

CHAPTER 116: ITINERANT MERCHANTS

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GENERAL PROVISIONS

§ 116.01 LICENSE REQUIRED.

(A) No person, organization, group or association shall engage in any temporary or transient selling or display for sale of goods, wares, merchandise, advertising, food or beverages of any kind, at retail or wholesale, or provide services from any 1 locality or in traveling from place to place within the town, or provide entertainment for a fee or admission charge within the town, without first obtaining a license from the Town Clerk-Treasurer.

(B) Notwithstanding any of the provisions contained herein, no person, organization, group or association providing professional services regulated and licensed by the State of Indiana shall be denied permission to continue furnishing the professional services or assessed any penalty under this chapter should the person, organization, group or association refuse to obtain a license.
(Ord. 1998-3, passed 9-17-1998)

LICENSE PROCEDURES

§ 116.15 APPLICATION AND FEES.

Before issuing a license, each business shall file with the Clerk-Treasurer an application on forms provided by the town. The Clerk-Treasurer shall receive from each applicant for each location as follows:

(A) A photostatic copy of a valid Indiana Registered Retail Merchants Certificate (if business is a retail business);

(B) A fee in the amount of \$10 per day of operation. Operation during any part of a day shall be considered a full day;

(C) The name, residence and post-office address and phone number of the person, firm or corporation making the application; and if a firm or corporation, the name, address and phone number of the members of the firm or officers of the corporation, as the case may be;

(D) If the applicant is a corporation, then there shall be stated on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than the State of Indiana, the date on which the corporation qualified to transact business as a foreign corporation in the State of Indiana;

(E) A statement showing the kind of business proposed to be conducted, the actual dates for which the applicant desires to transact business, and if for the purpose of transacting such business any permanent or mobile building, structure or real estate is to be used for the exhibition by means of samples, catalogues, photographs and price lists or sale of goods, wares or merchandise; the location of the proposed place of business; and a verified statement from the owner(s) of the real estate that seller has permission to use the real estate for the sale of goods for the time period indicated;

(F) A detailed inventory and description of the goods, wares and merchandise to be offered for sale, the manner in which the same is to be advertised for sale and the representations to be made in connection therewith, and any and all details necessary to locate and identify all goods, wares and merchandise to be offered for sale; and

(G) The application shall be verified by signature of the applicant or his or her authorized agent.
(Ord. 1998-3, passed 9-17-1998)

§ 116.16 DATE OF APPLICATION.

Any person, organization, group or association requiring a business license shall apply for and pay for the same no later than 3 business days before the first date of commencing business in any calendar year.
(Ord. 1998-3, passed 9-17-1998)

§ 116.17 TERM OF LICENSE.

A license issued under this subchapter is valid for any 15-day period during the calendar year. Additionally, a license issued under this subchapter is not renewable.
(Ord. 1998-3, passed 9-17-1998)

§ 116.18 DISPLAY OF LICENSE.

Each business shall display the issued license in a place clearly visible to the Town Marshal.
(Ord. 1998-3, passed 9-17-1998)

§ 116.19 DEFINITIONS.

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

BUILDING. Any structure enclosed by walls on all sides, covered by a roof and requiring permanent location on the ground. Tents, temporary frames covered by soft material, or structures built without a building permit are excluded from this definition.

BUSINESS. Any person, organization, group or association engaging in the selling or display for sale for goods, wares, merchandise, food or beverages; providing services; or providing entertainment for a fee or admission charge.

ORGANIZATION, GROUP or ASSOCIATION.
Any organization, group or association claiming to be a single legal entity and therefore entitled to purchase a single license for the organization, group or

association. The organization, group or association must furnish the Clerk-Treasurer with a list of its individual members at the time of making application and furnish evidence that the organization, group or association is, in fact, doing business as a single entity, keeping a single set of books, a single deposit of their incomes, and paying expenses of doing business and state sales tax as a single entity. Failure to make such proof shall constitute an admission that each individual member of the organization, group or association is an individual business therefore required to purchase separate licenses.

TEMPORARY. That which is to last for a limited time only, as distinguished from that which is indefinite in its duration.

TRANSIENT. One who or that which is temporary.
(Ord. 1998-3, passed 9-17-1998)

§ 116.20 EXCEPTIONS.

(A) *Exhibitors.* Individual exhibitors shall be exempted from applying for and paying for an itinerant business license, provided the exhibitor is sponsored by a current Nashville business license holder. The sponsor and the individual exhibitors shall not be required to satisfy the definition of organization, group or association as set forth in § 116.19, provided the exhibition is at a single location and is limited to 4 consecutive days.

