

ORDINANCE NO. 2014-OR-26

BEFORE THE JEFFERSONVILLE COMMON COUNCIL
STATE OF INDIANA

**AN ORDINANCE REGULATING DOOR-TO-DOOR SOLICITATION AND
TRANSIENT MERCHANTS (REPEALING 2012-OR-13 and 2013-OR-6)**

WHEREAS, the Jeffersonville Common Council is vested with the power, duty and obligation to enact ordinances and laws that are designed to provide for the public safety, health and welfare of the citizens of Jeffersonville, Indiana;

WHEREAS, in an effort to protect and assure the public health, safety and welfare, the City of Jeffersonville periodically reviews its business regulations to ensure their applicability, safety, fairness and fitness not only for commerce, but also for the peace, dignity and safety of the Citizens of Jeffersonville;

WHEREAS, the City of Jeffersonville has the authority pursuant to Indiana law to develop business regulation ordinances, establish business standards that are promulgated for the purpose of providing for the public health, safety and welfare;

WHEREAS, the Common Council desires to repeal Ordinances No. 2012-OR-36 and 2013-OR-6, and replace said ordinances with the following:

Section 1 - Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Noncommercial door-to-door advocate. A person who goes door-to-door for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purpose of this article, the term door-to-door advocate shall not fall under the term solicitor and include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

Peddler. A person who goes from house to house, door to door, business to business, street to street, or any other type of place to place movement, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, other personal property, or services that the person is carrying or otherwise transporting.

Person. Any natural individual, group, organization, corporation, partnership, or similar association.

Professional fundraiser. Any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, political, social, or other charitable organization.

Solicitor. A person who goes from house to house, door to door, business to business, street to street, or any other type of place to place movement, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. For purposes of this article, the term solicitor shall have the same meaning as the term canvasser.

Transient merchant (Street or Mobile Vendor). A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty storefront for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering goods, wares, products, merchandise, or other personal property and who does not remain in any one location for more than 14 consecutive days.

Section 2 - Exceptions to definitions

For the purpose of this chapter, peddler, solicitor, and transient merchant shall not apply to: Noncommercial door-to-door advocates. Nothing within this article shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Persons engaging in non-commercial door-to-door advocacy shall not be required to register as a solicitor under this ordinance.

- (a) Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler.
- (b) Any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk.
- (c) Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route.
- (d) Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to

establish a regular delivery route, or when publications are delivered to the community at large.

- (e) Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales.
- (f) Any person participating in an organized multi-person bazaar or flea market.
- (g) Any person conducting an auction as a properly licensed auctioneer.
- (h) Any officer of the court conducting a court-ordered sale. Exemption from these definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirement provided by this or any other city ordinance.

Section 3 - License or registration required.

- (a) State or County license required. No person shall conduct business as a peddler, solicitor, or transient merchant within the city limits without first having obtained the appropriate license from the State of Indiana or Clark County, including the Health Department that may be necessary, if the state or county issues a license for the activity.
- (b) City license required. Except as otherwise provided for by this article, no person shall conduct business within this jurisdiction as either a peddler or a transient merchant without first having obtained a license from the city. The license requirement shall not apply to a noncommercial advocate.
- (c) Application. Application for a city license to conduct business as a peddler or transient merchant shall be made at least ten regular business days before the applicant desires to begin conducting business. Each person conducting business as a peddler or transient merchant (unless exempted herein) shall make application for a city license. A license will not be granted in the name of a business or other entity. The applicant must appear in person and show proper identification. Application for a license shall be made on a form prepared by the Department of Law and available at the Department of Planning and Zoning. All applications shall be signed by the applicant. All applications shall include the following information:
 - (1) Applicant's full legal name.
 - (2) All other names under which the applicant conducts business or to which applicant officially answers.

- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features and the like).
- (4) Full address of applicant's permanent residence.
- (5) Telephone number of applicant's.
- (6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which applicant is an employee or agent.
- (7) Full address of applicant's regular place of business (if any).
- (8) Any and all business related telephone numbers of the applicant.
- (9) The type of business for which the applicant is applying for a license.
- (10) The dates during which the applicant intends to conduct business.
- (11) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.
- (12) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than non moving vehicle traffic offenses.
- (13) A statement as to whether or not the applicant has any pending criminal charges.
- (14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.
- (15) Proof of any requested state or county license.
- (16) Written permission of the property owner or the property owner's agent for any location to be used by a transient merchant.
- (17) A general description of the items to be sold or services to be provided.
- (18) The applicant's driver's license or other acceptable form of government-issued identification.
- (19) The license plate number, registration information and vehicle identification number and physical description for any vehicle to be used in conjunction with the licensed business operation.
- (19) If applying for a transient merchant license, certification from the Department of Planning and Zoning as required under section 11 of this ordinance.
- (20) All additional information deemed necessary by the Department of Planning and Zoning.

(d) Non-Refundable Fee. All applications for a license under this chapter shall be accompanied by the non-refundable fee as follows:

Duration	Fee
Per month	\$100
Per 3 months	\$150

Per 6 months	\$200
Per 12 months	\$300

Said fee shall be paid to the City of Jeffersonville by certified or cashier check.

- (e) Procedure. The Jeffersonville Police Department is required to do an investigation into the criminal record, driving record, business reputation and personal character on applicants for peddler and transient merchant permits and the company represented by the applicant. In conducting the criminal history background investigation in order to screen such license applicants, the Police Department shall request a criminal history and driving record of the applicant through a third-party vendor.

The applicant shall pay a separate, non-refundable background check fee of \$100.00 to the Jeffersonville Police Department as reimbursement for the third-party criminal and driving record check. Acceptable forms of payment are money orders and certified check, payable to the City of Jeffersonville.

Upon receipt of the completed application and payment of the license fee, the Director of Planning and Zoning or his designee, within two regular business days, will determine if the application is complete. An application is determined to be complete if all required information is provided and the applicant has included a signed consent form authorizing a background check through the Jeffersonville Police Department and/or any third party vendor. If the Director of Planning and Zoning determines that the application is incomplete, he must inform applicant of the required necessary information that is missing. If the application is complete, the Director of Planning and Zoning or his designee must order an investigation including a criminal history and wanted persons check with the Jeffersonville Police Department and other background checks necessary to verify the information provided with the application. In the case of questioned identity, where we cannot confirm if a record exists based on name and date of birth alone, fingerprint verification will be required.

Within ten regular business days of receiving a complete application the Director of Planning and Zoning or his designee must issue the license unless there exists grounds for denying the license application under this ordinance, in which case the Director of Planning and Zoning or his designee must deny the request. If the Director of Planning and Zoning or his designee denies the license, the applicant must be notified in writing of the decision,

the reason for the denial, and the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of the rejection, a hearing before the city's Board of Public Works and Safety. The city's Board of Public Works and Safety shall hear the appeal within 20 days of the date of the request. The decision of the city's Board of Public Works and Safety can be appealed by petitioning the Circuit Court within thirty (30) days of the board's decision.

- (f) Duration. A license granted under this chapter shall be valid through December 31 of the current calendar year. On January 1st of each year, the license shall automatically expire and be null and void.
- (g) Professional fundraisers not exempt. A professional fundraiser working on behalf of an otherwise exempt person shall not be exempt from the licensing requirements of this section.

Section 4 - License exemptions.

No license shall be required of any person going from house to house, door to door, business to business, street to street, or other type of place to place movement for the primary purpose of exercising that person's state or Federal Constitutional rights such as the freedom of speech, press, religion, political, or the like, except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity.

Section 5 - License ineligibility.

