21-14A

Sponsor: Dan Spitale
Councilman at Large

ORDINANCE NO. 9506

AN ORDINANCE TO AMEND ORDINANCES 3305, AM. ORD. 3387, AM. ORD. 4301, AM. ORD. 5004, AM. ORD. 8592, AM. ORD. 8595, AM. ORD. 8961, AM. ORD. 8962, AM. ORD. 9098, ALSO KNOWN AS CHAPTER 117 OF TITLE XI OF THE HAMMOND MUNICIPAL CODE RELATING TO FOOD AND DRINK SALES AND ESTABLISHMENT LICENSING IN THE CITY

WHEREAS, Indiana Codes § 36-8-2-10, § 36-8-2-11, and § 25-37-1-11 grant a local government authority to regulate the operation of professions and businesses, including restaurants and mobile food vendors; and

WHEREAS, the City of Hammond regulates these professions through a licensing process codified in Chapter 117 of Title XI of the Hammond Municipal Code (HMC); and

WHEREAS, portions of Chapter 117 of Title XI of the HMC have not been updated since 1960, and therefore have become outdated and not applicable to the above stated professions desiring to operate in the city; and

WHEREAS, to ensure the health, safety, and general welfare of Hammond residents and the general public, the licensing requirements of Chapter 117 must be revised; and

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Hammond that Chapter 117 of Title XI of the HMC be amended and adopted as follows:

CHAPTER 117: FOOD AND BEVERAGE SALES AND ESTABLISHMENTS

General Provisions

117.001 Definitions
117.002 State regulations
117.003 Enforcement
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Licenses
117.015 License required
117.016 Application for license required
117.017 Fees
117.018 Transfer of license prohibited
117.019 Revocation of license
117.020 Appeals

Statutory reference:
Authority of city to regulate businesses, see I.C. 36-8-2-10
Food, see I.C. 16-42-1-1 through 16-42-18-7
Sanitary requirements for food establishments, see I.C. 16-42-5-1 et seq.

GENERAL PROVISIONS

§ 117.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FOOD. All articles used for food, drink, confectionery, or condiment, whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof.

FOOD ESTABLISHMENTS.

A. DRIVE-IN RESTAURANT. Any establishment where food, frozen dessert, or beverage is sold to the consumer, and where motor vehicle parking space is provided with the intention that the food, frozen dessert, or beverage will be consumed in the motor vehicle parked upon the premises or anywhere on the premises outside of the building.
B. FOOD MARKET. Any retail grocery, meat market, poultry market, fish market, fresh fruit and vegetables market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any other establishment, whether fixed or movable, where food intended for human consumption off the premises is manufactured, produced, stored, prepared, handled transported, sold, or offered for sale at retail. The provisions of this chapter shall not include meat or poultry slaughterhouses.
C. ITINERANT RESTAURANT. Any food and/or beverage provider that does not maintain a permanent place of business within the city, who sells or offers to sell

directly to the consumer and does not meet the definition of Mobile Food Vendor or Temporary Itinerant Restaurant.

D. MOBILE FOOD VENDOR. A Mobile Food Vendor is defined as:
   1. Any person who sells, serves, offers for sale, or gives away food or beverage from any self-contained mobile unit or vending cart, independent with respect to water, sewer, and power utilities, capable of moving or being moved, is meant to be portable and is not permanently attached to the ground consisting of an enclosed truck, trailer, bus, or similar vehicle that contains equipment used for the sale and/or preparation of food or beverages and is closed when not in operation.
   2. Any person who, by traveling from place to place, serves previously prepared food that is enclosed or wrapped for sale in individual portions, coffee, other beverages , or whole and uncooked fruits or vegetables from a motorized or nonmotorized wheeled vehicle.

E. RESTAURANT. Any fixed restaurant, coffee shop, cafeteria, short-order café, luncheonette, tavern, sandwich stand, soda fountain, in-plant food service, commissary, snack bar, food catering, or food establishment, where food for human consumption is prepared or served in a manner so that it is ready for consumption. RESTAURANT shall not include a food establishment that is known as a "food market" where food is not prepared and served for consumption on the premises.