(B) *Charitable, educational or religious organizations.* Any person, organization, group or association requiring a license as set forth in § 116.01 above, but engaging in the activity on behalf of and solely for the benefit of any bona fide local (Brown County), public, charitable, educational or religious organization shall apply for a license, but shall be exempted from paying for a business license.

(C) *Garage and yard sales.* Any person, organization, group or association requiring a license fee as set forth in § 116.01 above, selling his, her or its own used merchandise from the garage, basement

or yard and offering the merchandise for sale no more than 2 days in any given 6 months, shall be exempted from applying for and paying for a business license.

(D) *Farm produce.* Any person, organization, group or association requiring a license as set forth in § 116.01 above, selling only local (Brown County) produce, which is grown by that person, organization, group or association and engaging in such selling for less than 45 days in any calendar year, shall be exempted from applying for and paying for a business license.

(E) *Veterans.* Any veteran shall be exempted from applying for and paying for a business license.

(F) *Commercial agents.* The provisions of this subchapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business.

(G) *Governmental action.* The provisions of this subchapter shall not apply to sheriffs, constables or other public officers selling goods, wares and merchandise according to law. Additionally, this subchapter shall not apply to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors.
(Ord. 1998-3, passed 9-17-1998)

§ 116.21 LICENSE APPROVAL, REVOCATION OR TRANSFER.

(A) *Approval of application.* Each applicant for a license must show compliance with the appropriate ordinances, rules, regulations and statutes of the Town of Nashville, County of Brown and State of Indiana, and in relation to public health, safety and welfare.

(B) *Revocation of license.* In the event any licensee fails to comply with the conditions set forth in division (A) of this section, the Clerk-Treasurer shall cause the license to be revoked. Before commencing operations again, the licensee must apply for a new license.

(C) *Revocation not exclusive.* The revocation of a license shall not act as a bar to the town proceeding to prosecute violations in accordance with this chapter.

(D) *Transfer.* Itinerant merchants licenses shall not be transferable.
(Ord. 1998-3, passed 9-17-1998)

§ 116.22 SALE WITHIN PUBLIC RIGHT-OF-WAY OR FROM PUBLIC LANDS.

The issuance of a business license shall not give any business the right to sell goods, wares, merchandise, food, beverages or provide entertainment on or within any public right-of-way, street, alley, sidewalk, parking lot or from any land owned by any governmental unit without the express written consent of the owner of the land.
(Ord. 1998-3, passed 9-17-1998)

REVOCATION PROCEDURE; APPEAL

§ 116.35 REVOCATION PROCEDURE.

Any license issued pursuant to this chapter may be revoked by the Clerk-Treasurer on behalf of the Board of Trustees after notice and an inquiry has been made for any of the following causes:

(A) Any fraud, misrepresentation or false statement contained in the application for license;

(B) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;

(C) Any violation of this chapter;

(D) Conducting the business licensed under this chapter in an unlawful manner or in such manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the

public. Notice of a possible revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and requesting any information from the licensee regarding a denial; this notice shall be mailed, postage prepaid, to the licensee at his or her last known address at least 10 days prior to the date set for the revocation by the Clerk-Treasurer.

(Ord. 1985-3, passed 5-6-1985)

§ 116.36 APPEAL PROCEDURE.

Any person aggrieved by the decision of the Clerk-Treasurer in regard to the denial of application for a license as provided for in this chapter, or by a decision of the Clerk-Treasurer in connection with the revocation of a license as provided herein, shall have the right to appeal to the Board of Trustees. This appeal shall be taken by filing with the Board of Trustees within 14 days after notice of the decision of the Clerk-Treasurer has been mailed to the person's last known address, a written statement setting forth the grounds for the appeal. The Board of Trustees shall set the time and place for a hearing on the appeal and notice of the hearing shall be given to the person by registered or certified mail, return receipt requested, at least 10 days prior to the hearing date. The order of the Board of Trustees on the appeal shall be final.

(Ord. 1985-3, passed 5-6-1985)

ALTERNATIVE COMPLIANCE

§ 116.45 REQUIREMENTS.

The provisions of this chapter shall not apply to solicitors representing member companies, firms, corporations or partnerships of a trade association recognized by the town, or the solicitors of individual companies, firms, corporations or partnerships which:

(A) Subscribe to and are bound by policy statement code or regulation established either by the

company, firm, corporation or partnership individually, or subscribe to and are bound by the policy statement, code or regulation of a trade association of which the company, firm, corporation or partnership is a member in good standing and which policy statement, code or regulation requires that:

(1) The offer of products or services for sale, either through oral representation or advertising literature, shall be truthful and accurate as to price, grade, quality, make, value, performance, quantity, currency or model and availability;

(2) The terms of any guaranty offered by the seller in connection with the sale shall be furnished to the buyer in writing and shall clearly state the nature and extent of such guaranty; and

(3) The policy statement, code or regulation prohibits the initiation or continuation of any deceptive or unlawful trade practices as defined by any statute or ordinance in force and effect within this jurisdiction.

