HOUSE . . . . . No. 3443

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The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

AN ACT RELATIVE TO THE SALE AND STORAGE OF GOODS IN PUBLIC WAYS IN THE CITY OF SPRINGFIELD..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the Commissioner of the Police Department of the City of Springfield may issue, with the advise of the Director of Public Works for the City of Springfield and the Commissioner of Health and Human Services, under the conditions hereinafter provided and under regulations of his or her own not inconsistent herewith, licenses for the use of specified parts of public streets in the City of Springfield for the storage and sale of merchandise or food.

(a) Application. A person seeking such a license shall file with said commissioner a written application therefore, stating his name, age, occupation, residence and place of business, if any, and whether or not he is a citizen of the United States or has declared his intention to become such. The applicant shall describe accurately in writing, by plan or otherwise, the location, the shape and the dimensions of the space which he or she desires to occupy ("proposed site" or "site assignment"), the movable structures which he or she proposes to use, and the kinds of merchandise which he or she wishes to store and to sell.

An application from a firm or corporation shall be made by such partners or officers and under such further conditions as said commissioner shall determine, and every partner or officer so designated shall give concerning himself the information as to age, occupation, citizenship, residence and place of business which is required of an individual applicant.

(b) Notice. As part of the application the applicant shall provide the proof of notice sent by registered mail to each of the persons appearing upon the assessors' most recent valuation list as the owners of the property which fronts the proposed site and of the tenants of the ground

floor of such property, or in lieu thereof the written consent of the duly authorized agent or agents of such owners and ground floor tenants. The notice shall indicate the necessity of a written objection to the issuance of such license and a 30-day deadline for making such objection. An affidavit of the applicant or of the person mailing such notice in his behalf, together with an attested copy of the notice mailed, shall be filed with said commissioner and a certified copy of such affidavit shall be prima facie evidence that such notice has been mailed in accordance with this section.

If any such owner or ground floor tenant makes a complaint in writing to the commissioner that such license was granted without such notice having been mailed to him, her or them as require d hereby, and after due hearing it appears that such notice was not mailed as aforesaid, the local licensing authorities may cancel the license.

(c) Assessment by DPW and Health and Human Services. The application shall be sent by the police commissioner of the police department to the Director of Public Works ("DPW") of the city of Springfield, with a request for a report thereon, It shall be the duty of said DPW Director forthwith to examine in person or by means an authorized agent the location for which the license is asked, with particular reference to the effect of its use as desired spot, the free passage of vehicles and of foot passengers and upon the maintenance of public order. In the report to the commissioner of the police department, which shall be made as soon as practicable, the DPW director may recommend approval or disapproval, or approval conditional upon amendments to be made in the application as affecting the precise location, its area or the kinds of merchandise or food to be stored and sold thereon.

The application shall also be sent by the police commissioner of the police department to the Director of Health and Human Services of the City of Springfield, with a request for a report thereon, It shall be the duty of said Director of Health and Human Services forthwith to examine in person or by means an authorized agent the provisions made by the applicant relative to compliance with applicable sanitary, health and food codes at the location for which the license is asked, with particular reference to the effect of its use as a desired spot, the effect on members of the public and upon the maintenance of public order. In the report to the commissioner of the police department, which shall be made as soon as practicable, the Health and Human Services director may recommend approval or disapproval, or approval conditional upon amendments to be made in the application as affecting the precise location, its area or the kinds of merchandise or food to be stored and sold thereon.

Should the police commissioner and the DPW and Health and Human Services director agree as to the propriety or issuing a license, the authority for further action shall be vested in said police commissioner; but no license shall become effective until seventy-two h ours after a copy thereof has been delivered to the DPW director and the health and Human Services Director.

(d) Certificates of Good Standing. Prior to granting a new license all applicants must: 1) provide a certificate of good standing from the Massachusetts Department of Revenue; and 2) provide certificate of good standing from the City of Springfield Treasurer Collector' s Office. Upon license renewal applicants must sign a tax certification affirming under oath that he/she/it is in compliance with all tax laws of the Commonwealth of Massachusetts and the City of Springfield.

(e) Character and Fitness of Applicant and Manager. The applicant and the proposed manager of the entity which will conduct the licensed activity must be, with respect to his/her character, satisfactory to the police commissioner.

(f) Hearing. Should the police commissioner and the DPW and Health and Human Services director not agree as to the propriety or issuing a license , or if any owner or ground floor tenant which fronts the proposed site makes a timely written objection to the commissioner, the commissioner or his/her designee shall conduct a hearing with notice to the applicant, the objecting party and to DPW and Health and Human Services. At the hearing commissioner or his/her designee shall determine if the proposed site is suitable. In making such determination, the commissioner shall consider the effect of the use of the proposed site: including the free passage of vehicles and of foot passengers; the effect o n the owner(s) and ground floor tenants of the property which fronts the proposed site; the effect on members of the public; and the effect upon the maintenance of public order.

(g) Time Limitations upon License. A license issued by the police commissioner may be for one or more week days in each week, for such hours daily as it shall in each case determine, and for any period not exceeding twelve months. Annual licenses shall run from January 1 - December 31.

