

BILL NO. G-15-03-25

GENERAL ORDINANCE NO. G-_____

AN ORDINANCE REPEALING AND REPLACING
CHAPTER 117: TRANSIENT MERCHANTS AND ICE
CREAM VENDORS IN ITS ENTIRETY

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Chapter 117: TRANSIENT MERCHANTS AND
ICE CREAM VENDORS, of the City of Fort Wayne, Indiana Code of
Ordinances, is repealed and replaced in its entirety as follows:

Fort Wayne, IN Code of Ordinances

**CHAPTER 117: TRANSIENT MERCHANTS AND
ICE CREAM VENDORS**

Section	<i>Transient Merchants</i>
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- 117.17 Definitions
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TRANSIENT MERCHANTS

§ 117.01 DEFINITIONS.

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

CARNIVAL. A temporary entertainment establishment located on private or public property which includes, but is not limited to, side shows, games, regulated amusement devises, rides and refreshments.

EXHIBITION. Any public show or trade show organized to demonstrate and/or sell goods, wares or merchandise, which is open to the public.

FESTIVAL. An event held for more than one day with a special title and conducted in one location or more, promoted to attract patrons from the city and surrounding communities, which is planned, named and executed under the total auspices of a not-for-profit organization.

FLEA MARKET. A market indoors, or out-of-doors, in operation 120 calendar days or fewer, where new or used items are sold from individual locations, with each location being operated independently from the other locations. Items sold include, but are not limited to, household items, antiques, rare items, decorations, used books and used magazines.

PERSON. Any individual, firm, corporation or partnership.

1 **TRANSIENT MERCHANT.** All persons, both as principals and agents,
2 who engage in, do, or transact, any temporary or transient business in this
3 city, for a period of 120 calendar days or less, either in one locality or in
4 traveling from place to place in this city, offering for sale or selling goods,
5 wards or merchandise, except for the sale of alcoholic beverages during
6 the time of a festival, and except for the operation of a carnival or
7 carnival rides during the time of a festival, and including those who, for
8 the purpose of carrying on such business, hire, lease or occupy any
9 permanent or mobile building, structure, real estate, or any other place, for
10 the exhibition by means of samples, catalogues, photographs, and price
11 lists or sale of such goods, wares or merchandise, but does not include:
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- 13 (1) A resident of the city in which the sale takes place who
14 conducts a sale of tangible personal property for no more
15 than six calendar days;
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17 (2) An organization that is exempt from the Indiana Gross
18 Retail Tax under IC 6-2.5-5-26 and/or is a not- for-profit
19 organization, and presents upon demand, written proof of
20 such exemption and/or status as a not-for- profit
21 organization;
22
23 (3) A person who provides proof that the sale is being
24 conducted as part of an activity sponsored by an
25 organization described in section (2) of this section.
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28 **TRANSIENT MERCHANT/ALCOHOL PERMIT.** A permit issued to a
29 transient merchant selling alcoholic beverages during the time of festival,
30 according to a rate schedule established under § 117.06(B) of this chapter.

TRANSIENT MERCHANT/CARNIVAL PERMIT. A permit issued to
a transient merchant operating a carnival or carnival rides during the time
of a festival, according to a rate schedule established under § 117.06(B)
of this chapter.

TRANSIENT MERCHANT OPERATION A CARNIVAL OR

CARNIVAL RIDES DURING THE TIME OF A FESTIVAL. All persons, both as principals and agents, who engage in the operation of a carnival or carnival rides, who do so in private or public property during any of the same days that a festival is occurring in the city.

TRANSIENT MERCHANT SELLING ALCOHOLIC BEVERAGES DURING THE TIME OF A FESTIVAL. All persons, both as principals and agents, who engage in the sale of alcoholic beverages to the general public, as licensed to do so by the Indiana Alcoholic Beverage Commission through a Caterer's Permit or Temporary Beer or Temporary Wine Permit, who do so in a temporary structure, tent or mobile building during any of the same days that a festival is occurring in the city.

§ 117.02 PERMITS REQUIRED.

It shall be unlawful for any transient merchant to do or transact any business in the sale of goods, wares or merchandise of any and every kind, make and description, without first obtaining a permit therefor as herein provided. It shall further be unlawful for the owner and/or occupant of any real estate, permanent or mobile building, structure, or other place, to knowingly permit the use of real estate, permanent or mobile building, structure, or other place, by a transient merchant who does not have a permit as provided herein. In the case of a flea market or exhibition, only one permit need be obtained for the flea market or exhibition, and not for each transient merchant therein. In the case of a festival, only one permit need be obtained for the festival, and each transient merchant at said festival shall not be required to obtain a separate transient merchant permit if said transient merchant is officially licensed by the festival or otherwise recognized as an official vendor of the festival, and displays in a prominent area, a logo or other written proof that it has such official designation. Any transient merchant not thus officially designated as an official festival licensee or vendor shall be required to obtain a permit pursuant to the terms of this chapter.