(B) Recognize a responsibility to consumers for violations of either its policy statement, code or regulation or deceptive and/or unlawful trade practices, statutes and ordinances by the solicitors of its products or services, even if the company, firm, corporation or partnership had no knowledge of the violation or acts, and this lack of knowledge is the result of failure by the company, firm, corporation, or partnership to establish procedures whereby it would be kept informed of the activity of the solicitors selling its products or services; or

(C) Have established a procedure for processing consumer complaints within a reasonable time and providing for consumer redress if, after the fact-finding is completed, it is determined that the consumer was aggrieved by a violation of the policy statement, code or regulation or a statutory deceptive or unlawful practice.

(D) Festival exception.

(1) Itinerant merchants who participate in festivals or similar activities which have been

pre-approved by the Town Council and which have a representative or fiscal agent who can handle the application process may be licensed for a period of up to 7 consecutive days for a single payment of \$15 per merchant.

(2) The holder of a license under this exception shall be permitted to conduct business on public streets, alleys, sidewalks or parking lots within the area designated by the Town Council in its approval of the festival for which the merchant's license has been issued.

(Ord. 1985-3, passed 5-6-1985; Am. Ord. 2008-02, passed 4-17-2008) Penalty, see § 116.99

§ 116.46 APPLICATION.

Application for alternative compliance as provided in this chapter shall be completed and alternative compliance status shall be granted upon the filing of the following information and items with the Clerk-Treasurer:

(A) Five current copies of the policy statement, code or regulation which meet the requirements specified in § 116.21;

(B) A notarized statement containing the name of the company, firm, corporation, or partnership subscribing thereto, and listing the address, telephone number and the name of the executive within the company, firm, corporation or partnership designated to administer the policy statement, code or regulation. In the case of a trade association making application on behalf of its membership based upon an association policy statement, code or regulation, which the membership must subscribe to and be bound by, the application must contain the above-required information for each of its individual members which desire alternative compliance status, and, in addition, must list the name, address and telephone number of the officer or agent in charge of administering the association policy statement, code or regulation; and

(C) The application, whether submitted by an individual company, firm, corporation or partnership, or by a trade association recognized by the town on its

membership's behalf, must be signed by the chief executive officer of the individual applicant or trade association applicant and must be notarized.

(Ord. 1985-3, passed 5-6-1985) Penalty, see § 116.99

§ 116.47 PROCESSING OF COMPLAINTS.

(A) A consumer complaint against a company, firm, corporation or partnership having alternative compliance status may be filed in the following ways:

(1) A consumer may register a complaint against an alternative compliance company, firm, corporation, or partnership or trade association with the Clerk-Treasurer in person, by telephone or in writing; or

(2) A consumer or his or her duly authorized representative, including but not limited to legal counsel, may file a written complaint directly with the alternative compliance company, firm, corporation, partnership or trade association, so long as the Clerk-Treasurer receives a copy of the directly submitted complaint, and so long as the written complaint filed directly with the alternative compliance company, firm, corporation, partnership or trade association clearly indicates that the Clerk-Treasurer has been notified.

(B) In the situation where the complaint is filed with the Clerk-Treasurer, the Clerk-Treasurer may notify the alternative compliance company, firm, corporation, partnership or trade association that the complaint has been lodged, either by sending the complaint in writing or by placing a collect call to the person, officer, agent, or employee designated by the company, firm, corporation or partnership to receive that information in its alternative compliance application.

(C) The complaint, as filed with the alternative compliance company, firm, corporation, partnership or trade association shall contain the following information:

- (1) Name and address of consumer;

(2) Name or trade name of the product or service purchased;

(3) Name of the company, firm, corporation, or partnership that manufactured and/or distributed the product or service, if the name differs from the trade name of the product or service and if it is known by the consumer;

(4) Name of the solicitor involved in the transaction, if remembered by the consumer;

(5) Purchase date, if known;

(6) Identifying contract or receipt numbers, if available; and

(7) Copy of the contract, invoice or receipt, if available.

