(2) Provide a barrier between the grill or device and the general public;

(3) The spark, flame or fire shall not exceed twelve (12) inches in height; and

(4) A fire extinguisher shall be within reaching distance of the itinerant merchant, peddler or solicitor at all times.

4.16.110 Revocation of License

(a) Any license issued under this Chapter shall be revoked by the City Controller if the holder of the license is found to have violated this Chapter or any other applicable law or ordinance, or ceases to possess the qualifications required for licensing hereunder, or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a license under this Chapter.

(b) Immediately upon the revocation of a license issued under this Chapter, written notice thereof shall be given by the City Controller to the holder of the license by certified mail, return receipt requested, addressed to the applicant's physical address or his/her agent as set forth in the application. Immediately upon the mailing of such notice, the license shall become null and void. Concurrently, city staff shall notify the licensee of the revocation in person or by phone.

4.16.1120 Appeal

Any applicant or licensee aggrieved by the action of the City Controller in the denial, suspension or revocation of a license or any person who is issued a citation shall have the right of appeal to the Board of Public Works . Such appeal shall be taken by filing with the Board of Public Works within ten (10) days after the action complained of, a written statement setting forth fully the grounds for the appeal. The decision and order of the Board of Public Works on such appeal shall be final and conclusive.

4.16.130 Penalty

Citations may be issued by the Chief of Police or his or her designee:

(a) Each day that any violation continues shall be considered a separate violation for purposes of the penalties specified in this Chapter.

(b) Any person, firm, limited liability company, corporation or organization who violates any provision of this Chapter, or who makes a false statement upon an application for a license provided herein, shall be subject to a fine of two hundred and fifty dollars ($250.00).

(c) Any person, firm, limited liability company, corporation or organization who conducts any business described in this Chapter, without first obtaining a license as described herein, shall be assessed a fine of five hundred dollars ($500.00).

SECTION. 2. Severability The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or phrase of the Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect.

SECTION 3. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor and publication in accordance with law.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 15th day of APRIL, 2009.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 16th day of April, 2009.

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 21st day of April, 2009.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 4 of the Bloomington Municipal Code entitled "Business Licenses and Regulations" by deleting the section on "Lunch wagons" (BMC 4.04.110) and the chapter on "Itinerant Merchants" (BMC 4.16) and replacing them with a new Chapter 4.16 entitled " Itinerant Merchants, Solicitors, and Peddlers." It requires potential vendors to apply for and obtain a license before conducting business in the City. Licensees are prohibited from conducting business in certain locations and are held to certain standards of conduct. Applicants and licensees whose license is denied, revoked or suspended and any person who is issued a citation may appeal that decision.

Note: On April 15, 2009, the Common Council adopted this ordinance as amended by Am 01 and Am 02.

Am 01 removed from the application procedures the requirement that the applicant:

- *File a social security number;*
- *File statement of criminal convictions or a copy of a criminal history check and no longer made convictions of crimes a basis for denial of an application (but still made violations of the Chapter a discretionary basis for denial); or*
- *Provide a photograph that would be attached to the license.*

It also changed the revocation procedure to:

- *Require city staff to contact licensees whose license was revoked either by phone or in person at the same time as the letter of revocation is mailed.*

Lastly, the changes make some minor corrections and changes in numbering elsewhere in the ordinance.

Am 02 clarified that vendors who conduct business on private property are not prohibited by this ordinance from doing so within a block radius of special events. Those vendors, however, would still need to have written permission from the owner of the property who, in turn, would need to obtain a temporary use permit through the Planning Department.

These amendments affected the following provisions: the 3rd Whereas clause, Section 4.16.030 (License Application), Section 4.16.040 (Issuance or Denial of License), Section 4.16.080 (License Identification and Display), Section 4.16.090 (Prohibited Locations), Section 4.16.110 (Revocation of License), Section 4.16.111 (Appeal) (renumbered as 4.16.120), and Section 4.16.112 (Penalty) (renumbered as 4.16.130).

Signed copies to:

legal (10)	CA/CA (3)	Public Works
controller	clerk (2)	Public Works Board
ED-Arts	BMC (2)	
ED-Buc	Fire department	HT-for Publication
ED director	Police Dept.	web
PARKS director		