

GREENWOOD COMMON COUNCIL

ORDINANCE NO. 16-76

**AN ORDINANCE AMENDING GREENWOOD MUNICIPAL CODE (1993), AS
AMENDED, CHAPTER 4, ARTICLE 2, DIVISION VIII REGULATING PEDDLERS,
SOLICITORS, TRANSIENT MERCHANTS, STREET VENDORS
AND MOBILE FOOD TRUCKS AND REPEALING CHAPTER 6, ARTICLE 10,
SECTION 6-352**

WHEREAS, the majority of the provisions in Chapter 4, Article 2, Division VIII, Peddlers, Solicitors, Transient Merchants, and Street Vendors, of the Greenwood Municipal Code have not been updated in forty-five (45) years;

WHEREAS, Chapter 6, Article 2, Division VIII of the Greenwood Municipal Code contains many outdated provisions as door to door sales, peddling, street vending, and transient merchant methods and practices and the law regarding such practices have substantially changed over the past forty-five (45) years and the City Municipal Code needs updating;

WHEREAS, the United States Supreme Court's holding in *Reed v. Town of Gilbert* necessitates certain changes to Greenwood's Municipal Code in this area;

WHEREAS, Ind. Code § 36-8-2-11 empowers the City of Greenwood ("City") to regulate solicitation by persons offering goods or services to the public in the interest of public safety, and the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment;

WHEREAS, the City desires to minimize fraud, prevent crime, and protect the privacy of its citizens by regulating the commercial activities of solicitors, peddlers, transient merchants, and street vendor; and

WHEREAS, under the *Reed v. Town of Gilbert* decision Greenwood Municipal Code Section 6-352 needs to be repealed in its entirety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GREENWOOD, INDIANA, THAT:

Section 1. The text of Greenwood Municipal Code (1993), as amended, Chapter 4, Article 2, Division VIII is hereby repealed in its entirety and replaced with new language to read as follows:

**DIVISION VIII. PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS,
STREET VENDORS AND MOBILE FOOD TRUCKS**

Sec. 4-101 Definitions; Exceptions.

(a) The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) **Issuing Authority** shall mean the Board of Public Works and Safety.

(2) **License** shall mean the document authorizing the holder to conduct specific commercial vending activities issued under this Article.

(3) **Licensee** shall mean the holder of a license.

(4) **Mobile Food Truck Vendor.** Any person who sells food from a self-contained food service operation, located in a readily movable, motorized, wheeled or towed vehicle used to store, prepare, display or serve food intended for individual portion service.

(5) **Peddler.** Any person who travels upon the right-of-way of the City going from house to house, structure to structure, or from street to street, making personal contact, or attempting to

make personal contact, with a resident at his/her residence on private property without prior specific invitation or appointment from the resident, conveying or transporting food, goods, wares or merchandise, for the purpose of offering, exposing, or displaying the same for sale to the resident, or making sales and delivering food, goods, wares, articles and merchandise to purchasers.

(6) **Revocation** shall mean the termination by formal action of the issuing authority of a license, which termination shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon after the expiration of at least two (2) years after the date of revocation.

(7) **Solicitor.** Any person who travels upon the right-of-way of the City going from house to house, structure to structure, or from street to street, making personal contact, or attempting to make personal contact, with a resident at his/her residence on private property without prior specific invitation or appointment from the resident, for the primary purpose of taking sales orders for food, goods, wares, merchandise, or any article, for future delivery, or for services to be performed in the future, or for the making, manufacture or repair of any article or thing whatsoever, for future delivery.

(8) **Street Vendor.** Any person who exhibits and offers food, goods, wares, or merchandise for sale, or offers to purchase food, goods, wares, or merchandise, from any stationary stand or vehicle located on any street or sidewalk, or open to any street or sidewalk, and whose primary business location is a vehicle, stand, or temporary structure not regulated elsewhere by City Code, that is open to street or sidewalk access.

(9) **Suspension** shall mean the temporary withdrawal by formal action of the issuing authority not to exceed the term of the original grant of the license, unless otherwise specifically provided for elsewhere in this Code or other Ordinances.