§ 117.03 APPLICATION APPROVAL PROCEDURE.

(A) Each transient merchant desiring to engage in, do and transact business in the city shall file a verified application for a permit for that purpose with the Chief of Police or his/her agent and shall include the following information:

- (1) The name and residence address of the applicant;
- (2) The address and location of the building, permanent or mobile building, structure, real estate, or other place in which the person expects to do business;
- (3) A list of the make and character of goods, wares and merchandise that person intends to sell;
- (4) The name and address of employer, if any;
- (5) The dates and times for which the applicant intends to do business;
- (6) If employer is a corporation, the state of its incorporation, whether it is authorized to do business in the State of Indiana, and evidence that the corporation has designated a resident agency in Indiana upon whom legal service may be made and that the corporation will be responsible for the acts of its employees;
- (7) A copy of a valid government issued photo identification;
- (8) The applicant's fingerprints taken within the previous 60 days by the Fort Wayne Police Department; and

(9) A list of all convictions, the nature of the offense, and any penalty imposed, excluding traffic violations.

(B) Upon receipt of each application, the Chief of Police or his/her agent shall conduct an investigation of the applicant's business reputation, moral character and criminal background. If upon investigation, the applicant's character is found to be unsatisfactory, no permit shall be issued.

§ 117.04 GROUNDS FOR PERMIT DENIAL, REVOCATION OR SUSPENSION

A permit may be denied, revoked or suspended for the following:

(A) Any fraud or misrepresentation contained in the license application.

(B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the permit.

(C) Any violation of this Ordinance.

(D) Conviction of the permittee of any felony, or conviction of the permittee of any misdemeanor involving moral turpitude.

(E) The permittee conducting the business in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals or general welfare of the public.

§ 117.05 REVOCATION OR SUSPENSION; HEARING

(A) Any license issued under this subchapter may be denied, revoked or suspended by the Chief of Police or his/her agent by reason of a violation of any of the provisions of this subchapter.

(B) When a hearing is set by the Chief of Police or his/her agent in a revocation or suspension procedure, the licensee shall receive

1 not less than 20 days written notice, which notice shall contain
2 charges made, as well as the time and place when the hearing will
3 be held.

4 (C) At a hearing conducted pursuant to this subchapter, the licensee shall
5 have the right to be represented by counsel, to present witnesses, to
6 testify and cross-examine any other witnesses and to subpoena
7 witnesses. Proceedings shall be conducted under oath.

8 (D) The Chief of Police or his/her agent shall preside at the hearing and
9 shall make the final determination.

10 (E) If any decision adverse to the licensee is made by the Chief of Police
11 or his/her agent after a hearing as provided above, the Chief of Police
12 or his/her agent shall provide the licensee with a written reason for such
13 decision, as well as a notice of the licensee's right to appeal to the courts
14 of the state.

15 **§ 117.06 FEE; ISSUANCE; TERM.**

16 (A) Each transient merchant, or operator of a flea market, exhibition or
17 festival, except those engaged in selling any alcoholic beverages during
18 the time of a festival, and except for those operating a carnival during
19 the time of a festival, shall pay to the Chief of Police or his/her agent
20 for a permit, the sum of \$250, and on the filing of the application and
21 the payment of the permit fee as herein provided, the Chief of Police or
22 his/her agent shall issue a transient merchant permit to do business as
23 such at the place described in the application for a period of not less
24 than 120 days. Any application for a permit must be filed five business
25 days prior to the first day of operation by the transient merchant.

26 (B) All persons who apply for a transient merchant/carnival permit or a
27 transient merchant/alcohol permit shall pay to the Chief of Police or
28 his/her agent for a permit a sum derived from the following rate
29 schedule:
30

DAYS***HOURS******RATE***

Sunday-Thursday Before 12:00 a.m. \$500 per day

- (1) If the permit holder intends to operate after 12:00 a.m. on any day Sunday through Thursday, the permit cost shall be an additional \$300 for each hour of operation after 12:00 a.m.

DAYS***HOURS******RATE***

Friday,
Saturday
& Holidays Before 1:00 a.m. \$1,000 per day

- (2) If the permit holder intends to operate after 1:00 a.m. on any Friday, Saturday or holiday, the permit cost shall be an additional \$500 for each hour of operation after 1:00 a.m.

- (3) This payment is due at the time of filing of the transient merchant/alcohol permit and/or the transient merchant/carnival permit, and the permittee shall then be issued a transient merchant/alcohol permit to do business as such at the place described in the application. Any application for a permit must be filed 30 business days prior to the first day of operation by the transient merchant.

- (C) A transient merchant desiring to sell alcoholic beverages and operate a carnival or carnival rides shall be required to obtain both a transient merchant/alcohol permit and a transient merchant/carnival permit.

