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HAMILTON County Recorder IN
Recorded as Presented

ORDINANCE 09-15

AN ORDINANCE BY THE COMMON COUNCIL OF THE CITY OF WESTFIELD CONCERNING AMENDMENTS TO CHAPTER 46 OF THE MUNICIPAL CODE OF ORDINANCES

WHEREAS, The City of Westfield, ("City") is a duly formed municipal corporation within the State of Indiana, governed by its duly elected Mayor and Common Council ("Council"); and,

WHEREAS, it has come to the attention of the Council that there exists a need to identify and regulate those persons conducting a temporary retail business within the City and to assure that the retail operations are being conducted pursuant to the restrictions in place within the City; and,

WHEREAS, it has come to the attention of the Council that there is a need to regulate those persons who solicit from house to house, place to place or upon the streets and rights of way within the City; and,

WHEREAS, the current procedure for the regulation has become ineffective and not responsive to the needs of the City to identify and regulate the temporary retail operations of those persons legitimately doing business within the City limits as well as the need of the citizens to be able to identify those persons legitimately soliciting from door to door within the City limits.

NOW, THEREFORE, BE IT ORDAINED by the Westfield City Common Council meeting in session as follows:

Section 1. That Chapter 46 of the Westfield Code of Ordinances shall be amended to adhere to the provisions attached hereto as Exhibit "A" and incorporated herein.

Section 2. That the Clerk-Treasurer's Office is ordered to amend the Code of Ordinances pursuant to the provisions of Exhibit "A" upon the effective date of this Ordinance.

Section 3. That this Ordinance shall be in full force and effect in accordance with Indiana law, upon the passage of any applicable waiting periods, all as provided by the laws of the State of Indiana. All Ordinances or parts thereof that are in conflict herewith are hereby ordered repealed. Any portion of this Ordinance later deemed invalid shall not operate to invalidate the remaining portions.

ALL OF WHICH IS ORDAINED THIS 24th DAY OF August, 2009.

WESTFIELD CITY COUNCIL

Voting For	Voting Against	Abstain
John Dippel	John Dippel	John Dippel
Steve Hoover	Steve Hoover	Steve Hoover
Bob Horkay	Bob Horkay	Bob Horkay
Ken Kingshill	Ken Kingshill	Ken Kingshill
Bob Smith	Bob Smith	Bob Smith
Thomas Smith	Thomas Smith	Thomas Smith
Rob Stokes	Rob Stokes	Rob Stokes

ATTEST:

SEAL

Cindy Gossard, Clerk Treasurer

"I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law"

Signed

I hereby certify that ORDINANCE 09-15 was delivered to the Mayor of Westfield

on the 26 day of Aug, 2009, at 8:50 Am.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 09-15

this 27 day of August, 2009.

J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 09-15

this _____ day of _____, 2009.

J. Andrew Cook, Mayor

ATTEST:

Cindy Gossard, Clerk Treasurer

This document prepared by
Brian J. Zaiger, Esq.
KRIEG DEVAULT, LLP
(317) 238-6266

Exhibit A
Peddlers and Solicitors License

Sec. 46-1. Definitions.
The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Other names applied to essentially the same function as those described below will also have to comply with the requirements of this chapter. It is to the total discretion of the clerk-treasurer to determine if other job titles essentially are performing these same functions.

Itinerant merchant: This is any person who shall engage temporarily in the selling of any kind of goods, wares, merchandise, or services, within the city, regardless of whether such goods, wares, merchandise, or services are peddled from house to house, sold upon the streets or other public places, for the purposes of carrying on such business.

It shall also include any person selling from house to house or place to place who does not have a regularly established place of business in the city.

Solicitor: This means any person who goes from house to house or place to place in the city selling or taking orders for goods, wares, merchandise or services, of any article for immediate or future delivery.
(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Cross references: Definitions generally, § 1-2.

Sec. 46-2. Registration required.
It shall be unlawful for any person to engage in the business of itinerant merchant or in the business of solicitor within the city until that person complies with the provision of this chapter.
(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Sec. 46-3. Registration requirements.

(a) No person shall sell or take orders for any goods, wares, merchandise, or services without first applying for and being issued a Peddlers and Solicitors License ("License").
(b) An applicant for a License shall execute an application form at the office of the clerk-treasurer at least seven days prior to engaging in any sales activity in the city. The form shall require:

    (1) Applicants name, home address, and local address, if any.
    (2) A photograph or a physical description of the applicant.
    (3) The name and address or principal office of the person, firm, organization, or corporation for whom the applicant is authorized to conduct such activity. A brief description of the type of goods or services to be sold and a statement whether delivery of such goods or services is to be immediate or in the future.

