

ORDINANCE No. 74-19
Itinerant Merchants

Whereas, pursuant to the authority granted in Ind. Code § 25-37-1-7, Ind. Ann. Stat. § 42-416, and Ind. Code § 18-1-1.5-13 (a) and (e), Ind. Ann. Stat. § 48-1463 (a) and (e), it is the public policy and purpose of this ordinance to provide the citizens of Bloomington a system by which they can be assured that sellers who are taking orders for goods to be delivered in the future have registered with the city and posted a bond to secure the delivery of goods as ordered. The system, once established, will provide a more wholesome atmosphere in which all business can operate. It is the hope of the Bloomington Common Council that by establishing an effective system of registration and bonding, these sellers can be placed on an equal competitive basis with local merchants and that by securing the performance of these sellers all merchants will reap the benefits of a wholesome business environment, NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON:

Section One That the following repeal and supersede chapter 4.16 of the City Code of Bloomington:

4.16.010 Definitions

- (a) A "buyer" is a person who buys from a seller in the city.
- (b) "City" is the City of Bloomington, Indiana.
- (c) "Controller" is the controller of the city.
- (d) "County Auditor" is the Auditor of Monroe County, Indiana.
- (e) A "deposit" is cash, check, or money order.
- (f) "Goods" are things which are movable at the time they are offered for sale or at the time they are to be delivered to a buyer.
- (g) "He" includes "she," and "his" includes "her."
- (h) An "individual" is a male or female person.
- (i) A "seller" is an individual licensed under this chapter.

4.16.020 Seller of goods for later delivery--license and bond required

A representative of a corporation, association, or

other organization, or any other individual, who regularly accepts payment for goods which he does not simultaneously deliver to the buyer, violates this chapter and is subject to the penalties provided by § 1.01.130 of this code unless licensed and either bonded or exempted from bonding as provided by this chapter.

4.16.030 Exemptions from bonding

An individual who represents a nonprofit organization and who is required by this chapter to obtain a license and bond is exempt from bonding but not from licensing if he:

- (a) represents a nonprofit organization and submits a notarized affidavit from 3 persons who
 - (1) have resided in the city for the 3 year period immediately preceding the date of application and
 - (2) agree to assume personal liability of up to \$500 jointly or severally for goods paid for but not delivered; or
- (b) represents a profit-making corporation and submits a notarized affidavit from an authorized representative of a corporation which:
 - (1) submits a charter or certificate from the Indiana Secretary of State which has been in effect for the 3 year period immediately preceding the date of application and
 - (2) acknowledges the applicant as its agent for whom it accepts liability.

4.16.040 License application

When required by this chapter, an individual may obtain a nontransferable license from the controller upon completion of an application including:

- (1) name;
- (2) permanent address;
- (3) local address;
- (4) place(s) where business is to be conducted;
- (5) kind(s) of goods to be offered for sale;
- (6) length of time for which business is to be conducted

in the city.

4.16.050 Additional requirements

The individual shall provide documentary proof:

- (a) that a corporation for which the applicant is an agent or employee has acquired from the Indiana Secretary of State:
- (1) a domestic corporate charter, under Ind. Code § 23-1-3-3, Ind. Ann. Stat. § 25-217;
 - (2) a foreign corporate certificate of admission, under Ind. Code § 23-1-11-1, Ind. Ann. Stat. § 25-301;
 - (3) a domestic not-for-profit certificate of incorporation, under Ind. Code § 23-7-1.1-25, Ind. Ann. Stat. § 25-301; or
 - (4) a foreign not-for-profit corporate certificate of admission, under Ind. Code § 23-7-1.1-34, Ind. Ann. Stat. § 25-534.
- (b) that a person or organization whose name or reputation the applicant uses while selling has given permission to this use of its name or reputation.
- (c) that he has paid a "transient merchant" license fee to the county auditor in accordance with Ind. Code § 25-37-1-6, Ind. Ann. Stat. § 42-415.
- (d) (1) that he has posted a "transient merchant" bond with the county auditor in accordance with Ind. Code § 25-37-1-5, Ind. Ann. Stat. § 42-414 or
- (2) that he has obtained an exemption from bonding from the county auditor under Ind. Code § 25-37-1-10, Ind. Ann. Stat. § 42-419.

4.16.060 fee

The applicant shall pay a fee of \$5 which the controller shall deposit in the city general fund to pay for costs of licensing and regulating sellers.

