

Sponsor: Dan Spitale
Councilman at Large

ORDINANCE NO. 9494

21-02

AN ORDINANCE TO AMEND ORDINANCES 4872, AM. ORD. 8715, 8717, 9133 ALSO KNOWN AS CHAPTER 122 OF TITLE XI OF THE HAMMOND MUNICIPAL CODE RELATING TO PEDDLER AND POP-UP VENDOR 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, including peddlers and pop-up vendors; and

WHEREAS, the City of Hammond regulates these professions through a licensing process codified in Chapter 122 of Title XI of the Hammond Municipal Code (HMC); and

WHEREAS, portions of Chapter 122 of Title XI of the HMC have not been updated since 1984, and therefore have become outdated and not applicable to the above stated professions desiring to operate in the city; and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 the public, and to balance the interests of both brick & mortar businesses and peddlers/pop-up vendors, the licensing requirements of Chapter 122 must be revised; and

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Hammond that Chapter 122 of Title XI of the HMC be amended and adopted as follows:

CHAPTER 122: PEDDLERS AND POP-UP VENDORS

General Provisions

- 122.01 Definitions
- 122.02 Exceptions
- 122.03 Enforcement
- 122.04 Records of violations
- 122.05 Sales near schools

- 122.06 Residential door-to-door sales and solicitations
- 122.07 Pop-Up Vendors
- 122.08 Use of noise for purpose of attracting attention
- 122.09 Time and location restrictions

Licenses

- 122.15 Required; application
- 122.16 Investigation of application
- 122.17 License fees
- 122.18 Service of process
- 122.19 Transfer of license prohibited
- 122.20 Exhibition of license
- 122.21 Revocation
- 122.22 Appeals

Statutory reference:

Authority of city to regulate and license peddlers, see I.C. 36-8-2-10 and 36-8-2-11
 Authority of city to tax, license, and regulate transient merchants, see I.C. 25-37-1-11
 Transient merchants, see I.C. 25-37-1

GENERAL PROVISIONS

§ 122.01 DEFINITIONS.

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

PEDDLER.

Peddler is defined as:

- A. Any individual, whether a resident of the city or not, traveling either by foot, bicycle, motorized vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, merchandise, property, or services, offering and exposing the items for sale or selling and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the items for sale from a bicycle, cart, motorized vehicle, or any other type of conveyance;

- B. Any individual, whether a resident of the city or not, who takes orders for sale of goods, wares, merchandise, property of any nature whatsoever for future delivery, or for services to be furnished or performed currently or in the future; and
- C. Any individual, whether a resident of the city or not, who engages in a temporary business of selling or delivering goods, wares, merchandise, property, or services, and who, in furtherance of this purpose, hires, leases, uses, or occupies any building, structure, motorized vehicle, or boat.
- D. PEDDLER shall also include, but is not limited to, terms formerly defined as CANVASSER, HAWKER, HUCKSTER, ITINERANT MERCHANT, ITINERANT VENDOR, SOLICITOR, and TRANSIENT MERCHANT.
- E. An individual shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer, or by conducting a transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant, or auctioneer.

POP-UP VENDORS. Any individual, whether a resident of the city or not, who erects, places, or stands in the city an open-air booth, shed, tent, trailer, container, stand, or other structure for the purpose of selling, bartering, receiving for future sale or use, distributing, or exchanging on or from such place any goods, wares, merchandise, property, or services.

§ 122.02 EXCEPTIONS.

Nothing in this chapter shall be construed to include any of the following:

- A. Vendors of groceries, food, or beverage products of any kind duly licensed to sell as provided by Chapter 117;
- B. Food and beverage delivery services;
- C. Any sale conducted pursuant to statute or by order of any court or by any individual conducting bona-fide auction sales who is, at the time of conducting the sale, duly licensed as an auctioneer;
- D. Individuals selling for bona-fide wholesale establishments to retail dealers in the city, bona-fide local retail merchants of the city or their employees taking orders in the houses of their customers for goods held by them at their places of business, merchants or their employees delivering goods ordered by their customers, or newspaper delivery persons;
- E. Clubs or organizations making sales on a charitable or nonprofit basis;
- F. Individuals or entities participating in a city-sponsored event whose participation is subject to application and fee submittal to the sponsoring department; and

G. Licensed businesses conducting sidewalk sales, tent sales, special promotions, or special events pursuant to Title X, §10.80(B)(4) of Am. Ordinance 8514 .
(Prior Code, § 122.02)

§ 122.03 ENFORCEMENT.

It shall be the duty of any police officer of the city to require any peddler or pop-up vendor, and who is not known by the officer to be duly licensed, to produce his or her license and to enforce the provisions of this chapter against any individual found to be violating this chapter.

(Prior Code, § 122.03) Penalty, see § 10.99

§ 122.04 RECORDS OF VIOLATIONS.

The Police Department or Law Department shall report to the Controller all convictions for violations of this chapter. The Controller shall maintain a record for each license issued and shall record the reports of violations therein.