(10) **Transient Merchant.** Any person who is in the business of selling or taking orders for the sale of food, goods, wares, merchandise, or services within the City for a temporary period of less than thirty (30) days in any calendar year and who, in furtherance of such purposes, hires, leases, uses or occupies any fixed location within the City for exhibition and sale of such food, goods, wares, merchandise or services. Any person who is unable to produce written documentation of the right to occupy the fixed location for thirty (30) days or longer to the City within five (5) days of a request shall be presumed to be a transient merchant.

(b) The requirements of this Article shall not apply to the following persons:

(1) Any person selling fruits, vegetables or farm products grown by himself/herself, with or without the help of others at an established farm market within the City at a stationary location on public or private property. A ‘farm market’ means a collection of three (3) or more persons selling a variety of agricultural products and other homemade products.

(2) Any person seventeen (17) years old or less.

(3) Any business or merchant making delivery of goods previously ordered by any person or personal customer and whose activity in major part is driving a regular route to the location of existing customers who have arranged for return visits with respect to established customers only.

(4) Any person selling refreshments from refreshment stands at fixed locations not on the City’s right-of-way at seasonal recreational sites.

(5) To persons selling goods to other merchants at trade shows or conventions where attendance is generally restricted to those merchants in a particular trade or discipline.

(6) A resident of the City who is conducting a garage or rummage sale in accordance with City regulations.

(7) Any person selling or soliciting as part of a City approved Special Event or festival.

(8) Any employee of a video service franchise company that holds a certificate granting the company direct marketing authority from the State of Indiana pursuant to Ind. Code § 8-1-34 *et. al.*

To the selling of personal property at wholesale to dealers in such articles.

Sec. 4-102 License Required.

No person shall engage in the business of peddler, solicitor, transient merchant, street vendor, or mobile food truck vendor within the City without obtaining a license in accordance with this Division.

(a) Application for License.

Any person desiring a license shall file a written sworn application with the City Controller, on a form prescribed by the Board of Public Works and Safety that contains the following information, with payment of the applicable fee prescribed in Sec. 4-104.

(1) The name of applicant and a physical description of the applicant. If the applicant is a corporation, the name of the officers of the corporation; if the applicant is a partnership, the names of all partners.

(2) The permanent business address, and telephone number of the applicant. The name, title, address (including street address) and telephone number of the person having immediate supervisory or management responsibility over the applicant's business that is proposed to be carried on in the City.

(3) The names, ages, permanent address, telephone number, Social Security Number and criminal history for the past seven (7) years of each person selling goods or soliciting business under the license. Each person shall submit a criminal history check authorization form with the application

(4) The local street address and telephone number of the applicant while the applicant is conducting business within the City.

(5) The names of municipalities or governmental units to which the applicant has applied for a license of similar character within the twelve (12) months prior to the date of application.

(6) If a motor vehicle is utilized for the sale of food, a copy of the Board of Health Permit for the vehicle.

(7) A valid driver's license to operate a motor vehicle.

(8) Valid vehicle registration for the vehicle to be used for vending; and, if applicable, the vehicle being used to tow a food vending vehicle.

(9) A photograph of the food vending vehicle.

(10) In the case of transient merchants, written evidence of the right to occupy a specific location at which the sales activity is proposed, and a site plan if the sale is conducted outside an existing structure showing the sales area and parking areas. If the sale is inside a structure, a parking plan to show compliance with Greenwood Zoning Code requirements.

(11) In the case of peddlers and solicitors, the boundaries of the area where peddling or soliciting will be conducted.

(12) A description of the nature of the business, the merchandise to be sold or offered for sale or the nature of the service to be furnished.

(13) The dates upon which the business is proposed to be conducted in the City.

(14) Three business references.

(b) Review and Investigation of Applications

Upon receipt, the Controller shall refer all applications to the Police Department for review or investigation of the representations made in the applications. In the case of transient merchants, the application shall also be referred to the Planning Division of the Department of Community Development Services and the Building Commissioner for review.

(c) Issuance of License

The Controller shall issue a license upon receiving the surety prescribed in Sec. 4-105 and upon receipt of:

(1) The report of the Police Department finding that no person selling for such applicant has, within seven (7) years previous to the application, been convicted of violating any law or ordinance based upon charges concerning the use of sales, subscription or soliciting methods involving, trespass to land, undue pressure, misrepresentation and false or misleading statements or any ordinances related to licensing; or within ten (10) years for convictions related to disorderly conduct, assault, battery fraud, or felonies involving bodily harm or theft, or any other violent crimes.