4.16.070 Deposit or Bond

A seller of goods for later deliver who is, under Ind. Code § 25-37-1-10, Ind. Ann. Stat. § 42-419, exempt from posting bond with the county auditor, and who is not

exempt under § 4.16.030 of this chapter shall place with the controller a \$500 deposit or a \$500 surety bond valid for 365 days payable to the city.

(a) If, before his license expires, the seller places with the controller

(1) a written copy of all agreements made by the seller with buyers, including all terms and conditions agreed to, the amount paid, and any amount due, and

(2) a deposit or a bond valid for 365 days for the amount, determined from the written agreements, paid and to be paid to the seller by all buyers, but not less than \$500, payable to the city to insure that goods paid for by buyers will be delivered, then the controller shall release the bond required at the time of licensing.

(b) If the seller does not comply with § 14.16.070 (a), then the controller shall not release the bond or deposit required at the time of licensing. The seller shall forfeit to the city any deposit. The seller's surety shall be liable to the city for the amount of the bond. Funds obtained by the city under this section shall be placed in the city general fund.

4.16.080 30 day validity--renewal

A license issued under this chapter is valid for a period specified by the individual, up to 30 days.

A license issued under this chapter may be renewed by the licensee within 24 hours after it expires, without reapplication, upon payment to the controller of a renewal fee of \$2 and deposit of a \$500 certified check, money order, or surety bond or proof that a previous deposit or bond given to the controller remains in force.

4.16.090 Severability

If a part of this chapter is invalid, all valid part that are severable from the invalid part remain in effect. If a part of this chapter is invalid in one or more of its applications,

*Delete
Just the
paragraph*

the part remains in effect in all valid applications that are severable from the invalid applications.

Section two. That the following be added as chapter 4.17 of the City Code of Bloomington:

4.17.010 Definitions

- (a) A "buyer" is a person who buys from a seller in the city.
- (b) "City" is the City of Bloomington, Indiana.
- (c) "Goods" are things which are movable at the time they are offered for sale or at the time they are to be delivered to a buyer.
- (d) "He" includes "she," and "his" includes "her"
- (e) An "individual" is a male or female person.
- (f) a "seller" is an individual licensed under this chapter.

4.17.020 Seller of goods or produce for simultaneous delivery--
license required

~~An individual who~~ represents ^{of a} ~~a profitmaking~~ corporation, association, or other organization, ^{many other individual} ~~and~~ who, in a public place or at the private residence of another, accepts payment for goods which he simultaneously delivers to the buyer, violates this chapter and is subject to the penalties provided by § 1.01.130 of this code unless licensed or exempted from licensing as provided by this chapter.

4.17.030 Exemption

An individual 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.

4.17.040 License application

When required by this chapter, an individual may obtain a nontransferable license from the controller of the city upon completion of an application including:

- (1) name;
- (2) permanent address;
- (3) local address;
- (4) places(s) where business is to be conducted;
- (5) kind(s) of goods to be offered for sale;
- (6) length of time for which business is to be conducted in the city.

4.17.050 Fee

The applicant shall pay a fee of \$5 which the controller of the City of Bloomington shall deposit in the city general fund to pay for costs of licensing and regulating sellers.

4.17.060 30 day validity--renewal

A license issued under this chapter is valid for a period specified by the individual, up to 30 days.

A license issued under this chapter may be renewed by the licensee within 24 hours after it expires, without reapplication, upon payment to the controller of a renewal fee of \$2.

Section four. This ordinance shall be in full force and effect from and after its passage, promulgation, approval by the Mayor, and publication in accordance with the law.

Passed and adopted by the Common Council of the City of Bloomington, Indiana on the ___ day of _____, 1974.

President, Common Council

ATTEST:

Grace E. Johnson, City Clerk

Presented by me to the Mayor of the City of Bloomington, Indiana on the ___ day of _____, 1974.

Grace E. Johnson, City Clerk

This ordinance approved and signed by me on the _____ day of _____, 1974, at the hour of _____ o'clock ____m.

Francis X. McCloskey, Mayor
City of Bloomington, Indiana

ATTEST:

Grace E. Johnson, City Clerk

Tabled

I HEREBY MOVE THAT ORDINANCE 74-19
BE INTRODUCED AND READ AT FIRST READING AT THE
COUNCIL MEETING ON May 2, 1974



(signature)

TABLED