

GENERAL ORDINANCE NO. 5, 2024

**BEING AN ORDINANCE AMENDING
CHAPTER 4 ARTICLE 2, DIVISION VIII SECTIONS 4-60 THROUGH 4-73 AND
DIVISION XIII, SECTIONS 4-136, 4-137 AND 4-143 OF THE WABASH CITY CODE
FOR THE CITY OF WABASH, INDIANA PROVIDING FOR THE REGULATION
OF TRANSIENT MERCHANTS AND RESTAURANTS WITHIN THE CITY OF
WABASH**

WHEREAS, the City of Wabash has adopted ordinances for the regulation of transient merchants, restaurants and itinerant restaurants within the limits of the City of Wabash; and

WHEREAS, the ordinance currently provides that merchants may not sell out of any vehicle; and

WHEREAS, food trucks are commonplace within the city limits of the City of Wabash, especially in connection with various festivals and special events; and

WHEREAS, it is appropriate to permit food trucks and other mobile vendors but only with certain restrictions and regulations designed to protect the citizens and visitors to this community;

NOW THEREFORE BE IT HEREBY ORDAINED that

ORDINANCE SECTION 1. Chapter 4, Article 2, Division VIII, Sections 4-60 through 4-73 are repealed in their entirety.

ORDINANCE SECTION 2. Chapter 4 Article 2, Division VIII concerning transient merchants, peddlers, hawkers, and solicitors within the city limits be amended by adding the following:

SECTION 4-60 DEFINITIONS. The following terms shall have the meanings set forth herein:

- a. “Political” Means on behalf of a political party or candidate or for the purpose of influencing legislation or personal belief.
- b. “Religious” Means on behalf of established religion which means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination.
- c. “Solicitation”
 1. Means the act of any person traveling by foot, vehicle or any other type of conveyance who goes on private or public property to:
 - i. Request, either directly or indirectly, money, credit, funds, contributions, personal property or anything of value;
 - ii. Take or attempt to take orders for the sale of any goods, wares, merchandise or services of any kind, or description for future delivery or for services to be performed in the future either in person or by distributing flyers and leaflets;
 - iii. Does not include a realtor or auctioneer conducting private listing or auctions of real or personal property.
 2. Does not mean the following:

- i. A person communicating or otherwise conveying ideas, views, or beliefs or otherwise disseminating oral or written information to a person willing to directly receive such information, provided that such information is a political, religious or charitable nature;
- ii. A person seeking to influence the personal belief of the occupant of any residence regarding any political or religious matter;
- iii. A person seeking to obtain, from any occupant of any residence, an indication of the occupant's belief in regard to any political or religious matter;
- iv. A person conducting a poll, survey or petition drive in regard to any political matter;
- v. A person carrying, conveying, delivering or transporting food or beverage products, newspapers or other goods to regular customers on established routes or to the premises of any person who had previously ordered such products or goods is entitled to receive the same;
- vi. A person whose business is to solicit dealers or permanent merchants in the usual course of business; or
- vii. Any person exempted from this Chapter's requirement under Ind. Code 8-1-34-30.

viii. Food truck units invited on private property require no City permits,

ix. Special events located on private property or special events by the Board of Public Works require no City Permits.

- 3. **“Solicitor”** Means a person, whether a resident of the city or not, engaged in solicitation. In addition, a Solicitor may also be considered a Peddler or Transient Merchant as defined in Indiana Code 25-37-1 et al., which includes any method of selling goods, wares, or merchandise door to door in open public on the streets, alleys, avenues, sidewalks or other common public places within the city limits of Wabash, Indiana.
- 4. **“Beverage”** Means any nonalcoholic liquid, hot or cold, intended for use in whole in part for human consumption.
- 5. **“Commissary”** Means any retail food establishment, registered catering establishment, or commercial kitchen, subject to inspection by the Health Department, for the purpose of storing supplies, cleaning, and serving a food truck. No food, supplies, or equipment shall be stored or prepared in a private residence.
- 6. **“Food Truck”** Means a person who sells, serves, offers for sale, or gives away food or beverages from any self-contained mobile unit, 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 merchandise and is closed up when not in operation. Food trucks shall utilize a commissary. An ice cream truck that does not park or locate in any one place for longer than ten minutes is not considered a mobile food vendor unit for purposes of this Chapter.
- 7. **“Mobile vendor unit”** Means a person who sells, offers for sale or gives away any goods, wares, or merchandise from any self-contained mobile unit, 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 a truck, trailer, bus or other vehicle.

