

ORDINANCE NO. 2007-2

**AN ORDINANCE OF THE TOWN OF WESTVILLE, INDIANA REGULATING
TRANSIENT MERCHANTS WITHIN THE TOWN LIMITS OF WESTVILLE,
INDIANA**

WHEREAS, the Westville Town Council has determined that the unregulated sale of goods, wares, merchandise, food, services and subscriptions by Transient Merchants, as defined in this Ordinance, is a public nuisance and detrimental to the health, safety and welfare of the citizens of the Town; and

WHEREAS, an ordinance regulating Transient Merchants is necessary in order to protect the health, safety and welfare of the citizens of the Town of Westville.

NOW, THEREFORE, BE IT ORDAINED BY THE WESTVILLE TOWN COUNCIL, AS FOLLOWS:

SECTION 1. Definitions.

For the purpose of this Ordinance, certain terms or words used herein shall be given the following meanings:

“TRANSIENT MERCHANT” means any person, firm, limited liability company or corporation, both principles and agents, who engages in any temporary or transient business in the Town wherein goods, wares, merchandise, food, services or subscriptions to any publication are sold or offered for sale, for either present or future delivery, regardless of whether such goods, wares, merchandise, food, services or subscriptions are sold or offered for sale from house to house, upon the streets or other public places, or sold from any room, building, structure or lot rented or leased for the purpose of carrying on such business.

“TEMPORARY OR TRANSIENT BUSINESS” shall mean any business operated by any person, firm, limited liability company or corporation who does not reside within the Town or who operates or intends to operate said business for a continuous period less than one hundred and twenty (120) calendar days or whose business is to be transacted by door-to-door or other in person contact with potential customers at a location other than a fixed single location within the Town.

SECTION 2. The Town of Westville declares the sale or attempted sale of all goods, wares, merchandise, food, services or subscriptions by Transient Merchants, within the Town limits, to be a public nuisance and prohibited activity, except as specifically provided by this Ordinance.

SECTION 3. It shall be unlawful for any Transient Merchant to sell or offer for sale any and all goods, wares, merchandise, food, services or subscriptions in the Town without having first obtained a Transient Merchant License in accordance with the provisions of this Ordinance.

SECTION 4. Any and all Transient Merchants desiring to transact business within the Town shall complete and file with the Clerk-Treasurer an Application for Transient Merchant License no less than seven (7) days prior to the commencement of business. Organizations, corporations, firms, or employers who utilize or have as their agents, Transient Merchants, shall file an Application for Transient Merchant License for each individual Transient Merchant that will sell or offer for sale goods, wares, merchandise, food, services or subscriptions within the Town.

The Application for Transient Merchant License must contain the following information:

- (1) The name, business address, home address and telephone number of the applicant.
- (2) The name, if any, under which the business is to be conducted.
- (3) The type goods, wares, merchandise, food, services or subscriptions intended to be sold or offered for sale by the applicant.
- (4) The location(s) where the applicant intends to sell or offer for sale goods, wares, merchandises, food or services within the Town.
- (5) The length of time the applicant intends to sell or offer for sale goods, wares, merchandise, food or services within the Town.
- (6) The make, model and license plate number of all vehicles, if any, to be used by the applicant.
- (7) A complete summary of the applicant's criminal history including the date of any and all criminal convictions, including the city and state of all such crimes and convictions, if any.
- (8) The applicant shall verify under oath all information contained in the Application for Transient Merchant License.

SECTION 5. At the time of filing the Application for Transient Merchant License, each Applicant shall pay a non-refundable application fee of \$25 to the Clerk-Treasurer to cover the costs of processing the Application.

SECTION 6. Upon the filing of an Application for Transient Merchant License with the Clerk-Treasurer, the Town Marshal shall review said application and conduct an investigation of the applicant. The Town Marshal has the exclusive power to grant or deny any and all Applications for Transient Merchant Licenses. The Town Marshal may deny an Application for Transient Merchant License provided that written reasons are submitted to the Clerk-Treasurer and given to the applicant. The reasons for denial of an application may include, but are not limited to, the following:

- (1) Applicant's conviction of a crime;
- (2) Willful misstatements in the application;
- (3) Proposed location will adversely impact traffic and/or visibility for passing motor vehicles;
- (4) Applicant's violation of other ordinances, statutes or regulations pertaining to Transient Merchants;
- (5) Applicant's commission of prior fraudulent acts; and
- (6) Applicant's record of continual breaches of solicited contracts.