F. TEMPORARY FOOD VENDOR. A food and/or beverage provider operating for a temporary period in connection with an outdoor food or farmers market, fair, carnival, circus, public exhibition, or other similar gathering.

UTENSIL. Any kitchenware, tableware, glassware, cutlery, containers, or other equipment of any kind or nature with which food comes in contact during storage, preparation, display, or serving, and after delivering to a food market.

LICENSEE. A person having a city license in full force and effect issued under this chapter.

WASTE MATERIAL. Any paper cups, straws, napkins, garbage, beverages, and all other waste matter intended for disposal which, if not placed in a proper receptacle, tends to create a public nuisance by rending property unclean, unsafe, and unsightly.
(Prior Code, § 117.01) (Ord. 3305, passed 10-10-1960; Am. Ord. 3387, passed 3-25-1963)

§ 117.002 STATE REGULATIONS.

All Restaurants, Food Markets, Mobile Food Vendors, Itinerant Restaurants, Temporary Food Vendors, Drive-in Restaurants, and other sellers of food shall be inspected and enforced by the State or County Department of Health to the standards set forth in I.C. 16-42, et seq., as enforced by state or local health authorities. Failure to comply with these standards may serve as grounds for revocation or non-renewal of the licensee's annual City of Hammond business license.
(Prior Code, § 117.69) (Ord. 5004, passed 2-10-1986; Am. Ord. 8962, passed 11-19-2008)
Penalty, see § 10.99

§ 117.003 ENFORCEMENT.

Enforcement and inspection shall be performed by the State of Indiana or County Health Officer or their inspectors, as permitted by law.

(Prior Code, § 117.03) (Am. Ord. 8961, passed 11-19-2008) Penalty, see § 10.99

§ 117.004 EXCEPTIONS.

A. No business license shall be required for temporary food stands operated by religious, educational, or charitable organizations at their regularly established place of worship, campus, or business. Religious, educational, or charitable organizations operating entirely for profit or at locations outside their regular place of worship, campus, or business shall be required to have a business license as set forth in this chapter.
B. A Restaurant, Itinerant Restaurant, or Mobile Food Vendor duly licensed within this chapter shall pay no extra fee under this chapter to participate as a Temporary Food Vendor.

(Prior Code, § 117.12) (Ord. 3387, passed 3-25-1963; Am. Ord. 4301, passed 2-28-1977; Am. Ord. 8595, passed 8-24-2004; Am. Ord. 8961, passed 11-19-2008) Penalty, see § 10.99

§117.005 MOBILE FOOD VENDORS

A. It shall be unlawful for any person to engage in, carry on, or conduct the business of being a Mobile Food Vendor within the city without first having obtained a license as set forth in this chapter.
B. Any person desiring a license as a Mobile Food Vendor shall make application pursuant to the application requirements set forth in §117.016, in addition to adhering to the following provisions:
    1. Insurance and indemnity. Each applicant for a license shall provide a certificate of liability insurance to the City Controller against the following liability and in the following amounts relative to such activity:
        i. General Liability: $250,000.00 per occurrence and $500,000.00 in the aggregate;
        ii. Property Damage: $50,000.00 per occurrence and $100,000.00 in the aggregate; and
        iii. Proof of valid auto/vehicle insurance.
        iv. Each applicant shall execute a document, in a form approved by the Law Department, agreeing to indemnify and hold harmless the City of Hammond for personal injury, losses, expenses, or other damages arising out of the operation of the applicant's business.
    2. Location Restrictions.
        i. No Mobile Food Vendor shall locate in any property, parking lot, parking space, or parking facility owned, leased, or managed by the City of Hammond unless approval has been given by the City's Board of Public Works and Safety.
        ii. No Mobile Food Vendor shall locate in any property, parking lot, parking space, or parking facility owned, leased, or managed by any

public entity unless approval has been given by the appropriate governing body.