(4) Copies of appropriate permits or licenses from outside agencies, including but not limited to the Bureau of Motor Vehicles, Hamilton County Health Department, City of Westfield Public Works Department.
(5) Applicant shall provide proof of liability insurance.
(6) The applicant shall be asked to authorize a criminal records check prior to approval. No license shall be issued to persons subject to the provisions contained in Indiana Code 11-8-8-1, et.seq.
(7) A sample of the order and receipt form used by applicant if the applicant canvasses or solicits orders.
(8) At the time of executing such application form, the applicant shall also submit in person to the clerk-treasurer written proof of identity and a specimen of the applicant's signature.
(9) The application is a continuing application and if, after the issuance of the registration certificate, the information in the application shall become inaccurate for any reason, and the holder of the License intends to continue activity, notice of such change and the correct information shall be furnished to the office of the clerk-treasurer within 24 hours.
(10) The License issued shall expire on the date specified on the License.

(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Sec. 46-4. Issuance of License.

Upon satisfactory completion by the applicant of the conditions contained in Sec 46-3 as determined by the clerk-treasurer's Office, the clerk-treasurer shall issue a License, which shall be dated and signed by the clerk-treasurer. The clerk-treasurer shall have up to five business days to process the application. If the clerk-treasurer finds the applicant has had a previous License revoked, this is grounds for refusal to issue a License.

(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Sec. 46-5. Registration fees and bonds.

Each application shall be accompanied by a bond in the penal sum of One Thousand Dollars ($1,000.00) executed by a surety company or in lieu thereof a cash bond of equal amount, assuring that all goods, wares, merchandise, or services sold by the applicant will be provided as represented, and that the applicant will refund the purchase price of any goods, wares, merchandise, or services sold which are not provided as represented.

Any person aggrieved may bring an action on the bond for the recovery of money or damages or both. If a cash bond is deposited, it shall be retained by the city for a period of 90 days after the expiration of any such License.

The following License fees will apply:

(a) For one day . . . $10.00
(b) For one week . . . 15.00
(c) For one month . . . 30.00
(d) For one year . . . 100.00

All such License fees must be paid in advance and if any such licensee desires to continue in business after the expiration of such License, a new License must be secured in the same manner as the original License.

Any applicant exempted by the laws of the state from the payment of the License fees shall, before beginning such business, present to the clerk-treasurer, its credential, showing that it is entitled to such exemption, and shall file a bond and a license application as required above, and upon approval of the bond and license application by the clerk-treasurer, it shall receive a License from the clerk-treasurer authorizing it to conduct the business as a solicitor or itinerant merchant within the city for a period not to exceed one (1) year. If at the end of such period the person desires to continue in such business, another License must be procured from the city clerk-treasurer
(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Sec. 46-6. Conditions of License.
All Licenses are nontransferable and entitle the holder to sell, distribute, solicit, or canvass within the city, subject to the following conditions:

(a) The holder shall have the License in his possession at all times, and shall exhibit the same at any time on request by any police officer of the city or by any individual.
(b) The holder shall not enter into or on any house, building, or other structure of any land or property, without the prior consent of the owner or occupant thereof.
(c) The holder shall not enter into any subdivision or approach any home when a No Solicitation sign is clearly posted.
(d) The holder of a License shall make no false statement or misrepresentation of fact in the course of carrying on the activity for which the License is granted and shall conduct business at all times in an orderly and lawful manner.
(e) The holder of a License who takes orders for the future delivery of any type of goods or service shall be required to deliver such goods or service before any payment is made. It is unlawful to require "deposit" money for the expectation of future delivery of goods and services.
(f) The city reserves the right to restrict the location of operation.

(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Sec. 46-7. Revocation of License.

(a) Any certificate issued may be revoked by the clerk-treasurer after notice of hearing for any fraud, misrepresentation, or false statement contained in the application, or for failure to observe the conditions of the License as set forth in section 46-6.
(b) Notice of hearing for revocation of a License shall be in writing, stating the reason for the hearing, and the time and place thereof. Notice shall be given to the holder at least three days, if by personal service, and at least five days if by mail, addressed to the holder's last known local address, or if none, their home address prior to the date for the hearing.

(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Sec. 46-8. Exceptions.

The following are exempt from the provisions of this chapter:

(a) Persons engaged in the sale of newspapers.

(b) Persons who sell farm, dairy products or other foodstuffs of their own raising or production.

(c) Persons who have established permanent places of business within the city limits and bona fide salesmen selling at wholesale to such resident merchants.

(d) Sales for nonprofit services or civic organizations who have an office, chapter, council, or lodge located in Hamilton County.

(e) Persons engaged in sales during City sponsored festivals and carnivals who have registered with and paid fees to the organizing party.

(Ord. No. 99-04, 6-14-99; Ord. No. 09-15, 8-24-09)

Sec. 46-9. Penalty.

Any person who violates any part of the provisions of this chapter shall, on conviction, be punished as provided in section 1-6.

(Ord. No. 99-04, 6-14-99)

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