SECTION 7. Any Application for License that is denied by the Town Marshal may be appealed to the Town Council. The Town Council may accept or reject the decision of the Town Marshal. All appeals must be made by submitting a formal Request for Appeal to the Clerk-Treasurer, together with a \$50 non-refundable appeal fee. Upon the filing of the written Request for Appeal and payment of the appeal fee the Clerk-Treasurer shall place said Appeal on the Agenda of the next Town Council meeting.

SECTION 8. The Clerk-Treasurer shall make out all licenses granted to Transient Merchants pursuant to this Ordinance and each license shall be properly signed by the Clerk-Treasurer, the President of the Town Council and the Town Marshal, upon the Clerk-Treasurer having received from the applicant the non-refundable filing fee for such license and all other provision of this Ordinance having been complied with.

SECTION 9. No Transient Merchant License shall be issued a license pursuant to this Ordinance for less than one (1) day or longer than one (1) year. After the term of a Transient Merchant License has expired any and all Transient Merchants desiring to continue transacting business within the Town shall obtain a new Transient Merchant License by complying with the provisions of this Ordinance. In addition to the non-refundable filing fee each applicant must also pay a fee at the time the license is issued. The license fee must be paid with cash or certified funds. The fees for the above-stated license shall be as follows:

- (1) A \$200 fee every year;
- (2) A \$75 fee per month;
- (3) A \$50 fee per week; or
- (4) A \$25 fee per day.

SECTION 10. No Transient Merchant to whom a license has been used under the provisions of this Ordinance shall refuse, on request, to show such license to any police officer, employee of the Town or any person that the Transient Merchant is selling or attempting to sell goods, wares, merchandise, food, services or subscriptions. Failure to present the license upon request is a violation of this chapter.

SECTION 11. It shall be unlawful for any Transient Merchant to sell or offer for sale any goods, wares, merchandise, food, services or subscriptions within the Town except between the hours of 9:00 a.m. and 5:00 p.m. of each week day and 9 a.m. and 12:00 noon on Saturday. No Transient Merchant shall sell or offer for sale any goods, wares, merchandise, food, services or subscriptions on Sunday.

SECTION 12. All licenses issued under the provisions of this Ordinance shall expire on the date specified on the license and are nontransferable.

SECTION 13. A Transient Merchant License may be revoked or suspended if the Town Marshal determines that the Transient Merchant has violated any of the provisions of this Ordinance. A Transient Merchant may appeal the revocation or suspension of a Transient Merchant License as set forth in Section 7 of this Ordinance.

SECTION 14. The provisions of this Ordinance shall not apply to any person(s) selling or offering for sale goods, wares, merchandise, food, services or subscriptions in conjunction with a charitable or other civic non-profit club or organization having an office or chapter in LaPorte County, or that regularly holds meetings in LaPorte County.

SECTION 15. Violation of this Ordinance shall be punishable by a fine of \$100 for the first violation and \$250 for a second or subsequent violation. Each incident in violation of this Ordinance constitutes a separate violation. In addition, the Town of Westville may seek injunctive relief against any and all person, firms, limited liability companies or corporations who violate the provisions of this Ordinance.

SECTION 16. If any portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other portion or provision of this Ordinance.

SECTION 17. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency. It is provided, however, that such repeal shall be only to the extent of such inconsistency, and in all

other respects the ordinance or parts of ordinances are hereby ratified, re-established and confirmed.

PASSED AND ADOPTED by the Westville Town Council on this 8th day of MAY, 2007.

WESTVILLE TOWN COUNCIL

By:

Michael Albright
Paul D. Stokes
Regina Russell
Sherris Swanson
James F. White

ATTEST:

Carol Rotzien
Carol Rotzien
Clerk-Treasurer
Town of Westville, Indiana