iii. No Mobile Food Vendor shall be located in a manner which would significantly impede or prevent the use of any City of Hammond property, or which would endanger the safety or property of the public.

iv. No Mobile Food Vendor shall locate outside of a commercial or industrial zoned area without the prior approval of the Board of Public Works and Safety.

v. No Mobile Food Vendor shall operate within 200 feet from any intersection, except those permitted to operate on private property, or attempt to sell any food, drink, or other food items to passengers inside of vehicles.

vi. No Mobile Food Vendor shall operate or conduct sales in any way that interferes with or prevents vehicular or pedestrian traffic.

vii. Notwithstanding anything to the contrary in the Municipal Code, it shall be unlawful for Mobile Food Vendors to locate on the streets, alleys, or other public place or grounds within 700 feet of any elementary, middle or high school or any school which is recognized by the state as being a public institution or any private, parochial or charter school, but not including colleges or universities ("schools"), during the hours that such schools are in session and for one hour before and one hour after such schools are in session.

viii. No Mobile Food Vendor shall locate within two hundred and fifty (250) feet of an establishment that also sells food, beverages, or similar products. The distance restriction only applies from one hour before the opening time to one hour after the closing time posted by an establishment.

ix. Mobile Food Vendors shall be located a reasonable distance from all posted crosswalks, driveways, alleyways, or right-of-way lines.

x. Mobile Food Vendors shall only be located on private property if the private property owner has provided the business operator written permission for the Mobile Food Vendor to locate on or at said property. Mobile Food Vendors must retain a copy of the permission form on-site for the inspection or review of the Police Department, Inspections Department, or other enforcement agency of the City.

xi. No Mobile Food Vendor operating on private property shall displace required parking or landscaping nor block any drives, parking access aisles, fire lanes, sidewalks, or accessible routes required by the City's zoning code.

3. Time Restrictions. No Mobile Food Vendor shall locate on the public streets or sidewalks in the City of Hammond between the hours of 7:00 p.m. and 7:00 a.m.

4. Safety Requirements. All Mobile Food Vendors shall comply with the safety requirements set forth by the United States Food and Drug Administration, United States Department of Agriculture, the Indiana Department of Health, the State Department of Agriculture, and the Lake County Health Department.

Violations of safety and sanitation requirements by the State or County Health Department may result in suspension or revocation of license as set forth in section 117.019 of this chapter.

§117.006 MAINTENANCE OF QUIET AND GOOD ORDER.

A. The licensee shall maintain quiet and good order upon the premises or in the area around it, and shall not permit disorderly or immoral conduct or loitering. The licensee shall not cause or create any noise or other nuisance in the area whereby the quiet and good order of the premises or of the neighborhood might be disturbed.
B. No person on the premises or in the area, including the parking area, shall race the motor of any vehicle, needlessly bring to sudden start or stop any vehicle, blow any horn, or make or cause to be made any other loud or unseemly noise, nuisance, or disturbance whereby the quiet and good order of the premises or of the neighborhood might be disturbed.

(Prior Code, § 117.54) (Ord. 3305, passed 10-10-1960) Penalty, see § 10.99

§ 117.007 REFUSE DISPOSAL.

A. No person shall place, throw, or deposit any waste material upon the outside premises, parking area, or on any street, alley, or adjoining property, except in adequate receptacles provided for that purpose, nor shall the licensee permit the conduct.
B. The licensee shall at least once in 24 hours dispose of waste materials which tend to create a public nuisance on the premises or in the area of licensee.
C. The licensee shall keep the premises or the area, together with the parking area and any adjoining street or alley, free from waste material.
D. The licensee shall provide the premises or area with a sufficient number of adequate refuse containers for waste material.
E. Any incinerator which may be installed shall conform with all applicable state laws, code, or city ordinance.

(Prior Code, § 117.075) (Ord. 3305, passed 10-10-1960) Penalty, see § 10.99

§ 117.008 HOURS OF OPERATION; DRIVE-INS

The licensee shall serve no person upon the premises of a Drive-in Restaurant any food, frozen dessert, or beverage in a motor vehicle Sunday through Thursday between the hours of 11:00 p.m. and 9:00 a.m. On Friday and Saturday the hours shall be 12:00 a.m. and 9:00 a.m.

