

ORDINANCE NO. 74-40
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,

proprietorship, or other organization, or any other individual, who, in any road, street, square, or other public place, or in the private residence of another, 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 an 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 three persons who
 - (1) have resided in the county 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 that:
 - (1) has been incorporated under the laws of any state for the three-year period immediately preceding the date of application and,
 - (2) is qualified to transact business in the state of Indiana under the provisions of Indiana Code 23-1-3-3 or Indiana Code 23-1-11-1.

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 of applicant;
- (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;
- (7) organization represented.

4.16.050 Additional requirements

The individual shall provide documentary proof:

- (a) that a corporation for which the applicant is an agent or employee is in good standing and has acquired one of the following four items 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. If the applicant was unable either to obtain a license or to post a bond with or obtain an exemption from the county auditor, he shall execute a notarized affidavit to that effect with the controller who shall thereupon process the application.

(e) that an organization for which the applicant is an agent or employee acknowledges the applicant as its agent for whom it accepts liability. Documentary proff shall be provided to the controller by means of a notarized affidavit.

4.16.060 fee

The applicant shall pay a fee of \$5.00 which the controller shall deposit in the city general fund to pay for costs of licensing and regulating sellers. Those individuals who are required to place with the controller a deposit or surety bond shall pay an additional fee of \$5.00 which the controller shall deposit in the city general fund to pay for filing and other clerical costs.

The license may be renewed by the licensee within one business day after it expires, without reapplication, upon payment to the controller of a renewal fee of \$2.00.

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 or denied the privilege of 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) The new bond or deposit shall be held for 365 days to satisfy all claims reduced to judgment against the seller or the organization which he represents. Upon being presented evidence of a judgment against the seller or the 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, he 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.
- (c) If the seller does not comply with § 4.16.070 (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 and shall be prohibited from doing business within the city for five years. The seller's surety shall be liable to the city for the amount of the bond. Funds obtained by the city under this paragraph shall be held for 365 days to satisfy claims against the seller which have been reduced to judgment. Upon the expiration of 365 days any remaining funds shall

be placed in the city general fund.

4.16.080 30 day validity

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

4.16.090 Exemption

An individual who sells the products or services of a company, firm, corporation, or partnership complying with the requirements of Chapter 4.18 entitled Alternative Compliance is exempt from the requirements of Chapter 4.16.

4.16.100 Severability

If a part of this chapter is invalid, all valid parts 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, 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.

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

An individual who represents a profitmaking corporation, association, proprietorship, or other organization, who offers for sale any goods in any road, street, square or other public place, or at the private residence of another, and who accepts or intends to accept payment for such goods upon simultaneous delivery 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: or is an individual who sells the products or services of a company, firm, corporation or partnership complying with the requirements of Chapter 4.18 entitled Alternative Compliance.

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 of applicant;
- (2) permanent address;
- (3) local address;
- (4) places 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;
- (7) organization represented.

4.17.050 Fee

The applicant shall pay a fee of \$5.00 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 \$2.00.

Section three That a new Chapter 4.18 entitled Alternative Compliance be added to the City Code:

4.18.010 Requirements for Alternative Compliance.

The provisions of City Code Chapters 4.16 and 4.17 shall not apply to solicitors representing member companies, firms, corporations or partnerships of a trade association recognized by the city, or the solicitors of individual companies, firms, corporations or partnerships which:

- (a) Subscribe to and are bound by a policy statement code or regulation established either by the company, firm, corporation or partnership individually, or subscribe to and are bound by the policy statement, code or regulation of a trade association of which the company, firm, corporation or partnership is a member in good standing and which policy statement, code or regulation requires:
 - (1) That the offer of products or services for sale, either through oral representation or advertising literature shall be truthful and accurate as to price, grade, quality, make, value, performance, quantity, currency of model and availability; and
 - (2) that the terms of any guaranty offered by the seller in connection with the sale shall be furnished to the buyer in writing and shall clearly state the nature and extent of such guaranty; and
 - (3) that the policy statement, code or regulation prohibit the initiation or continuation of any deceptive or unlawful trade practices as defined by any statute or ordinance in force and effect within this jurisdiction.
- (b) Recognizes a responsibility to consumers for violations of either its policy statement, code or regulation or deceptive and/or unlawful trade practices statutes and ordinances by the solicitors of its products or services even if the company, firm, corporation or partnership

had no knowledge of such violation or acts, and such lack of knowledge is the result of failure by the company, firm, corporation, or partnership to establish procedures whereby it would be kept informed of the activity of the solicitors selling its products or services.