(Prior Code, § 122.04)

§ 122.05 SALES NEAR SCHOOLS.

- A. Notwithstanding anything to the contrary in the Municipal Code, it shall be unlawful for any individual to sell or offer to sell, give or offer to give, 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 1 hour before and 1 hour after such schools are in session, any goods, wares, merchandise, property, or services.
- B. The distance above shall be measured as a straight line from the nearest property line of any such schools to the activity prescribed above in division (A).
- C. This section shall have no application to clubs, organizations or persons making sales or solicitations on a charitable or non-profit basis.

(Prior Code, § 122.05) (Ord. 4872, passed 2-29-1984; Am. Ord. 8715, passed 12-12-2005) Penalty, see § 10.99

§ 122.06 RESIDENTIAL DOOR-TO-DOOR SALES AND SOLICITATIONS.

It shall be unlawful for any individual to engage in, carry on, or conduct the business of being a residential door-to-door salesperson within the city without first having obtained a license as set forth in this chapter.

(Ord. 9133, passed 2-13-2012)

§ 122.07 POP-UP VENDORS.

- A. It shall be unlawful for any individual to engage in, carry on, or conduct the business of being a pop-up vendor within the city without first having obtained a license as set forth in this chapter.
- B. Any individual desiring a license as a pop-up vendor shall make application pursuant to the application requirements set forth in §122.15 in addition to the requirements set forth in this subsection.
- C. Applicants shall designate the kind of booth, shed, tent, trailer, container, stand, or other structure in and from which their goods, wares, merchandise, property, or services are to be sold.
- D. The applicant shall attach to the application a signed statement from the owner or lessee of the location granting permission to the applicant for the use of the location for business purposes for the duration of the license.
- E. No license shall be issued by the Controller under this section until the zoning, ingress and egress of the location(s) have been approved by the appropriate city departments.
- F. A license may be granted under this section for a transitory pop-up vendor which may move to various locations during the duration of the license term, provided that the applicant, in addition to meeting all other requirements of this chapter, attaches to the application a list of the locations and the dates on which the business will be operated at each location, along with the permission for use of each location as required by subsection (D).
- G. Pop-up vendors shall be permitted to sell for a period of seven (7) days during the calendar year, which days may be non-consecutive.
- H. Any individual who violates any provision of this section, shall have his or her license revoked pursuant to Chapter 109 of this code, in addition to any fines imposed by § 10.99.

§ 122.08 USE OF NOISE FOR PURPOSE OF ATTRACTING ATTENTION.

No individual licensed under this chapter shall make a noise by hawking or sound, or cause to be sounded any horn, bell, whistle, loudspeaker or other noisemaking device, for the purpose of attracting attention of the public to their presence, or as a medium of advertising the sale of such goods, wares, merchandise, property, services, or provisions.

§ 122.09 TIME AND LOCATION RESTRICTIONS.

The city may regulate the time, placement, and location of peddlers and pop-up vendors including, but not limited to, the following restrictions:

- A. Any individual desiring a license as a peddler or door-to-door salesperson shall agree to make such sales only between the hours of 10:00 a.m. and 5:00 p.m., Monday through Saturday;
- B. Any individual desiring a license as a pop-up vendor shall agree to make such sales during times permitted by the property owner and listed on the pop-up vendor application;
- C. All peddlers and pop-up vendors shall remove their carts, stands, tents, vehicles, or any other device or structure at the close of each business day; and
- D. All peddlers and pop-up vendors agree to comply with all city ordinances regarding signage.

LICENSES

§ 122.15 REQUIRED; APPLICATION.

- A. It shall be unlawful for any individual to engage in the business of peddler or pop-up vendor, as defined in § 122.01, within the city without first obtaining a license therefor, as provided in this subchapter.
- B. Applicants for a license under this chapter must file with the Controller a sworn application in writing, which shall give the following information:
 - 1. Name;
 - 2. Mailing Address, phone number, and email address;
 - 3. A brief description of the nature of the business, and the goods, wares, property, or services to be sold or offered for sale;
 - 4. If a bicycle, motorized vehicle, or any other type of conveyance is to be used, a description of the vehicle, together with the license number or other means of identification of the conveyance;
 - 5. If employed, the name and address of the employer;
 - 6. The length of time for which the license is desired;
 - 7. A photograph of the applicant taken within 60 days immediately prior to the date of the filing of the application (This picture shall be 2 inches by 2 inches showing the head and shoulders of the applicant in a clear and distinguishing manner);
 - 8. The fingerprints of the applicant and the names of at least two (2) reliable residents of Lake county who will certify as to the applicant's good character and business responsibility, or, in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as

will enable the Controller to properly evaluate the applicant's character and business responsibility; and

9. A statement as to whether or not the applicant has been convicted of any felony, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.

- C. Licenses obtained under this chapter are nonrenewable; however, nothing shall prohibit the licensee from applying for a new license in a subsequent calendar year.