- (D) A transient merchant selling alcoholic beverages or operating a carnival or carnival rides shall be exempt from the requirement of purchasing a transient merchant/alcohol permit and/or a transient merchant/carnival

permit if said merchant is in any of the following categories:

- (1) Listed as the sole sponsor or partner in the sponsorship of a festival, or as a vendor licensed by a festival sponsor.
- (2) An organization that is exempt from the Indiana Gross Retail Tax under IC 6-2.5-5-26 and/or is a not-for-profit organization, and presents upon demand, written proof of such exemption and/or status as a not-for-profit organization.
- (3) Any individual, company or organization which receives a caterer's permit or temporary beer and wine permit for any event which will function no more than two days in any calendar week.

§ 117.07 TRANSFER PROHIBITED.

No permit issued under the provisions of this chapter shall be good for more than one location and it shall not be transferable.

§ 117.08 REFUND OF PERMIT FEE.

The Chief of Police or his/her agent will refund the permit fee that has been paid herein if such transient merchant remains in business longer than 120 days.

§ 117.09 DISPLAY OF PERMIT.

Transient merchants shall display the permit, described in § 117.06 of this subchapter, in a prominent area at the location where that person engages in, does or transacts, any temporary or transient business in this city.

ICE CREAM VENDORS

§ 117.17 DEFINITIONS.

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

ICE CREAM TRUCK. Every motor vehicle in which ice cream, ice milk, frozen dairy products or ice flavored with syrup is carried for purposes of retail sale on the streets of the city.

VEND or VENDING. Offering ice cream, ice milk, frozen dairy products or ice flavored with syrup for sale from a motor vehicle on the public streets of the city.

§ 117.18 INSPECTION, EQUIPMENT AND LICENSING.

Once every year prior to the issuance of any license to any person who uses and operates any ice cream truck on the streets of the city, the owner thereof shall cause said ice cream truck to be thoroughly examined and inspected by the Health Officer of the City-County Board of Health to determine compliance with the minimum sanitation and health requirements specified by the state Board of Health. Written proof of said inspection shall be transmitted promptly by the Health Officer to the Fort Wayne Police Department. Upon receipt of the written proof of inspection showing compliance with minimum sanitation and health requirements as hereinabove specified, and prior to the issuance of a vendor or peddler's license as set forth hereinafter and prior to the use and operation of said ice cream truck, said ice cream truck shall be thoroughly examined and inspected by the Fort Wayne Police Department and must have the following safety equipment on said vehicle in good working order:

- (A) A metal, horizontally extendable sign at least 20 inches in length, and at least ten inches in width imprinted with the words "STOP"

1 in six-inch black block letters on yellow background, and
2 "PROCEED WITH CAUTION" in two-inch black block letters
3 on yellow background, such arm to be lighted at the street end of
4 said arm with two alternately flashing lights two inches in
5 diameter, amber in the front and red in the back clearly visible
6 from both front and rear directions at a distance of at least 300
feet, the bottom of said sign to be at a height between three and
five feet above the level of the street or way.

7 (B) The inspection letter for each vehicle by the Board of Health and
8 Fort Wayne Police Department shall be carried in that vehicle.

9 (C) Each vendor-driver shall possess a valid Indiana chauffeur's
10 driver's license. The owner shall provide his drivers, in the
11 spring, a safety program of at least two hours taught by a
12 qualified instructor in the operation of the ice cream truck and
13 vending of products.

14 **§ 117.19 OPERATION OF VEHICLES APPROACHING ICE CREAM**
15 **TRUCKS.**

16
17 It shall be unlawful for any motorist, when approaching a parked
18 (defined as located within six inches of the curb or side of road, whichever
19 is applicable) ice cream truck from any direction at a time when such ice
20 cream truck is displaying the metal extendable arm and the flashing lights,
21 to fail to come to a complete stop at least ten feet from the closest end of
22 said ice cream truck or to fail to then proceed with caution past such ice
23 cream truck at a reasonable and prudent speed and to yield the right-of-way
24 to any pedestrian who crosses the roadway to or from the side of said ice
25 cream truck; provided, that on any street or highway divided into two or
26 more roadways by leaving an intervening space which is unimproved and
27 not intended for vehicular traffic, or by a physical barrier or by a dividing
28 section constructed to impede vehicular traffic, if the ice cream truck is on
29 the opposite side of such traffic barrier, the driver of the approaching
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vehicle need not stop but shall proceed with due caution for the safety of the customers of the ice cream truck.

§ 117.20 OPERATION OF ICE CREAM TRUCKS; VENDING RESTRICTIONS.

- (A) The driver of an ice cream truck shall come to a full and complete stop within six inches of the curb or side of the road. The vendor shall then activate the alternately flashing red and amber lights and extend the stop signal arm required by this subchapter prior to vending.
- (B) The required signal arm and flashing lights shall not be used when the ice cream truck is in motion or at any time when the ice cream truck is stopped for a purpose other than vending.
- (C) The driver or vendor therein of an ice cream truck shall not back the truck to make or attempt to make a sale.
- (D) The driver or vendor therein of an ice cream truck shall vend only from the side of said ice cream truck away from moving traffic.
- (E) It shall be unlawful to offer to vend on any public street where parking is prohibited on one side or on both sides of said public street, or on any public street where the legal speed limit exceeds 30 miles per hour.
- (F) It shall be unlawful to offer to vend or to vend from any ice cream truck on any public street before 9:00 a.m., between 5:00 p.m. and 6:00 p.m., and after dusk.
- (G) It shall be unlawful to offer to vend or to vend from any ice cream truck within a distance of 1,000 feet of any school ground of any duly accredited public, or private, grade or junior high school between 7:00 a.m. and 4:00 p.m. on days when said schools are in session.