8. **“Pushcart”** Means a non-motorized wheeled cart which may be moved by one or more persons, and which is designed and used for displaying, keeping or storing any food or beverage or products for sale by a vendor.
9. **“City Property”** Means all outdoor areas which are owned, or leased as lessee, by the City or one of the City’s departments, or upon which the City or one of its departments has an easement or right-of-way including, but not limited to, streets, plazas or other area adjacent to building owner by the city or one of its departments.
10. **“Food”** Means any raw, cooked, frozen or processed edible substance or beverage intended for use in whole or in part for human consumption.
11. **“Private Property”** Means all outdoor areas which are not owned or leased by any governmental agency or entity, including, but not limited to, streets, sidewalks, plazas, parking lots, or other areas adjacent to buildings not owned by a governmental agency or entity.
12. **“Special events”** Is any event so designated by the City of Wabash Board of Public Works and Safety.
13. **“Enforcement Officer”** Is a person designated by the Mayor or the Building Commissioner to enforce the provisions of this Ordinance. The Enforcement Officer is sometimes also called Code Enforcement Officer.
14. **Board of Works.** Is the Board of Public Works and Safety of the City of Wabash, Indiana.
15. **License.** Means a license or permit issued by the Clerk-Treasurer or Building Commissioner of the City of Wabash, Indiana.

SECTION 4-61 OPERATIONS GENERALLY.

It is unlawful to locate as a solicitor, food truck, or as a pushcart in the City except in accordance with the provisions of this Chapter.

SECTION 4-62 BUSINESS LICENSE-REQUIRED.

a. No person shall carry on the business of soliciting, acting as a solicitor, peddling, acting as a peddler, operating a pushcart, or food truck within the corporate limits of the City, whether for wholesale or retail, by carrying, exposing, or representing for sale, either on foot or from a vehicle, within any street, avenue, alley, square, sidewalk or similarly situated open public place, or by going from house to house within the City, any item, article, merchandise, food beverage, food items, or other similar products without obtaining a license as set forth in this Chapter.

b. It is unlawful to locate as a solicitor, food truck, as a mobile vendor unit, or as a pushcart in the City without first having secured a license to do if required by this Ordinance.

c. A separate license shall be required for each food truck, mobile vendor unit, pushcart, or solicitor.

d. This Chapter does not apply to any recognized participant in a Special Event authorized or sponsored by an entity that has obtained prior approval as a special event from the City Board of Works.

SECTION 4-63 BUSINESS LICENSE-APPLICATION

- a. Any person desiring a license under this Chapter shall submit to the Building Commissioner’s office a fully, completed application to be approved as a solicitor, as a food truck, mobile vendor unit, or a pushcart within the City of Wabash, Indiana. The application must set forth or have attached the following information as specified:

1. The applicant's name, current physical address, mailing address, telephone number, email address and date of birth.
 2. The name, current physical address, mailing address, tax identification number, and telephone number of the person, firm, limited liability company, corporation or organization by which the applicant is employed or for which it represents.
 3. If the applicant is employed by or represents a firm, limited liability company or corporation, the applicant shall provide the name and current physical and mailing addresses of all members of the firm or limited liability company, or all officers of the corporation, as the case may be;
 4. If the applicant is employed by or represents a corporation or limited liability company then there shall be stated on the application the date of the incorporation or organization, the state of incorporation or organization, and if the applicant is a corporation or limited liability company formed in a state other than the State of Indiana, the date on which such corporation or limited liability company became qualified to transact business as a foreign corporation or foreign limited liability company in the State of Indiana;
 5. The types of products or services to be sold and the hours of the day the applicant plans to conduct business;
 6. The place or places where said business may be conducted, and a written statement, if applicable, from the owner of any private property wherein the business may be conducted authorizing the applicant to use the property;
 7. The duration of the license being sought;
 8. The names of municipalities or governmental units to which the applicant has applied for a license of similar character within the twelve (12) months prior to the date of application; and
 9. The designation of a resident of the State of Indiana as a registered agent for purposes of receiving notices from the City of Wabash or other service of process, as a result of doing business in the City of Wabash.
- b. An application for a license under this Chapter for all forms of business regulated by this Chapter shall not be considered unless proof of the following are provided with the application:
1. A copy of all required permits issues by the Wabash County Health;
 2. Proof of registration as a business with the Indiana Secretary of State;
 3. Proof of an Employer Identification Number;
 4. If business is to be conducted on or in property owned or managed by the City of Wabash Parks Department, approval from the Wabash Parks Board shall be obtained and Wabash Park Department policies shall be followed;
 5. Proof of insurance in accordance with the amounts established in this Chapter;
 6. A copy of the Indiana registration for the vehicle, for a mobile food vendor unit or mobile vendor unit;
 7. Copy of a valid driver's license, for a food truck or mobile vendor unit;
 8. Proof of payment for, or exemption form, the applicable fee.