(D) Upon receipt of a consumer complaint or an official complaint against alternative compliance company, firm, corporation or partnership which does not necessarily involve a sales transaction, but alleges a violation of a deceptive or unlawful trade practice statute or ordinance in force and effect in the jurisdiction, the Clerk-Treasurer, the individual or his or her authorized representative shall submit the information surrounding the allegation to the person, officer, agent or employee designated by the company, firm, corporation, partnership or trade association to receive such complaints in its alternative compliance application.

(E) Each company, firm, corporation, partnership, or trade association on behalf of its membership that has received alternative compliance status shall, upon receipt of a complaint, file a written statement with the Clerk-Treasurer and the individual consumer complainant, or his or her duly authorized representative, containing the disposition of the complaint. The statement shall contain the findings of facts upon which the disposition was based and shall be filed within 20 business days from the date of receipt of the complaint.

(Ord. 1985-3, passed 5-6-1985)

§ 116.48 LOSS OF STATUS.

(A) Any company, firm, corporation or partnership having received alternative compliance status as provided for in this chapter, which fails to honor the provisions of the policy statement, code or regulation or which violates any of the other requirements for obtaining and maintaining alternative compliance status shall be subject to revocation of alternative compliance status for not less than 1 year.

(B) The authority to revoke the alternative compliance status, as provided in this chapter shall rest with the Clerk-Treasurer who shall consider the following criteria in making that determination:

(1) Failure by the company to file any responses with the Clerk-Treasurer concerning a consumer complaint(s) forwarded by the Clerk-Treasurer to the person, officer or agent or employees designated by the company, firm, corporation, partnership or trade association to receive the information;

(2) Failure to return money or replace products which were received by the consumer in a defective condition;

(3) A pattern of failure to deliver ordered goods without adequate explanation shall constitute grounds for automatic revocation. For purposes of this provision, a pattern shall be defined as 10 instances of failure to deliver without explanation; or

(4) Failure to correct or adequately explain repeated allegations of violation of statutory deceptive or unlawful trade practices in force and effect within the corporate limits of the company, firm, corporation, partnership or trade association or violation filed with the town as part of the application for alternative compliance even where a sale did not result, when such allegations have been forwarded by the Clerk-Treasurer, individual consumer, or his or her authorized representative to the person, officer, agent or employee designated by that company, firm, corporation or partnership to receive the material.

(C) Prior to a revocation of alternative compliance status becoming final, the Clerk-Treasurer shall give written notice at least 15 business days in advance of the effective revocation date to the company, firm, corporation or partnership informing it of the effective date of the revocation for that company, firm, corporation or partnership, and the finding upon which the determination was based, and in addition, notice that the company, firm, corporation or partnership can appeal the determination to revoke the alternative compliance status by filing a notice of review with the Clerk-Treasurer not later than 15 business days after receipt of the notice of revocation. (Ord. 1985-3, passed 5-6-1985)

§ 116.49 REVIEW OF REVOCATION.

(A) The determination of the Clerk-Treasurer to revoke the alternative compliance status of a company, firm, corporation or partnership as provided for in this chapter shall be subject to review. An appeal is perfected if the company, firm, corporation or partnership within 15 business days after receipt of the notice of revocation files a written petition for review with the Clerk-Treasurer.

(B) Upon receipt of a petition for review, the Clerk-Treasurer shall place petitioner on the agenda of the next regularly scheduled monthly meeting of the Board of Trustees, at which time the petitioner may present written and oral testimony and evidence contesting the revocation of its alternative compliance status. The Clerk-Treasurer may designate the Town Attorney to present to the Town Board of Trustees the findings upon which the revocation was made.

(C) The review panel shall notify the petitioning company, firm, corporation or partnership of its decision to either uphold or reverse the revocation within 30 days from the date of the review hearing. (Ord. 1985-3, passed 5-6-1985)

§ 116.99 PENALTY.(A) *General.*

(1) Any person, firm or corporation failing to comply with the provisions of §§ 116.01 and 116.15 through 116.22 shall be subject to a fine of \$100 per day.

(Ord. 1998-3, passed 9-17-1998)

(2) Any person, firm or corporation failing to comply with the provisions of §§ 116.35, 116.36 and 116.45 through 116.49 shall be subject to a fine of \$100 per day up to a maximum penalty of \$2,500 per licensing period.

(Ord. 1985-3, passed 5-6-1985)

(B) *Separate violations.* Each day a violation continues shall be deemed a separate violation during any 1 licensing period.

(Ord. 1985-3, passed 5-6-1985; Am. Ord. 1998-3, passed 9-17-1998)

(C) *Enforcing officer.* The Town Marshal or his or her deputy is hereby authorized to enforce the provisions of this chapter.

(Ord. 1998-3, passed 9-17-1998)