(2) Confirmation that a transient merchant applicant complies with all ordinances applicable to the premises, including but not limited to all zoning and building safety requirement, in addition to the report of (c)(1) above.

(d) Term of License.

A license issued under this Article shall expire 180 days after the date of its issuance. The holder may renew the license one (1) time before the end of the initial 180-day term by following the same procedure set forth in Section 4- 102(a), except no application fee shall be charged nor criminal backgrounds required; the holder shall instead be charged a renewal fee in accordance with the provisions of Sec. 4-104. Subsequent to the expiration of the second 180-day term, a new license must be applied for with all the component parts and a new application fee will be charged in accordance with the provisions of Sec. 4-102(a) and Sec. 4-104.

Sec. 4-103 Refusal to Issue; Suspension; Revocation

(a) Imputed liability. Every act or omission constituting a violation of any of the provisions of this Division by any officer, director, manager, agent or employee of any Licensee shall be imputed to such Licensee. The Licensee may be subject to punishment as if the act or omission had been done or omitted by the Licensee personally.

(b) Causes for Suspension or Revocation. In addition to provisions elsewhere in this Division and other ordinances, the Issuing Authority may suspend or revoke a License for any one or more of the following reasons:

(1) Material fraud, misrepresentation or false statements in connection with the application for a License;

(2) Material fraud, misrepresentation or false statements in connection with the offer to sell or the sale of food, goods, wares, merchandise or services which are the subject of the License;

(3) Material violation of this Division;

(4) Violation by the licensee of this Division or other ordinances related to the License, the subject matter of the License, or to the premises, if any, occupied by the Licensee in connection with the License;

(5) Conducting business, activity or enterprise for which the License is issued in a manner so as to constitute a nuisance as defined by this Code, other ordinances, or the laws of this State;

(6) Failure to meet the qualifications required of a Licensee.

(7) Any conviction of the licensee for a violation of the laws of the United States, this State or any of its political subdivisions, or any other state or political subdivision thereof substantially related to the subject matter of the license, or to the premises, if any, occupied by the licensee in connection with the license;

(c) Causes for Denial. The Issuing Authority or its designee may refuse to issue a license for any of the reasons for which a license could be suspended or revoked.

(d) Notice of Denial, Suspension, or Revocation; Hearing. Except as provided in subsection (e), no license subject to the provisions of this Division shall be denied, suspended, or revoked, except when at least ten (10) days' written notice shall be served on the applicant or Licensee. The notice shall set forth a date, time and place at which the Licensee or applicant may appear to show cause before the Issuing Authority why the License should be issued or not suspended or revoked, and shall state the facts which constitute the reasons for the suspension or revocation hearing.

(1) Service of the notice shall be made in one of the following ways:

- a. Certified mail, return receipt requested, at the Licensee's business or home address indicated on the Licensee's application for the License;
- b. Personal Service on the Licensee, the manager or agent of a Licensee, or any employee of the Licensee, who is eighteen (18) years of age or older at the time of service; or
- c. any other method of service effective under Indiana law.

(e) Emergency suspension. If the Issuing Authority has reason to believe that the continued operation of a particular Licensee will immediately threaten the health, safety or welfare of the community, the Issuing Authority may, upon the issuance of a written order stating the reason for the conclusion and without notice or hearing, order the License suspended for not more than ten (10) days. A hearing shall be held within the ten (10) day period. Such period shall begin on the date of suspension. The hearing shall give the Licensee the opportunity to be heard on the matter.

(f) Hearings. The Issuing Authority shall make findings of fact and a decision, and impose a suspension or revocation of license, if any, in writing.

(g) Fines. In addition to the suspension or revocation of a License, a Licensee is subject to imposition of fines in accordance with Sec. 4-109.

(h) Appeal. The decision of the Issuing Authority is final action for the purposes of judicial review.

(i) No Refund of Fees. In a case of a refusal to issue a License, a suspension of License, or revocation of License, no portion of the application fee or any renewal fee shall be returned to the Licensee.

Sec. 4-104 Application and Renewal of License Fees

Any person applying for a license shall pay an application fee in the amount of One Hundred Dollars (\$100.00) to cover the review, investigation, and administrative costs of the Controller, the Police Department, and the Department of Community Development Services. Upon renewal of an existing license by any person, the person shall pay a renewal fee of Twenty-Five Dollars (\$25.00) to reflect the reduced time required for review and investigation of the current license holder.