The following shall be grounds for denying a license under this chapter:

- (a) The failure of an applicant to obtain and show proof of having obtained any required county license.
- (b) The failure of an applicant to provide completely and truthfully any of the information requested by the city as a part of the application or the failure to sign the application, or the failure to pay the required fee at the time of application.
- (c) The entry of a plea of guilt by the applicant or the conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in a professional, honest and legal manner. Such violations shall include but not be limited to burglary, theft, larceny, swindling,

fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

- (d) The revocation or cancellation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant by any other local government unit, i.e., city, township, or county.
- (e) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the attorney general's office, civil adjudication in a court of this state of a violation of state or federal consumer protection laws, or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years upon which a finding of fault has been determined by that agency or the governmental unit.
- (f) An applicant that has been denied can reapply in the next calendar year. All competent evidence of rehabilitation will be considered upon reapplication.

Section 6 - Suspension and revocation.

- (a) Generally. Any license issued under this section may be suspended or revoked at the discretion of the Director of Planning and Zoning for violation of the following:
 - (1) Subsequent knowledge by the city of fraud, misrepresentation or incorrect statements provided by the applicant on the application form.
 - (2) Fraud, misrepresentation or false statements made during the course of the licensed activity.
 - (3) Subsequent conviction of any offense for which granting of a license could have been denied under this ordinance.
 - (4) Engaging in any prohibited activity as provided under this ordinance.
 - (5) Violations of any of the provisions of this ordinance.
- (b) Notice. Prior to revocation or suspension of any license issued under this ordinance, the Department of Planning and Zoning shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing

on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

- (c) Hearing. Upon receiving the notice provided in subsection (b) of this section, the licensee shall have the right to request a hearing in front of the city's Board of Public Works and Safety. If no request for a hearing is received by the Director of Planning and Zoning within ten days following the service of the notice, the city may proceed with the suspension or revocation. If a hearing is requested within the stated timeframe, a hearing shall be scheduled within 20 days from the date of the request for the hearing. Within ten regular business days of the conclusion of the hearing, the city's Board of Public Works and Safety shall notify the licensee of its decision.
- (d) Emergency. If, in the discretion of the Board of Public Works and Safety, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the Board of Public Works and Safety may immediately suspend the person's license and provide notice of the right to hold a subsequent hearing as prescribed in subsection (c) of this section.
- (e) Appeals. Any person whose license is suspended or revoked under this section shall have the right to appeal that decision to the Circuit Court within thirty (30) days.

Section 7 - Transferability.

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

Section 8 - Badges and identification.

Any person who shall exercise the vocation of a peddler or transient merchant shall display a permit, issued in their name, containing a number to correspond to the number of the license, and license expiration date issued by the Department of Planning and Zoning, which shall be worn in a conspicuous place on the person's outer garment or clothing. Any person who shall exercise the vocation of a solicitor shall display a certificate of registration, issued in their name, containing a number to correspond to the number of the registration, and registration expiration date, which shall be worn in a conspicuous place on the person's outer garment or clothing. Transient merchants shall post conspicuously in his or her place of business the license issued hereunder which license shall be shown at the request of any citizen or police. Solicitors, peddlers and transient merchants shall also have on his or her person a government-issued identification containing a current photograph.

Section 9 - Prohibited activities.

No peddler, solicitor or transient merchant, non commercial door-to-door advocate, or other person engaged in other similar activities shall conduct business in any of the following manners:

- (a) Calling attention to his or her business items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.
- (b) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.
- (c) Conducting business in a way to create a threat to the health, safety and welfare of any individual or the general public.
- (d) Conducting business before 8:00 a.m. or after 8:00 p.m. or has received special permission from the Board of Public Works and Safety. Said restriction shall not apply to a noncommercial advocate.
- (e) Failing to provide proof of license or registration, and identification, when requested.
- (f) Using the license or registration of another person.
- (g) Alleging false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.
- (h) Remaining on the property of another when requested to leave.
- (i) Conducting business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.
- (j) Solicit funds or anything of value on the public streets of the city. The Jeffersonville Fire Department is the only group exempted from this provision.

Section 10 - Exclusion by placard.

- (a) Any resident of the city who wishes to exclude peddlers or solicitors from premises occupied by him may place upon or near the usual entrance to such premises a

printed placard or sign bearing the following notice: "Peddlers and Solicitors Prohibited."