SECTION 4-64 BUSINESS LICENSE-DURATION AND FEE.

a. A. Each itinerate vendor applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a consecutive period of time):

1. One Day License: \$25.00;

2. Three Day License: \$35.00;
3. Seven Day License: \$50.00;
4. Thirty Day License: \$75.00;
5. Three Month License: \$150.00;
6. Six Month License: \$200.00;
7. One Year License: \$300.00.

b. Each food truck vendor applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a calendar year the renewal amount is for consecutive years only)

1. One Year License: \$100.00
2. Renewal: \$50.00

c. The following listed organization and/or entities while required to obtain a license under this Chapter are exempt from having to pay fees, so long as the proceeds thereof are to be used exclusively for religious, charitable, educational, or scientific purposes:

1. Churches;
2. Schools;
3. Benevolent organizations;
4. Fraternal organizations; and
5. Other similarly situated organizations.
6. The Farmers Market or other similar ventures approved by either the Board of Works or Downtown Wabash, Inc.

d. Pursuant to Ind. Code 25-25-2-1, while all honorably discharged veterans are required to obtain a license under this Chapter, they are exempt from having to pay any fees. No deductions shall be allowed from the fee for a license issued pursuant to this Chapter for any part of this term of which the license does not engage in such business.

SECTION 4-65 BUSINESS LICENSE-INSURANCE AND INDEMNITY.

- a. Each applicant for a license shall provide a certificate of liability insurance to the Building Commissioner providing proof of insurance in the following amounts:
 1. Personal Injury \$100,000.00 per occurrence and \$300,000.00 in the aggregate; and
 2. Property Damage: \$25,000.00 per occurrence and \$50,000.00 in the aggregate.
- b. Each applicant shall also provide an indemnity and hold harmless agreement in favor of the City of Wabash on a form required by the Building Commissioner for losses or expenses arising out of the operation of his/her business.
- c. All business operations conducted under this Chapter shall require proof of Worker's Compensation Insurance on all employees or the submission of a State of Indiana affidavit of self-employment.

SECTION 4-67 BUSINESS LICENSE-ISSUANCE.

The Building Commissioner shall, within fourteen days of receipt of the completed application and any necessary approvals, issue the business license which may contain restrictions regarding hours of operations and locations of operation to the applicant if the Building Commissioner finds the following:

- a. Compliance with all provisions for this Chapter;
- b. The applicant has not had a prior license issued under this Chapter, or any other similar license authorized by a different governmental entity, suspended, or revoked; and
- c. The applicant has not previously been found to be in violation of this Chapter, or any other similar law promulgated by a different governmental entity.

SECTION 4-68 BUSINESS LICENSE-TRANSFERABILITY.

A license issue pursuant to this Chapter shall not be transferable to another licensee.

SECTION 4-69 BUSINESS LICENSE-IDENTIFICATION.

a. All licenses issued by the Building Commissioner under this Chapter shall be displayed at all times on the unit or on the person operating the business.

b Failure to display or exhibit a license in accordance with this Section may be grounds for suspension or revocation of said license.