Sec. 4-105 Surety Prerequisite to License Issuance

Before any license shall be issued in the City under this Division, the applicant shall file with the Controller a surety bond with guarantees running to the City in the sum of One Thousand Dollars (\$1,000.00) executed by the applicant, as principal, with good and sufficient sureties upon which service of process may be made in the State. Such bond shall be conditioned upon the undertaking that the applicant shall comply fully with all of the provisions of the ordinances of the City and the statutes of the State, regulating and concerning the sale of food, goods, wares, merchandise, and services, and payment of all judgments rendered against the applicant for any violation of the ordinances or statutes, or any of them, together with all judgments and costs that may be recovered against him/her by any person for damage growing out of any misrepresentation or deception practiced on any person transacting business with such applicant, whether such misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the food, goods, wares, merchandise, or services sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person, by the City if for the collection of fees, or by the person aggrieved and for whose benefit, among others, the bond is given. Such bond must be approved by the City's Legal Department, both as to form and as to the responsibility of the sureties thereon. The bond shall be in full force and effect for a one (1) year period after application.

Sec. 4-106 General Conditions

The following conditions shall apply to each license issued under this Division:

(a) Standing in Driving Lanes. No person shall stand in or enter into the driving lanes or medians of any street for the purpose of selling or attempting to sell food, goods, wares, merchandise, or services for immediate delivery, or for the purpose of soliciting purchases of food, goods, wares, merchandise or services for future delivery.

(b) Peddler and Solicitor; Mobility. No peddler, solicitor, or street vendor shall remain in the same place or within reasonably close proximity to the same place except when in the act of expeditiously showing goods, wares, or merchandise or expeditiously selling goods, wares or merchandise to or purchasing goods or taking orders from a customer. Any peddler, solicitor, or street vendor remaining in the same place or reasonably close proximity to the same place upon the public right-of-way for longer than five (5) minutes when goods are on display or available for sale without sales activity shall be presumed not to be engaged in expeditiously showing goods or expeditiously selling goods to or purchasing goods or taking orders from a customer.

(c) Zoning and Building Safety Restrictions and Regulations-Transient Merchants. No transient merchant shall sell goods or services or attempt to sell goods or services, and no license shall be issued to a transient merchant where the location or premises indicated on the application for the activity is not zoned to permit retail selling activity. The location of the sale shall, in all respects, comply with all zoning regulations for the district and all building safety regulations applicable to the property.

(d) Vending Consistent with Regulations. Each peddler, solicitor, transient merchant, street vendor or mobile food truck operator may only sell food, goods, wares, merchandise and services consistent with the regulations contained in this Division.

(e) License Not Transferrable. No license issued under the provisions of this Division shall be used at any time by any person other than the one to whom it was issued and for the premises and location stated in the license, and shall not be transferable.

(f) Hours. No person shall solicit or peddle to any residential structure between the hours of sunset to sunrise on any day.

(g) Display of License. Each peddler, solicitor, transient merchant, street vendor, and food truck vendor and/or their agents or employees shall at all times while peddling, soliciting, or vending within the City carry upon his/her person the license required by this Division, and shall exhibit the license upon request to any law enforcement officer or any person upon whom he/she calls.

Additionally, each transient merchant and food truck vendor shall prominently display the license so that it is plainly visible at a distance of five (5) feet.

Sec. 4-107 Mobile Food Truck Vendors and Street Vendors

No person may operate a Mobile Food Truck except in accordance with the following provisions:

(a) Mobile Food Trucks and Street Vendors are allowed to operate in public parking lots and/or on public property only pursuant to a valid Use Agreement with the entity owning the public property or parking lot.

(b) No service area for the operation of the Mobile Food Truck or Street Vendor shall block, obstruct, or interfere with vehicular, bicycle or pedestrian flow nor occupy any portion of the available sidewalk or roadway width.

(c) Mobile Food Truck Vendors and Street Vendors shall not use or employ any electronic or other amplified noises in conducting such business at any location.

(d) Mobile Food Truck vendors shall not use or employ any signs other than those permanently affixed to the vehicle, if any, and shall not otherwise use or employ canopies, umbrellas or other appurtenances except as may be necessary in the event of inclement weather.

(e) Mobile Food Truck vendors and Street Vendors shall collect and dispose of all trash and debris resulting from their operations.