(Prior Code, § 117.078) (Ord. 3305, passed 10-10-1960) Penalty, see § 10.99

§ 117.009 VEHICULAR ACCESS.

The licensee shall provide vehicular access available to public streets or other public ways from at least 2 points at all times. The means of access shall be kept clear by the licensee at all times to facilitate departure of persons in motor vehicles and to permit entrance of fire apparatus or ambulances in case of emergency. Additionally, a Mobile Food Vendor or Itinerant Restaurant shall not allow customers to block or otherwise inhibit the free flow of traffic on the street or to allow customers to park in prohibited areas while participating as a customer of said Mobile Food Vendor or Itinerant Restaurant.

(Prior Code, § 117.079) (Ord. 3305, passed 10-10-1960) Penalty, see § 10.99

§ 117.010 PARKING AREA.

A. The parking area of any premises shall be adequately illuminated, but this illumination shall be arranged by the licensee so as to reflect away from any adjoining residential property.
B. The parking area on the premises shall be satisfactorily paved or treated by the licensee so as to avoid creating dust and so as to provide for adequate drainage of surface water.

(Prior Code, § 117.080) (Ord. 3305, passed 10-10-1960) Penalty, see § 10.99

§ 117.011 FENCES AND WALLS.

The licensee of a premises shall provide a wall or fence and landscaping in accordance with the provisions of the Hammond Zoning Code.

(Prior Code, § 117.081) (Ord. 3305, passed 10-10-1960) Penalty, see § 10.99

LICENSES

§ 117.015 LICENSE REQUIRED.

It shall be unlawful for any person to operate as a Restaurant, Mobile Food Vendor, Drive-in, Itinerant Restaurant, Temporary Food Vendor, Food Market, food service, or seller of food without a business license issued by the City Controller. This license shall be posted in a conspicuous place. The license shall be valid for 1 year and subject to all the terms and conditions set forth in chapter 109 of the Hammond Municipal Code as it pertains to business licenses.

(Prior Code, § 117.10) (Ord. 3387, passed 3-25-1963; Am. Ord. 8961, passed 11-19-2008) Penalty, see § 10.99

§ 117.016 APPLICATION FOR LICENSE REQUIRED.

A. Any person desiring a license under this chapter shall submit a completed application to the City Controller. The application must set forth or have attached the following information as specified:
    1. The applicant's name, current physical address, telephone number, email address, and date of birth;
    2. The name, current physical address, tax identification number, and telephone number of the person, firm, limited liability company, corporation, or organization which the applicant is employed by or represents;
    3. A copy of the Indiana registration for the vehicle to be used, if applicable;
    4. A copy of the applicant's valid driver's license or other form of identification;
    5. The type of products to be sold and the hours of the day the applicant plans to conduct business;
    6. The number of motor vehicles which the proposed Drive-in Restaurant is designed to accommodate, if applicable;

7. The place or places where said business may be conducted, and a written statement, if applicable, from the owner of any property wherein the business may be conducted authorizing the applicant to use the property;
8. The duration of the license being sought;
9. A copy of required permits or licenses by the Lake County Health Department;
10. Proof of insurance in accordance with the amounts established in section 117.005(B)(1) of this chapter, if applicable;
11. The designation of a resident of the State of Indiana as a registered agent for purposes of receiving notices from the City of Hammond or other service of process, as a result of doing business in the City of Hammond; and
12. Any other information the City Controller shall find reasonably necessary to effectuate the purpose of this chapter and to arrive at a fair determination of whether the terms of this chapter have been complied with.

§117.017 ANNUAL FEES AND RENEWAL.