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CHAPTER 117: TRANSIENT MERCHANTS AND ICE CREAM VENDORS

Section

Transient Merchants

- 117.01 Definitions
- 117.02 Permits required
- 117.03 Application for ~~permit~~ approval procedure
- 117.04 ~~Fee; issuance; term~~ Grounds for permit denial, revocation or suspension
- 117.05 ~~Transfer prohibited~~ Revocation or suspension; hearing
- 117.06 ~~Refund of permit fee~~ Fee; issuance; term
- 117.07 ~~Display of permit~~ Transfer prohibited
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- 117.99 Penalty

TRANSIENT MERCHANTS

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§ 117.01 DEFINITIONS.

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

CARNIVAL. A temporary entertainment establishment located on private or public property which includes, but is not limited to, side shows, games, regulated amusement devices, rides and refreshments.

EXHIBITION. Any public show or trade show organized to demonstrate and/or sell goods, wares or merchandise, which is open to the public.

FESTIVAL. An event held for more than one day with a special title and conducted in one location or more, promoted to attract patrons from the city and surrounding communities, which is planned, named and executed under the total auspices of a not-for-profit organization.

FLEA MARKET. A market indoors, or out-of-doors, in operation 120 calendar days or fewer, where new or used items are sold from individual locations, with each location being operated independently from the other

locations. Items sold include, but are not limited to, household items, antiques, rare items, decorations, used books and used magazines.

PERSON. Any individual, firm, corporation or partnership.

TRANSIENT MERCHANT. All persons, both as principals and agents, who engage in, do, or transact, any temporary or transient business in this city, for a period of 120 calendar days or less, either in one locality or in traveling from place to place in this city, offering for sale or selling goods, wares or merchandise, except for the sale of alcoholic beverages during the time of a festival, and except for the operation of a carnival or carnival rides during the time of a festival, and including those who, for the purpose of carrying on such business, hire, lease or occupy any permanent or mobile building, structure, real estate, or any other place, for the exhibition by means of samples, catalogues, photographs, and price lists or sale of such goods, wares or merchandise, but does not include:

(1) A resident of the city in which the sale takes place who conducts a sale of tangible personal property for no more than six calendar days;

(2) An organization that is exempt from the Indiana Gross Retail Tax under IC 6-2.5-5-26 and/or is a not-for-profit organization, and presents upon demand, written proof of such exemption and/or status as a not-for-profit organization;

(3) A person who provides proof that the sale is being conducted as part of an activity sponsored by an organization described in division (B2) of this section.

TRANSIENT MERCHANT/ALCOHOL PERMIT. A permit issued to a transient merchant selling alcoholic beverages during the time of festival, according to a rate schedule established under § 117.064(B) of this chapter.

TRANSIENT MERCHANT/CARNIVAL PERMIT. A permit issued to a transient merchant operating a carnival or carnival rides during the time of a festival, according to a rate schedule established under § 117.064(B) of this chapter.

TRANSIENT MERCHANT OPERATION A CARNIVAL OR CARNIVAL RIDES DURING THE TIME OF A FESTIVAL. All persons, both as principals and agents, who engage in the operation of a carnival or carnival rides, who do so in private or public property during any of the same days that a festival is occurring in the city.