- (b) Unless specifically invited by the property owner or tenant, no peddler, solicitor, or transient merchant, or other person engaged in other similar activities shall enter onto the property of another for the purpose of conducting business as a peddler, solicitor, or transient merchant, or similar activity when the property is marked with a sign or placard.
- (c) No person other than the person occupying such premises shall remove, deface or otherwise tamper with such placard or sign.

Section 11 – Transient Merchant Requirements

Any person seeking a license as a transient merchant shall also comply with the following:

- (a) No advertising shall be allowed on the street or sidewalk.
- (b) The area shall be kept clean and orderly at all times, and the transient merchant must provide a refuse container.
- (c) If located on a sidewalk, a minimum clearance of five feet shall be maintained by any transient merchant.
- (d) Transient merchants shall not be allowed to operate within that portion of improved street right-of-way designed for vehicular traffic or parking. Transient merchants seeking to located in improved street right-of-ways or on sidewalks shall be oriented toward pedestrian traffic movement or safety. Any application to locate a transient merchant in the street right-of-way shall require approval by the Director of Planning and Zoning and shall not interfere in any way with vehicular or pedestrian traffic or safety.
- (e) Transient merchants are prohibited in parks and in residentially zoned areas. Transient Merchants shall only operate in commercially, institutional or industrial zoned areas: Neighborhood Commercial (NC), Office Commercial (OC), Downtown Commercial (DC), Highway Commercial (HC), Small to Medium Scale General Commercial (C1), Medium to Large Scale General Commercial (C2), Institutional Uses (IS), Neighborhood Industrial (NI), Business Park/Light Industrial (I1), or Industrial Park/Heavy Industrial (I2). The applicant for a transient merchant license must obtain certification from the Department of Planning of Zoning that the licensee

will operate in a permitted zoned area and submit such certification with the application.

- (f) The city reserves the right to limit the number of transient merchant licenses located within the city. The Director of Planning and Zoning shall determine the allowable number of transient merchants within the city and shall exercise this discretion based upon the needs of the public, diversity of products offered for sale, the smooth flow of both pedestrian and vehicular traffic and all other relevant factors necessary to promote the intent of the district.
- (f) Transient merchants are prohibited from occupying parking spaces on city property or in improved city rights-of-way reserved for vehicular traffic, parking or other transportation unless otherwise approved by the Director of Planning and Zoning.
- (g) All transient merchants must comply with all applicable Clark County Health Department requirements.
- (i) In the event, the transient merchant is making application to operate on private property, the applicant shall submit with the application a copy of the written approval from the property owner. The license shall not be granted without such written approval.
- (j) No transient merchant shall operate in an area exceeding 15 feet in length.
- (k) Transient Merchants shall only operate in commercially, institutional or industrial zoned areas: Neighborhood Commercial (NC), Office Commercial (OC), Downtown Commercial (DC), Highway Commercial (HC), Small to Medium Scale General Commercial (C1), Medium to Large Scale General Commercial (C2), Institutional Uses (IS), Neighborhood Industrial (NI), Business Park/Light Industrial (I1), or Industrial Park/Heavy Industrial (I2). Transient Merchants may operate in city parks, regardless of the zoned area, only for the purposes of a special event and upon the prior approval of the Director of Planning and Zoning.

Section 12 - Trespass.

It is hereby declared to be unlawful and shall constitute trespass for any person to go upon any premises and ring the doorbell upon or near any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence for the purpose of securing an audience with the occupant and engage in soliciting or peddling in defiance of the notice exhibited at the main entrance of the residence pursuant to this ordinance.

Section 13 - Nuisance.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence for the purpose of securing an audience with the occupant and engage in soliciting or peddling in unless invited to do so by the owner of the property.

Section 14 - Penalty.