SECTION 4-70 BUSINESS LICENSE-INSPECTIONS REGARDING FOOD TRUCKS AND PUSH CARTS.

a. Frequency of inspection—The Building Commissioner or designee may periodically inspect, or request the county health officer to inspect, each food truck or pushcart for which a permit is required under the provisions of this division.

b. Procedure to follow when any sanitation violation noted—If, during the inspection of any food truck or pushcart, the Building Commissioner, or designee, discovers, or is informed by health officer of the discovery of, the violation of any of the sanitation requirements in section 4-139 of the Wabash City Code, The Building Commissioner shall order the immediate correction of the violation.

c. Authority to inspect and to copy record—The person operating the food truck or pushcart shall, upon the request of the Building Commissioner, Building Commissioner designee, or health officer, permit such person access to all parts of the food truck or pushcart and shall permit copying any or all records relative to the enforcement of this division.

d. Revocation of permit and penalties for continued operation—Upon the failure of any person maintaining or operating a food truck or pushcart to comply with any order of the Building Commissioner or county health office, the Building Commissioner shall summarily revoke the permit of such person and establishment and shall forbid the further sale or serving of food therein or therefrom. Any person

continuing to sell or serve food in or from the food truck or pushcart the permit of which has been revoked, shall be subject to the penalties provided in section 4-72.

SECTION 4-71 STANDARDS OF CONDUCT FOR SOLICITORS OR PEDDLERS OF MERCHANDISE.

All solicitors shall conform to the following standards of conduct:

- a. Solicitors shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Wabash’s Noise Ordinance as stated in the Wabash Municipal Code;
- b. A device may not be used which would amplify sounds nor may any other device be used to draw attention to the solicitor by an aural means or a light-producing device (examples of such devices may include, but are not meant to be limited to the following: bull horns and strobe lights);
- c. No solicitor shall expose any person to any undue safety or health hazards nor create a public nuisance;
- d. Solicitors shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out inside of the City’s jurisdiction;
- e. No person shall engage in abusive solicitation. Such abusive activity shall mean to do one or more of the following while soliciting or immediately thereafter:
 1. Coming closer than three feet to the person solicited unless and until the person solicited indicates that the person wishes to make a purchase or otherwise receive the solicitation;
 2. Blocking or impeding the passage of the person solicited;
 3. Repeating the solicitation after the person solicited has indicated an objection to the solicitation;
 4. Following the person solicited by proceeding behind, ahead or alongside such person after the person has indicated an objection to the solicitation;
 5. Threatening the person solicited with physical harm by word or gesture;

SECTION 4-72. – APPEALS AND PENALTIES.

a. Any person who has been denied the issuance of a permit, or whose permit contains restrictions the person finds objectionable, may appeal such denial or restrictions to the Board of Works.

b. Any person who violates any provision of this section shall be subject to a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00) and costs, and the revocation of his license for a period not to exceed two (2) years.

SECTION 4-73. - RESERVED.

ORDINANCE SECTION 3. Chapter 4, Article 2, Division XIII, Section 4-136 is hereby amended as follows:

- a. To delete wherever they appear as a phrase in Section 4-136 the words “or itinerant restaurant” and “and itinerant restaurant.”
- b. To delete subparagraph c. and renumber old subparagraph d. as new subparagraph c.

ORDINANCE SECTION 4. Chapter 4, Article 2, Division XIII, Section 4-137 is hereby amended as follows:

a. Subparagraph c. is repealed in its entirety and shall be replaced with the following:

“c. Food Trucks and Pushcarts shall comply with all of the provisions of Chapter 4, Article 2, Division VIII,”

b. Section 4-137 d. shall be amended to delete the phrase “or itinerant restaurant.”

ORDINANCE SECTION 5. Chapter 4, Article 2, Division XIII, Section 4-138 is hereby amended to delete the phrase “and itinerant restaurants.”

ORDINANCE SECTION 6. Chapter 4, Article 2, Division XIII, Section 4-143 is hereby repealed in its entirety and the provisions thereof are now incorporated as part of Section 4-70.

This ordinance shall take effect upon its passage by the Common Council.

PASSED BY THE COMMON COUNCIL OF THE CITY OF WABASH, INDIANA THIS _____ DAY OF _____, 2024.

By: _____
John Burnsworth, Common Council President

PRESENTED BY ME TO THE MAYOR OF THE CITY OF WABASH ON THE _____ DAY OF _____, 2024 AT THE HOUR OF _____ O’CLOCK ____ M.

Melanie Givens Penn, Clerk-Treasurer

THIS ORDINANCE WAS APPROVED AND SIGNED ON THE _____ DAY OF _____, 2024 AT THE HOUR OF _____ O’CLOCK ____ M.

Scott A. Long, Mayor

ATTEST:

Melanie Givens Penn, Clerk-Treasurer