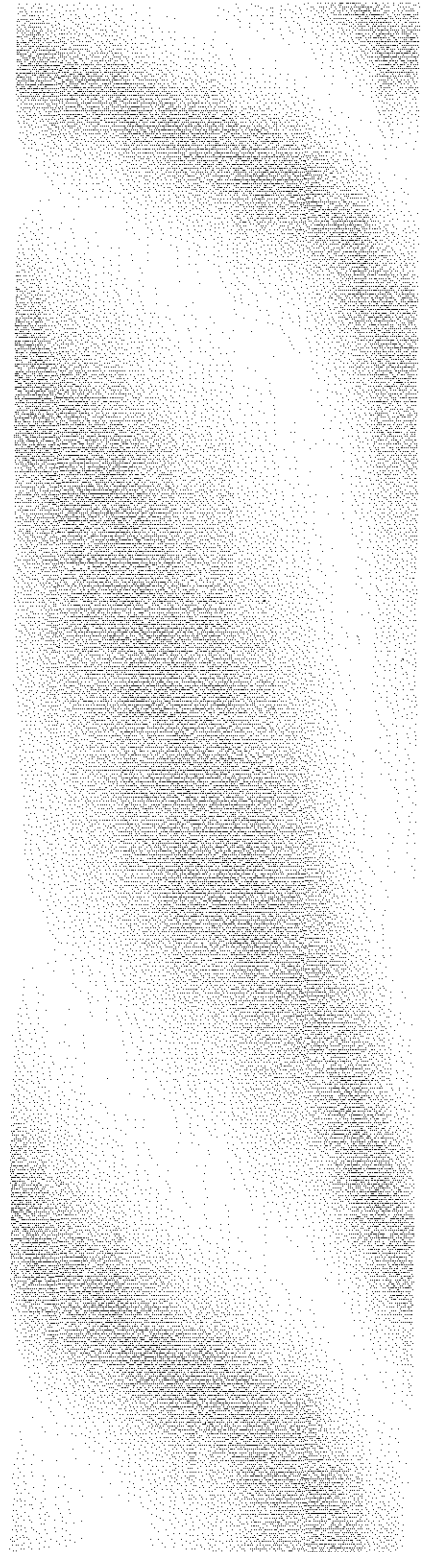
TRANSIENT MERCHANT SELLING ALCOHOLIC BEVERAGES DURING THE TIME OF A FESTIVAL. All persons, both as principals and agents, who engage in the sale of alcoholic beverages to the general public, as licensed to do so by the Indiana Alcoholic Beverage Commission through a Caterer's Permit or Temporary Beer or Temporary Wine Permit, who do so in a temporary structure, tent or mobile building during any of the same days that a festival is occurring in the city.

('74 Code, § 7-42) (Ord. G-03-90, passed 3-13-90; Am. Ord. G-22-93, passed 6-8-93) Penalty, see § 117.99

§ 117.02 PERMITS REQUIRED.

It shall be unlawful for any transient merchant to do or transact any business in the sale of goods, wares or merchandise of any and every kind, make and description, without first obtaining a permit therefor as herein provided. It shall further be unlawful for the owner and/or occupant of any real estate, permanent or mobile building, structure, or other place, to knowingly permit the use of structure-real estate, permanent or mobile building, structure, or other place, by a transient merchant who does not have a permit as provided herein. In the case of a flea market or exhibition, only one permit need be obtained for the flea market or exhibition, and not for each transient merchant therein. In the case of a festival, only one permit need be obtained for the festival, and

each transient merchant at said festival shall not be required to obtain a separate transient merchant permit if said transient merchant is officially licensed by the festival or otherwise recognized as an official vendor of the festival, and displays in a prominent area, a logo or other written proof that it has such official designation. Any transient merchant not thus officially designated as an official festival licensee or vendor shall be required to



obtain a permit pursuant to the terms of this chapter.

('74 Code, § 7-43) (Ord. G-03-90, passed 3-13-90) Penalty, see § 117.99

§ 117.03 APPLICATION APPROVAL PROCEDURE.

(A) Each transient merchant desiring to engage in, do and transact business in the city shall file a verified application for a permit for that purpose with the ~~City Controller~~ Chief of Police or his/her agent and shall include the following information;

(1) The name and residence address of the applicant;

(2) The address and location of the building, permanent or mobile building, structure, real estate, or other place in which the person expects to do business;

(3) A list of the make and character of goods, wares and merchandise that person intends to sell;

(4) The name and address of employer, if any;

(5) The dates and times for which the applicant intends to do business;

(6) If employer is a corporation, the state of its incorporation, whether it is authorized to do business in the State of Indiana, and evidence that the corporation has designated a resident agency in Indiana upon whom legal service may be made and that the corporation will be responsible for the acts of its employees;

(7) A copy of a valid government issued photo identification;

(8) The applicant's fingerprints taken within the previous 60 days by the Fort Wayne Police Department; and

(9) A list of all convictions, the nature of the offense, and any penalty imposed, excluding traffic violations.

which application shall state the person's name, residence, and the location of the building, permanent or mobile building, structure, real estate, or other place in which that person expects to do business, and the make and character of the goods, wares and merchandise that person intends to sell.

(B) Upon receipt of each application, the Chief of Police or his/her agent shall conduct an investigation of the applicant's business reputation, moral character and criminal background. If upon investigation, the applicant's character is found to be unsatisfactory, no permit shall be issued.

('74 Code, § 7-44) (Ord. G-03-90, passed 3-13-90) Penalty, see § 117.99

§ 117.04 GROUNDS FOR PERMIT DENIAL, REVOCATION OR SUSPENSION

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A permit may be denied, revoked or suspended for the following:

(A) Any fraud or misrepresentation contained in the license application.

(B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the permit.

(C) Any violation of this Ordinance.

(D) Conviction of the permittee of any felony, or conviction of the permittee of any misdemeanor involving moral turpitude.

(E) The permittee conducting the business in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals or general welfare of the public.

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§ 117.05 REVOCATION OR SUSPENSION; HEARING

(A) Any license issued under this subchapter may be denied, revoked or suspended by the Chief of Police or his/her agent by reason of a violation of any of the provisions of this subchapter.