Sec. 4-108 Refusing to Leave Premises; Posting of Premises for No Solicitation; Duty of Solicitor

(a) It shall be unlawful for any peddler or solicitor to enter or attempt to enter or fail to immediately leave a property in the City after the owner or occupant thereof has requested such person to leave.

(b) Any person who desires to exclude the presence of commercial peddlers and solicitors from the premises which he or she occupies shall give notice to such peddlers and solicitors by posting an easily readable notice on or near the main or front entrance to the property. Such notice may exclude all peddlers and solicitors or a class of peddlers and solicitors.

(c) It shall be the duty of each peddler and solicitor to examine and look for, on or near the main entrance to each premises, the notice that all peddlers and solicitors or a class of solicitors are prohibited from the premises.

(d) No peddler or solicitor shall ring the doorbell or knock on any door or window for the purpose of securing personal contact with the occupant of a property, or attempt any sale or solicitation when the owner or occupant thereof has prominently displayed a "No Peddlers/Solicitors Invited" sign or sign to that effect on or near the main or front entrance to such premises.

Sec. 4-109 Penalties and Fines for Violation

(a) Any person, firm, company, or corporation convicted of violating any provision of this Article shall be fined not less than Fifty Dollars (\$50.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(b) Any vehicle parked in violation of the provisions of this Article may be towed and impounded, and no person shall recover any vehicle towed pursuant to this Article without paying the cost of removal and storage. Any payments made to recover the towed vehicle shall be in addition to any fines charged due to violations of the provisions of this Article.

(c) Any law enforcement officer who finds any person selling food, goods, wares, or merchandise without possessing the required license therefor or in violation of the terms of such

license may take into possession the goods, wares, merchandise being sold and inventory of such person. Such property shall be held in the custody of the Police Department until such person selling without a license or in violation of the terms of such license obtains the license.

(d) If the property being held pursuant to (c) above is not claimed within sixty (60) days after it is taken into possession by the City, the City may proceed to seek an order for the sale of the property in accordance with applicable law.

Section 2. Greenwood Municipal Code (1993), as amended, Chapter 6, Article 10, Section 6-352 is hereby repealed in its entirety.

Section 3. The sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are separable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a Court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 4. This Ordinance shall be in full force and effect upon its passage, approval and publication according to law.


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Passed by the Common Council of the City of Greenwood, Indiana, this 4th day of January, 2017.


Mike Campbell, President
Greenwood Common Council

FOR:



















AGAINST:

Linda S. Gibson _____

Ezra J. Hill _____

Bruce Armstrong _____

Ronald Bates _____

J. David Hopper _____

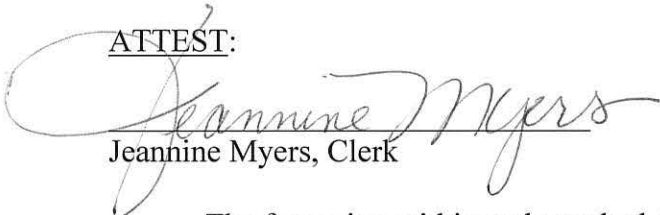
David Lekse _____

Michael Campbell _____

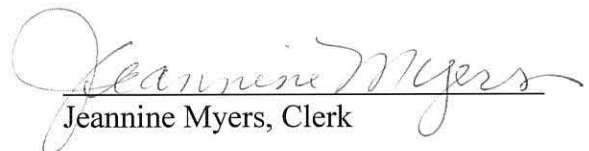
Brent Corey _____

Charles Landon _____

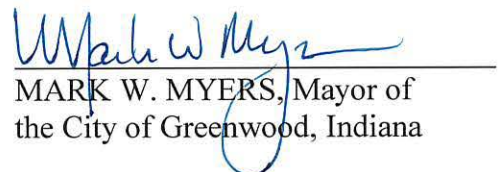
ATTEST:


Jeannine Myers, Clerk

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the 4th day of January, 2017, is presented by me this 6th day of January, 2017, at 2:00 O'Clock P.M., to the Mayor of the City of Greenwood, Indiana.


Jeannine Myers, Clerk

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the 4th day of January, 2017, is signed and approved by me this 6th day of January, 2017, at 3:00 O'Clock P.M.


MARK W. MYERS, Mayor of
the City of Greenwood, Indiana