- (c) Have established a procedure for processing consumer complaints within a reasonable time and providing for consumer redress if, after the fact finding is completed, it is determined that the consumer was aggrieved by a violation of the policy statement, code or regulation or a statutory deceptive or unlawful practice.

4.18.020 Application for Alternative Compliance

Application for alternative compliance as provided in Chapter 4.18 shall be completed and alternative compliance status shall be granted upon the filing of the following information and items with the City Controller:

- (a) Five current copies of the policy statement, code or regulation which meet the requirements specified in 4.18.010; and
- (b) A notarized statement containing the name of the company, firm, corporation, or partnership subscribing thereto, and listing the address, telephone number and the name of the executive within the company, firm, corporation or partnership designated to administer the policy statement, code or regulation. In the case of a trade association making application on behalf of its membership based upon an association policy statement, code or regulation to which the membership must subscribe to and be bound by the application must contain the above required information for each of its individual members which desire alternative compliance status, and, in addition, must list the name, address, and telephone number of the officer or agent in charge of administering the association policy statement, code or regulation; and
- (c) The application, whether submitted by an individual company, firm, corporation or partnership, or by a

trade association recognized by the city on its membership's behalf, must be signed by the chief executive officer of the individual applicant or trade association applicant and must be notarized.

4.18.030 Processing of Complaints

- (a) A consumer complaint against a company, firm, corporation or partnership having alternative compliance status may be filed in the following ways:
- (1) A consumer may register a complaint against an alternative compliance company, firm, corporation, partnership or trade association with the City Controller in person, by telephone, or in writing; or
 - (2) An consumer, or his duly authorized representative, including but not limited to legal counsel, may file a written complaint directly with the alternative compliance company, firm, corporation, partnership, or trade association, so long as the City Controller receives a copy of the directly submitted complaint, and so long as the written complaint filed directly with the alternative compliance company, firm, corporation, partnership, or trade association clearly indicates that the City Controller has been notified.
- (b) In the situation where the complaint is filed with the City Controller, the City Controller may notify the alternative compliance company, firm, corporation, partnership, or trade association that the complaint has been lodged either by sending the complaint in writing or by placing a collect call to the person, officer, agent, or employee designated by the company, firm, corporation or partnership to receive such information in its alternative compliance application.
- (c) The complaint, as filed with the alternative compliance company, firm, corporation, partnership or trade association shall contain the following information:
- (1) Name and address of consumer

- (2) Name or trade name of the product or service purchased;
 - (3) Name of the company, firm, corporation or partnership manufactured and/or distributed the product or service, if such name differs from the trade name of the product or service and if it is known by the consumer;
 - (4) Name of the solicitor involved in the transaction if remembered by the consumer
 - (5) Purchase date if known
 - (6) Identifying contract or receipt numbers, if available
 - (7) Copy of the contract, invoice, or receipt, if available.
- (d) Upon receipt of a consumer complaint or an official complaint against an alternative compliance company, firm, corporation or partnership which does not necessarily involve a sales transaction, but alleges a violation of a deceptive or unlawful trade practice statute or ordinance in force and effect in the jurisdiction, the City Controller, the individual or his authorized representative following the procedures described in 4.18.030 (d) (1) and (2), shall submit the information surrounding the allegation to the person, officer, agent or employee designated by the company, firm, corporation, partnership or trade association to receive such complaints in its alternative compliance application.
- (e) Each company, firm, corporation, partnership, or trade association on behalf of its membership that has received alternative compliance status shall, upon receipt of a complaint, file a written statement with the City Controller and the individual consumer complainant, or his duly authorized representative, containing the disposition of the complaint. The statement shall contain the findings of facts upon which the disposition was based and shall be filed within a reasonable time of receipt thereof. For purposes of this provision "reasonable time" shall

be defined as within twenty business days from the date of receipt of the complaint.