(B) When a hearing is set by the Chief of Police or his/her agent in a revocation or suspension procedure, the licensee shall receive not less than 20 days written notice, which notice shall contain charges made, as well as the time and place when the hearing will be held.

(C) At a hearing conducted pursuant to this subchapter, the licensee shall have the right to be represented by counsel, to present witnesses, to testify and cross-examine any other witnesses and to subpoena witnesses. Proceedings shall be conducted under oath.

(D) The Chief of Police or his/her agent shall preside at the hearing and shall make the final determination.

(E) If any decision adverse to the licensee is made by the Chief of Police or his/her agent after a hearing as provided above, the Chief of Police or his/her agent shall provide the licensee with a written reason for such decision, as well as a notice of the licensee's right to appeal to the courts of the state.

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§ 117.064 FEE; ISSUANCE; TERM.

(A) Each transient merchant, or operator of a flea market, exhibition or festival, except those engaged in selling any alcoholic beverages during the time of a festival, and except for those operating a carnival during the time of a festival, shall pay to the City-Controller-Chief of Police or his/her agent for a permit, the sum of \$250, and on the filing of the application and the payment of the permit fee as herein provided, the City-Controller-Chief of Police or his/her agent shall issue a transient merchant permit to do business as such at the place described in the application for a period of not less than 120 days. Any application for a permit must be

filed five business days prior to the first day of operation by the transient merchant.

(B) All persons who apply for a transient merchant/carnival permit or a transient merchant/alcohol permit shall pay to the City Controller-Chief of Police or his/her agent for a permit a sum derived from the following rate schedule:

DAYS HOURS RATE

Sunday-Thursday Before 12:00 a.m. \$500 per day

(1) If the permit holder intends to operate after 12:00 a.m. on any day Sunday through Thursday, the permit cost shall be an additional \$300 for each hour of operation after 12:00 a.m.

DAYS HOURS RATE

Friday, Saturday Before 1:00 a.m. \$1,000 per
& Holidays day

(2) If the permit holder intends to operate after 1:00 a.m. on any Friday, Saturday or holiday, the permit cost shall be an additional \$500 for each hour of operation after 1:00 a.m.

(3) This payment is due at the time of filing of the transient merchant/alcohol permit and/or the transient merchant/carnival permit, and the permittee shall then be issued a transient merchant/alcohol permit to do business as such at the place described in the application. Any application for a permit must be filed 30 business days prior to the first day of operation by the transient merchant.

(C) A transient merchant desiring to sell alcoholic beverages and operate a carnival or carnival rides shall be required to obtain both a transient merchant/alcohol permit and a transient merchant/carnival permit.

(D) A transient merchant selling alcoholic beverages or operating a carnival or carnival rides shall be exempt from the requirement of purchasing a transient merchant/alcohol permit and/or a transient merchant/carnival permit if said merchant is in either any of the following ~~two~~ categories:

(1) Listed as the sole sponsor or partner in the sponsorship of a festival, or as a vendor licensed by a festival sponsor.

(2) An organization that is exempt from the Indiana Gross Retail Tax under IC 6-2.5-5-26 and/or is a not-for-profit organization, and presents upon demand, written proof of such exemption and/or status as a not-for-profit organization.

(3) Any individual, company or organization which receives a caterer's permit or temporary beer and wine permit for any event which will function no more than two days in any calendar week.

('74 Code, § 7-45) (Ord. G-03-90, passed 3-13-90; Am. Ord. G-22-93, passed 6-8-93)

§ 117.075 TRANSFER PROHIBITED.

No permit issued under the provisions of this chapter shall be good for more than one location and it shall not be transferable.

('74 Code, § 7-46) (Ord. G-03-90, passed 3-13-90) Penalty, see § 117.99

§ 117.086 REFUND OF PERMIT FEE.

The ~~City Controller~~ Chief of Police or his/her agent will refund the permit fee that has been paid herein if such transient merchant remains in business longer than 120 days.

('74 Code, § 7-47) (Ord. G-03-90, passed 3-13-90)

§ 117.097 DISPLAY OF PERMIT.

Transient merchants shall display the permit, described in § 117.064 of this subchapter, in a prominent area at the location where that person engages in, does or transacts, any temporary or transient business in this city.

('74 Code, § 7-48) (Ord. G-03-90, passed 3-13-90) Penalty, see § 117.99

ICE CREAM VENDORS

§ 117.17 DEFINITIONS.