A. Notwithstanding provisions B and C of this subsection, a license shall be issued by the City Controller to a successful applicant under this chapter after payment of a license fee of $100 and a processing fee of $5. The license shall be for a term of 1 year commencing July 1 and expiring June 30 of the following year and must be renewed annually by the business through a renewal application. A separate license shall be required and a separate fee paid for each food seller, establishment, or location operated and maintained or to be operated and maintained by any individual or company. A business establishment that fails to renew a license by July 31 each year shall be required to pay a $200 late fee in addition to the annual $100 license renewal fee and processing fee of $5. Regardless of the date issued, the license shall expire on June 30 of each year.
B. An additional fee shall be collected by the City Controller in addition to subsection 117.017(A) for any applicant that is a Mobile Food Vendor or Itinerant Restaurant. The fee shall be $500 dollars annually. This fee does not apply for Temporary Food Vendors.
C. A Temporary Food Vendor shall only pay a fee of $25 per outdoor food market, farmers market, fair, carnival, circus, public exhibition, or other similar gathering.

§ 117.018 TRANSFER OF LICENSE PROHIBITED.

No license issued under the provisions of this chapter shall be sold, assigned, or transferred. No person or entity whose application was denied, suspended, or revoked shall be permitted to operate under the license of another person or entity.

Penalty, see § 10.99

§ 117.019 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

The City Controller shall deny a license application, deny a renewal of a license, or revoke a license previously issued to any Restaurant, Mobile Food Vendor, Itinerant Restaurant, Temporary Food Vendor, Drive-in, Food Market, food service, or other seller of food as set forth in chapter 109, and/or upon report by the State or County Health Inspector of a serious violation of state sanitary requirements for food establishments. Any establishment in operation

without a valid business license is subject to citation, and each day of operation without a license constitutes a separate offense.
(Prior Code, § 117.11) (Ord. 3387, passed 3-25-1963; Am. Ord. 8961, passed 11-19-2008) Penalty, see § 10.99

§117.020 APPEALS

In the event that a license is denied, suspended, or revoked, the applicant or licensee shall be given notice of the denial, suspension, or revocation, the reasons for this action, and shall be advised of the right to appeal to the Board of Public Works and Safety. Such appeal must be made within 10 days of revocation, suspension, or denial. Upon request, the Board of Public Works and Safety shall hold a hearing. The revocation of an existing license shall not take effect until the Board of Public Works and Safety has ruled upon the appeal. If a license is revoked, previously paid license fees will not be refunded.

THEREFORE, BE IT FURTHER ORDAINED that if any part of this ordinance shall be held invalid by a court of competent jurisdiction, the remainder thereof shall not be affected.

BE IT FURTHER ORDAINED this Ordinance shall be considered as amending Ordinance Numbers 3305, Am. Ord. 3387, Am. Ord. 4301, Am. Ord. 5004, Am. Ord. 8592, Am. Ord. 8595, Am. Ord. 8961, Am. Ord. 8962, Am. Ord. 9098, otherwise known as Chapter 117 or Title XI of the HMC, and if there be any conflict therewith, this ordinance shall take precedence.

BE IT FURTHER ORDAINED by the Common Council, that this Ordinance shall be in full force and effect upon signing by the President of the Common Council and approval by the Mayor, and Publication as provided by law.

ADOPTED AND APPROVED BY the Common Council of the City of Hammond, Indiana this

26th day of April, 2021

Sponsor: Dan Spitale
Councilman at Large

Dave Woerpel, President
Hammond Common Council

ATTEST:

Robert J. Golec, City Clerk

PRESENTED BY ME, the undersigned City Clerk of the City of Hammond to the Mayor of said City for his approval on the 27th day of April ,2021.

Robert J. Golec, City Clerk
City of Hammond, Indiana

The foregoing Ordinance No. 9506 consisting of ten (10) typewritten pages, including this page, was APPROVED AND SIGNED BY ME, the undersigned Mayor of the City of Hammond, Indiana on this 27th day of April ,2021.

Thomas M. McDermott, Jr., Mayor
City of Hammond, Indiana

PASSED by the Common Council on the 26th day of April , 2021 and Approved by the Mayor on the 27th day of April ,2021.

Robert J. Golec, City Clerk
City of Hammond, Indiana