

ORDINANCE 05-10

FAILED 4-5
~~Adopted~~
(Director, Dept. of Public Works)

**TO AMEND TITLE 4 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
"BUSINESS LICENSES GENERALLY"
(Amending Section 4.04.110 Entitled "Lunch Wagon" by Disallowing Lunch Wagons from
Operating Near the Farmers' Market When the Market is Open)**

WHEREAS, Bloomington Municipal Code Section 4.04.110 contains provisions regulating lunch wagons in the public streets, alleys, sidewalks and rights-of-way of the City of Bloomington, and requires that persons selling food or drink from moveable vehicles in the public rights-of-way must obtain a lunch wagon license pursuant to said section, and that persons operating a lunch wagon on private property must obtain a temporary use permit; and

WHEREAS, the City of Bloomington sponsors a Farmers' Market near the Showers Building, 401 North Morton Street, on Saturday mornings and Tuesday afternoons during certain seasons of the year, at which vendors must contract with the City to sell their merchandise within the market and must agree to comply with the regulations of the market; and

WHEREAS, it is desirable to protect the character of the Farmers' Market and the vendors who have contracted with the City to sell at the Market by disallowing the sale of food and drink in public right-of-way near the Market during the hours the Market is in operation;

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" shall be deleted and replaced with the following:

4.04.110 Lunch wagon.

(a) It is unlawful for any person to operate on the public streets, alleys, sidewalks or rights-of-way within the city for gain or profit, any motor, foot propelled, or pushed vehicle, selling or offering for sale articles of food or drink, commonly known and designated as a "lunch wagon" without first obtaining a license to do so. The fee for such license shall be as follows:

- (1) Five dollars per vehicle per day, or
- (2) Fifty dollars plus five dollars per vehicle per month, or
- (3) Three hundred dollars plus ten dollars per vehicle per year.

Provided further, that a foot-propelled bicycle from which only ice cream confections are vended shall be considered a special category of lunch wagon for which the owner of such vehicle shall pay an annual license fee as follows: Twenty-five dollars for the first bicycle so operated, and five dollars for each subsequent bicycle.

Licensees shall not operate lunch wagons from 6:00 a.m. until 1:00 p.m. on Saturdays from the first Saturday in April until December 31 each year, and from 2:00 p.m. until 6:00 p.m. on Tuesdays from the first Tuesday in June until September 30 each year, on public right-of-way (including, but not limited to, sidewalks, streets, and any tree plots) at the following locations: Sixth Street between College and Rogers, Seventh Street between College and Rogers, Eighth Street between College and Rogers, Tenth Street from College to Rogers Street, Madison Street from Sixth to Seventh Streets, and Morton Street from Sixth to Tenth Streets.

Licensees are subject to all relevant city ordinances, including but not limited to those regulating traffic and parking (BMC Sections 12.04.140, 15.32.140), noise (BMC Section 14.09.080(2)(A)), advertising (BMC Sections 14.28.090, 14.28.100, 14.28.110), and nuisances. A licensee shall not ride a bicycle or vehicle on the sidewalk (BMC Section 15.60.040) or on park grounds (BMC Section 15.60.020). A licensee operating from a lunch wagon on the sidewalk shall not impede ingress into or egress from structures abutting the sidewalk (BMC Section 12.04.140), or create an impediment to the free flow of traffic (IC 35-42-2-4). Violators may be ticketed. The judgment of the police exercising good faith shall determine whether the vehicle is impeding or inconveniencing either pedestrian traffic, vehicular traffic or the rights of

the abutting property owner. Licensees are subject to all applicable state and local health department rules.

(b) It is unlawful for lunch wagons to operate on private property without first having also obtained from the engineering department a temporary use permit for that site as required by BMC Section 20.06.07.00 (Ord. 88-15 § 1, 1988).

(c) Enforcement

(1) Enforcement of this section shall be implemented by Bloomington Police Department, or other such personnel as designated by the Office of the Mayor.

(2) Upon finding that any provision of 4.04.110 has been violated, the enforcement designee(s) shall issue a notice of violation (NOV) to the person(s) responsible for the violation. For purposes of this enforcement, the person(s) responsible shall include any person who owns, manages, operates or otherwise controls the use of a lunch wagon. The NOV shall be in writing and shall be served upon the person(s) responsible for the violation by one or more of the following methods: delivery in person or by first class mail. The NOV shall state:

- a. The date of the violation;
- b. The location of the violation;
- c. The nature of the violation;
- d. The fine assessed for the violation;
- e. That the fine is to be paid within seven (7) days at the city legal

department; and

- f. That the fine may be contested in the Monroe County Circuit Courts.

(3) In addition to the issuance of an NOV, the city legal department is authorized to seek any other remedy at law, including but not limited to injunctive relief, in order to enforce this provision.

(d) Violations and Penalties

(1) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of a lunch wagon to fail to comply with any of the provisions of 4.04.110.

(2) The fine assessed for a violation shall be one hundred dollars (\$100).

(3) Each day that any violation continues shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

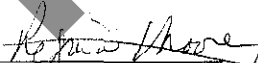
SECTION II. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without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

SECTION III. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 6th day of April, 2005.

ANDY RUFF, President
Bloomington Common Council

ATTEST:


REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2005.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2005.

MARK KRUZAN, Mayor
City of Bloomington

EXAMPLE

SYNOPSIS

This ordinance amends Bloomington Municipal Code 4.04.110 to prohibit lunch wagons from operating in the vicinity of the Farmers' Market, specifically Seventh Street between College and Rogers, Eighth Street between College and Rogers, Morton Street from Seventh to Tenth Streets, and Tenth Street from College to Rogers Street, from 6:00 a.m. until 1:00 p.m. on Saturdays from the first Saturday in April until December 31 each year, and from 2:00 p.m. until 6:00 p.m. on Tuesdays from the first Tuesday in June until September 30 each year. The ordinance provides for enforcement by issuance of a Notice of Violation and sets the fine for violation at \$100.

On April 6, 2005 the Council adopted Amendment 1 by a vote of 6 - 3, which broadened the area of restriction to include areas south of 7th Street and to correct a word in the subtitle.

Signed copies to:
legal (5)
controller
parks and rec
police department

legal AD
BMC file
file
CA/CR (2)

CLERK
eng meeting