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

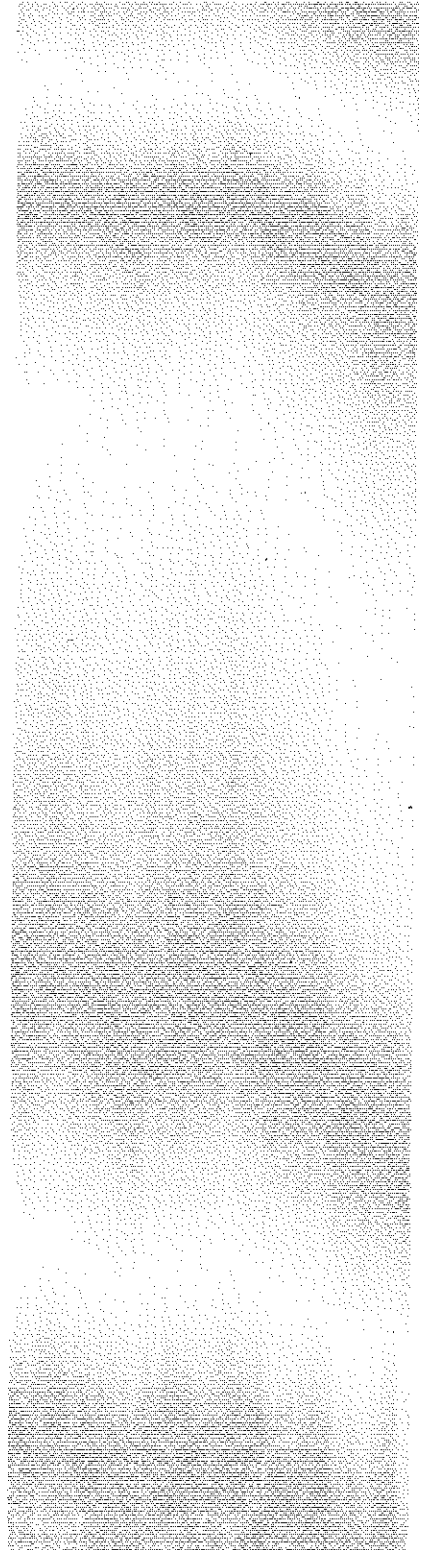
ICE CREAM TRUCK. Every motor vehicle in which ice cream, ice milk, frozen dairy products or ice flavored with syrup is carried for purposes of retail sale on the streets of the city.

VEND or VENDING. Offering ice cream, ice milk, frozen dairy products or ice flavored with syrup for sale from a motor vehicle on the public streets of the city.

('74 Code, § 17-117) (Ord. S-185-85, passed 10-8-85)

§ 117.18 INSPECTION, EQUIPMENT AND LICENSING.

Once every year prior to the issuance of any license to any person who uses and operates any ice cream truck on the streets of the city, the owner thereof shall cause said ice cream truck to be thoroughly examined and



inspected by the Health Officer of the City-County Board of Health to determine compliance with the minimum sanitation and health requirements specified by the state Board of Health. Written proof of said inspection shall be transmitted promptly by the Health Officer to the Fort Wayne Police Department. ~~office of the City-Controller/Chief of Police or his/her agent.~~ Upon receipt of the written proof of inspection showing compliance with minimum sanitation and health requirements as hereinabove specified, and prior to the issuance of a vendor or peddler's license as set forth hereinafter and prior to the use and operation of said ice cream truck, said ice cream truck shall be thoroughly examined and inspected by the Fort Wayne Police Department and must have the following safety equipment on said vehicle in good working order:

(A) A metal, horizontally extendable sign at least 20 inches in length, and at least ten inches in width imprinted with the words "STOP" in six-inch black block letters on yellow background, and "PROCEED WITH CAUTION" in two-inch black block letters on yellow background, such arm to be lighted at the street end of said arm with two alternately flashing lights two inches in diameter, amber in the front and red in the back clearly visible from both front and rear directions at a distance of at least 300 feet, the bottom of said sign to be at a height between three and five feet above the level of the street or way.

(B) The inspection letter for each vehicle by the Board of Health and Fort Wayne Police Department shall be carried in that vehicle.

(C) Each vendor-driver shall possess a valid Indiana chauffeur's driver's license. The owner shall provide his drivers, in the spring, a safety program of at least two hours taught by a qualified instructor in the operation of the ice cream truck and vending of products.

('74 Code, § 17-118) (Ord. S-185-85, passed 10-8-85) Penalty, see § 117.99

§ 117.19 OPERATION OF VEHICLES APPROACHING ICE CREAM TRUCKS.

(A)—It shall be unlawful for any motorist, when approaching a parked (defined as located within six inches of the curb or side of road, whichever is applicable) ice cream truck from any direction at a time when such ice cream truck is displaying the metal extendable arm and the flashing lights, to fail to come to a complete stop at least ten feet from the closest end of said ice cream truck or to fail to then proceed with caution past such ice cream truck at a reasonable and prudent speed and to yield the right-of-way to any pedestrian who crosses the roadway to or from the side of said ice cream truck; provided, that on any street or highway divided into two or more roadways by leaving an intervening space which is unimproved and not intended for vehicular traffic, or by a physical barrier or by a dividing section constructed to impede vehicular traffic, if the ice cream truck is on the opposite side of such traffic barrier, the driver of the approaching vehicle need not stop but shall proceed with due caution for the safety of the customers of the ice cream truck.