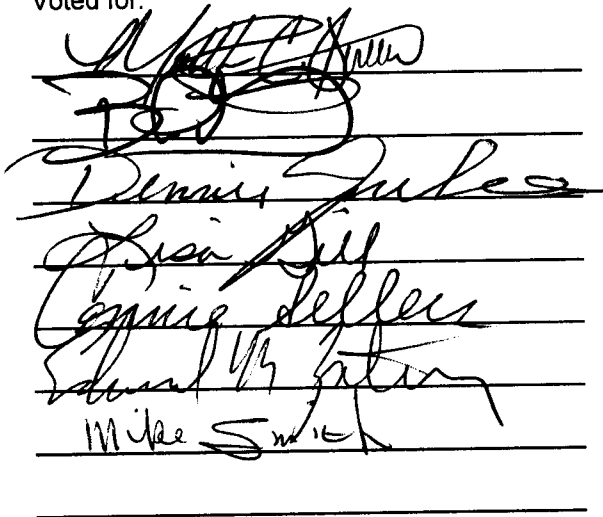
Any individual found in violation of any provision of this article shall be subject to the penalty provisions of the Jeffersonville Code of Ordinances Section 10.99. Each act in violation of this article shall constitute a separate punishable violation.

Section 15 - Severability.

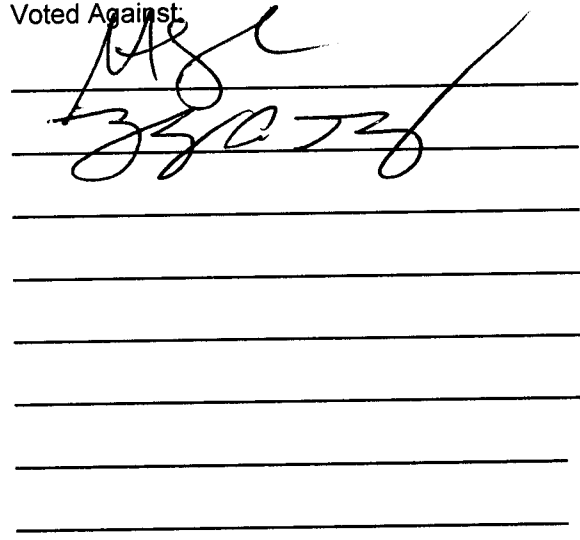
If any provision of this article is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

This ordinance shall be in full force and effect after its passage and upon publication pursuant to I.C. 5-3-1.

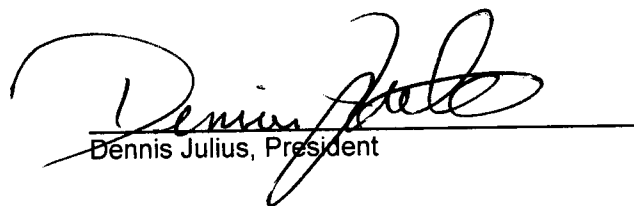
Voted for:



Voted Against:

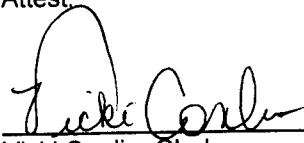


Passed and adopted on this 2 day of June, 2014.


Dennis Julius, President

2014-OR- 26

Attest:

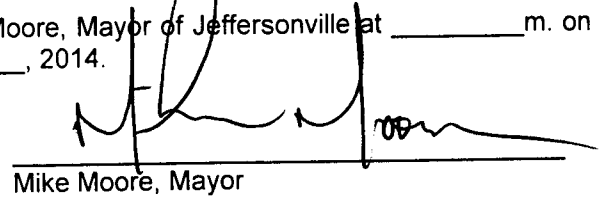


Vicki Conlin, Clerk

3 Presented by me, Vicki Conlin, Clerk, to the Mayor of Jeffersonville at _____ m. on this
day of June, 2014.


Vicki Conlin, Clerk

This ordinance signed and approved by Mike Moore, Mayor of Jeffersonville at _____ m. on
this _____ day of _____, 2014.


Mike Moore, Mayor

This ordinance vetoed by Mike Moore, Mayor of Jeffersonville at _____ m. on this
_____ day of _____, 2014.

Mike Moore, Mayor