(Prior Code, § 122.10) Penalty, see § 10.99

§ 122.16 INVESTIGATION OF APPLICATION.

- A. Upon receipt of the application for a license, an investigation of the applicant's character shall be made.
- B. If, as a result of the investigation, the applicant's character is found to be unsatisfactory, the Controller shall notify the applicant that his or her application is disapproved and that no license will be issued.
- C. If, as a result of the investigation, the applicant's character is found to be satisfactory, the Controller shall, upon payment of the prescribed fees, issue a license and deliver it to the applicant. This license shall contain the signature and seal of the issuing officer and shall show the name, address, and photograph of the licensee, the class of license issued and the kind of goods, wares, merchandise, property, or services to be sold thereunder, the date of issuance and the length of time the license shall be operative, as well as the license number, and other identifying description of any bicycle, motorized vehicle, cart, or any other conveyance used by the applicant. The Controller shall keep a permanent record of all licenses issued.

(Prior Code, § 122.11) Penalty, see § 10.99

Cross-reference:

Right of appeal, see § 122.24

§ 122.17 LICENSE FEES.

A license shall be issued by the 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 no more than one year. Regardless of the date issued, the license shall expire on December 31 of the year issued.

(Prior Code, § 122.12)

§ 122.18 SERVICE OF PROCESS.

- A. Before any license as provided in this chapter shall be issued, the applicant shall file with the Controller an instrument nominating and appointing the Controller or the individual performing the duties of this position as his or her true and lawful agent with full power and authority to acknowledge service or notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transacted under the license.
- B. This instrument shall also contain recitals to the effect that the applicant for a license consents and agrees that service of any notice or process may be made upon the Controller, as agent, and when so made shall be taken and held to be as valid as if personally served upon the individual applying for the license under this chapter, according to the law of this or any other state, and waiving all claim or right of error by reason of an acknowledgment of service or manner of service. Immediately upon service of process upon the Controller, as provided in this section, shall send to the licensee at his or her last known address as provided on the application, by regular and certified mail, a copy of the process.

(Prior Code, § 122.14) Penalty, see § 10.99

§ 122.19 TRANSFER OF LICENSE PROHIBITED.

No license issued under the provisions of this chapter shall be used at any time by any individual other than the one to whom it was issued, and each individual, whether employee or otherwise, must obtain an individual license.

(Prior Code, § 122.15) Penalty, see § 10.99

§ 122.20 EXHIBITION OF LICENSE.

All licensees under this chapter are required to carry their licenses with them at all times and must exhibit the license at the request of any city official or resident.

(Prior Code, § 122.17) Penalty, see § 10.99

§ 122.21 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

- A. The Controller shall deny a license or revoke a license previously issued under provisions of this chapter for any of the following causes:
 - 1. Fraud, misrepresentation, or false statement contained in the application for license;
 - 2. Fraud, misrepresentation, or false statement made in the course of carrying on the business of the licensee;
 - 3. Any violation of ordinance, state, or federal law;
 - 4. Conviction of any crime or misdemeanor involving moral turpitude;

5. Conducting the business of the licensee in an unlawful manner or in a manner so as to constitute a breach of the peace, a nuisance, or to constitute a menace to the health, safety, or general welfare of the public; or
 6. Upon a showing of other good cause.
- B. Any individual who continues to operate in the city on a denied, suspended, or revoked license shall be in violation of this section.

(Prior Code, § 122.18) Penalty, see § 10.99

Cross-reference:

Right of appeal, see § 122.24

§ 122.22 APPEAL OF DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

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.

(Prior Code, § 122.19)

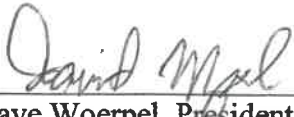
THEREFORE, BE IT FURTHER ORDAINED that if any part of this ordinance shall be held invalid by a court of competent jurisdiction, the remainder thereof shall not be affected.

BE IT FURTHER ORDAINED this Ordinance shall be considered as amending Ordinance Numbers 4872, AM. ORD. 8715, 8717, 9133, 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

8TH day of February, 2021

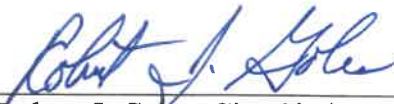


Dave Woerpel, President
Hammond Common Council

ATTEST: 

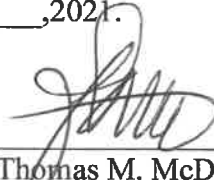
Robert J. Golec, City Clerk

PRESENTED BY ME, the undersigned City Clerk of the City of Hammond to the Mayor of said City for his approval on the 9TH day of February, 2021.



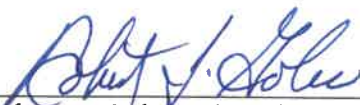
Robert J. Golec, City Clerk
City of Hammond, Indiana

The foregoing Ordinance No. 9494 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 10th day of February, 2021.



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

PASSED by the Common Council on the 8TH day of February, 2021 and Approved by the Mayor on the 10th day of February, 2021.



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