4.18.040 Loss of Alternative Compliance Status.

- (a) Any company, firm, corporation or partnership having received alternative compliance status as provided for in Chapter 4.18, which fails to honor the provisions of the policy statement, code or regulation upon which violates any of the other requirements for obtaining and maintaining alternative compliance status shall be subject to revocation of alternative compliance status for not less than one year.
- (b) The authority to revoke the alternative compliance status, as provided in Chapter 4.18 shall rest with the City Controller who shall consider the following criteria in making that determination:
 - (1) Failure by the company to file any responses with the City Controller concerning a consumer complaint (s) forwarded by the City Controller to the person, officer, agent or employees designated by the company firm, corporation, partnership or trade association to receive such information;
 - (2) Failure to return money or replace products which were received by the consumer in a defective condition; or
 - (3) A pattern of failure to deliver ordered goods without adequate explanation shall constitute grounds for automatic revocation. For purposes of this provision a pattern shall be defined as ten instances of failure to deliver without explanation;
 - (4) Failure to correct or adequately explain repeated allegations of violation of statutory deceptive or unlawful trade practices in force and effect within the corporate limits of the company, firm, corporation, partnership or trade association or violation filed with the city as part of the application for alternative compliance even where a sale

did not result, when such allegations have been forwarded by the City Controller, individual consumer, or his authorized representative to the person, officer, agent or employee designated by that company, firm, corporation or partnership to receive such material.

- (c) Prior to a revocation of alternative compliance status becoming final, the City Controller shall give written notice at least fifteen business days in advance of the effective revocation date, to the company, firm, corporation, or partnership informing it of the effective date of the revocation for that company, firm, corporation, or partnership, and the finding upon which the determination was based, and, in addition notice that such company, firm, corporation, or partnership can appeal the determination to revoke the alternative compliance status by filing a notice of review with the City Controller not later than 15 business days after receipt of the notice of revocation.

4.18.050 Review of Revocation

- (a) The determination of the City Controller to revoke the alternative compliance status of a company, firm, corporation or partnership as provided for in this chapter shall be subject to review. An appeal is perfected if said company, firm, corporation, or partnership within 15 business days after receipt of the notice of revocation, files a written petition for review with the City Controller.
- (b) Upon receipt of a petition for review, the City Controller shall set a hearing date within thirty days, at which time the petitioner may present written and oral testimony and evidence contesting the revocation of its alternative compliance status to a panel of at least three members of the City Council. The City Controller may designate the City Attorney to present to such panel the findings upon which the revocation was made.

(c) The review panel shall notify the petitioning company, firm, corporation or partnership of its decision to either uphold or reverse the revocation within ten days from the date of the review hearing.

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 19th day of Sept., 1974.

James S. Ackerman
James S. Ackerman, Council president

ATTEST:

Grace E. Johnson
Grace E. Johnson, City Clerk

Presented by me to the Mayor of the City of Bloomington, Indiana on the 26th day of Sept., 1974.

Grace E. Johnson
Grace E. Johnson, City Clerk

This ordinance approved and signed by me on the 27th day of Sept., 1974, at the hour of 4:30 o'clock p. m.

Francis X. McCloskey
Francis X. McCloskey, Mayor
City of Bloomington, Indiana

ATTEST:

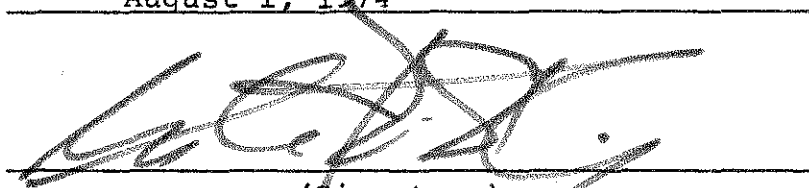
Grace E. Johnson
Grace E. Johnson, City Clerk

INTRODUCED BY

I HEREBY MOVE THAT ORDINANCE 74-40

BE INTRODUCED AND READ AT FIRST READING AT THE

COUNCIL MEETING ON August 1, 1974


(Signature)