('74 Code, § 17-119) (Ord. S-185-85, passed 10-8-85) Penalty, see § 117.99

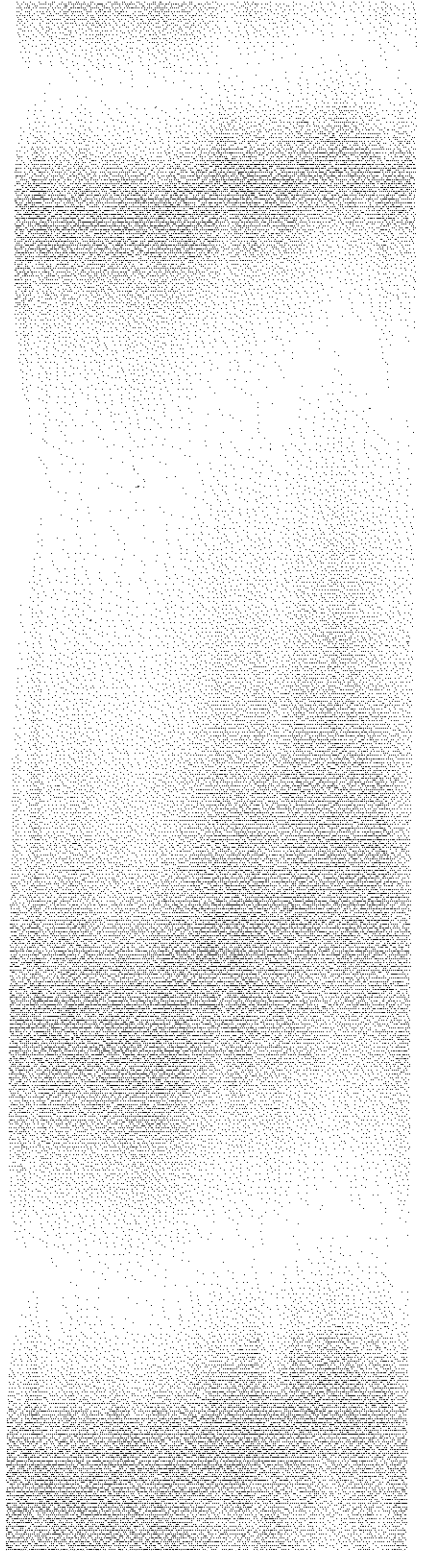
§ 117.20 OPERATION OF ICE CREAM TRUCKS; VENDING RESTRICTIONS.

(A) The driver of an ice cream truck shall come to a full and complete stop within six inches of the curb or side of the road. The vendor shall then activate the alternately flashing red and amber lights and extend the stop signal arm required by this subchapter prior to vending.

(B) The required signal arm and flashing lights shall not be used when the ice cream truck is in motion nor at any time when the ice cream truck is stopped for a purpose other than vending.

(C) The driver or vendor therein of an ice cream truck shall not back the truck to make or attempt to make a sale.

(D) The driver or vendor therein of an ice cream truck shall vend only from the side of said ice cream truck away from moving traffic.



(E) It shall be unlawful to offer to vend on any public street where parking is prohibited on one side or on both sides of said public street, or on any public street where the legal speed limit exceeds 30 miles per hour.

(F) It shall be unlawful to offer to vend or to vend from any ice cream truck on any public street before 9:00 a.m., between 5:00 p.m. and 6:00 p.m., and after dusk.

(G) It shall be unlawful to offer to vend or to vend from any ice cream truck within a distance of 1,000 feet of any school ground of any duly accredited public, or private, grade or junior high school between 7:00 a.m. and 4:00 p.m. on days when said schools are in session.

('74 Code, 17-120) (Ord. S-185-85, passed 10-8-85) Penalty, see § 117.99

§ 117.21 VENDING AT SPECIAL EVENTS.

It shall be unlawful for an ice cream truck duly inspected and licensed under this subchapter to vend its wares at special events, such as fireworks, Three Rivers Festivals, company benefits and parties in places other than on public streets without complying to provisions of § 117.19 through § 117.20.

('74 Code, 17-122) (Ord. S-185-85, passed 10-8-85) Penalty, see § 117.99

§ 117.99 PENALTY.

- (A) Any person who violates or fails to comply with any of the provisions of this chapter, for which no other penalty is provided, shall, upon conviction thereof, be fined in the sum of \$2,500. Each day such violation is committed shall constitute a separate offense. ('74 Code, § 7-49)
- (B) (1) Any ice cream vendor or driver of an ice cream truck who operates an ice cream truck in violation of §§ 117.18 through 117.21 shall be fined not to exceed \$50 and court costs for such violation. ('74 Code, § 17-121) (Ord. S-185-85, passed 10-8-85)
- (2) All fines and penalties shall be paid to the City Violations Bureau located in the office of the City Clerk. ('74 Code, § 17-123) (Ord. S-185-85, passed 10-8-85)

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