(h) License Renewal. A license may be renewed on an application conforming to the conditions and in accordance with the procedures prescribed by the police commissioner. Annual license renewals for the upcoming year may be applied for after October 31. Change or transfer of ownership, partnership , shareholders, members, etc of the entity which holds the license shall disqualify it/him/her from renewing the license, but he/she or it shall not be prevented from applying for a new license.

(i) Site Assignment. Upon the issuance of a license the police commissioner shall make a site assignment for each license. Site assignments shall be determined in the following manner.

(1) First Site Assignment. The first site assignment following the passage of this act shall be based upon seniority. Upon passage of this Act the police commissioner shall identify all vendors who hold hawkers and peddler licenses ("HP vendors") in the City of Springfield. Such HP vendors shall be seniority ranked based upon their consecutive vending years within the city. A lottery shall be used to rank vendors with equal seniority. The remaining site assignments shall be issued on a first come first serve basis.

(2) Renewals and Subsequent Site Assignments. Licensees issued under this act shall have the right to renew his/her/its license and site assignment. Subsequent site assignments shall be based upon a first come first serve basis. The first applicant to submit a complete license application to the police commissioner shall have first priority to the applied-for and available site.

(j) Regulations and Policies. The police commissioner may promulgate regulations and policies not inconsistent herewith, licenses for the use of specified parts of public streets in the city for the storage and sale of merchandise or food and to promote a fair method of assigning desirable sites. Such regulations may prescribe the permitted hours of operation for licensees. From ti me to time the police commissioner with the advise of the Director of Public Works for the City of Springfield and/or the Commissioner of Health and Human Services may determine a specific site in specified parts of public streets is no longer suitable for the storage and sale of merchandise or food because of public health and safety concerns.

(k) Suspension or Revocation of License. If after notice and opportunity to be heard, it is found that a licensee violated the conditions of the license, the laws of the Commonwealth or the ordinances or regulations of the city of Springfield; or it is determined that the specific site in specified parts of public streets is no longer suitable for the storage and sale of merchandise or food because of public health and safety concerns, the police commissioner or his/her designee may modify (including the restriction of hours of operation), suspend , cancel, or revoke the license or transfer the license to a new site. If the license is revoked, the licensee shall be disqualified to receive a license for one year after the expiration of the term of the revoked license. Upon suspension, revocation, cancellation or forfeiture of a license, the holder of the license must turn in its license to the police commissioner.

(l) License Fee. For each license issued and for each renewal thereof the police commissioner of shall charge and collect in advance such fee in an amount recommend by the Springfield Department of Finance and approved by the Springfield City Council, The receipt of such fee shall be certified on the face of the license.

(m) Parking Meters. The City or its agent shall be responsible for covering the parking meter(s) during the hours of operation. Licensees shall be allowed to request parking meter(s) be covered at any time during the days where the business is in operation (designated in the terms of the license), in order to reserve said parking spaces for the licensee's hours of operation. The licensee will be charged the cost noted above in paragraph (l) and an additional fee equal to the parking meter hourly rate for each restricted parking space multiplied by the number of hours per business day that the Parking Meter is covered, for the time the license is issued.

(n) Medallions. (1) The commissioner shall issue to the licensee a medallion for each license to be operated there under, bearing the words:

SALE & STORAGE OF GOODS IN PUBLIC WAY: License NO. ____

Springfield, Mass

(2) Such medallion shall be attached to the exterior of each vehicle. The numbering and exact location of such medallion will be determined by the commissioner.

(3) Under no condition is the medallion/license transferable or sold from one operator to another. In the event that the vehicle to which the medallion has been issued has been taken off the road either through age, vehicle accident, or mechanical problems, said medallion may be assigned to a replacement vehicle only upon the approval of the Taxi and Livery Commission and for the fee of $ 50.00 per transfer.

(o) Miscellaneous. The police commissioner shall cause to be kept at his or her office full and accurate re cords of his doings under this section, open to the public under reasonable restrictions, and at all times to the mayor of the city or to such persons as he may designate. Separate accounts shall be kept of moneys received from licenses and from rentals derived from the use of parts of the public streets.

The police commissioner shall include in his annual report a reasonable summary of his or her doings under the authority of this section.

The police commissioner may designate from time to time certain streets, or parts of streets, or sections of the city wherein, and not elsewhere in the city, it shall be lawful on the days and within the hours specified, and under such general rules as he or she shall make, for any hawker or peddler, without the license provided for in this section, to stop or stand for the purpose of selling food or merchandise: provided, that such hawkers or peddlers carry on their business in conformity with the laws of the Commonwealth, the ordinances of the city, and the regulation s of the board of health, now or hereafter enacted and not inconsistent herewith.

No person shall use or occupy a part of a public street in the city of Springfield, otherwise than according to the provisions of this section, for the purchase, sale, storage or display of merchandise or other articles except materials or appliances used or to be used for public purposes or for building operations under authority or license lawfully conferred or issued by or under any ordinance of the city of Springfield or laws of the commonwealth, now in existence or hereafter enacted.

(p) Violation. Violation of this act may be enforced through noncriminal disposition pursuant to G.L.c. 40, Section 21D or through the criminal process. A person violating any provision of this section shall be fined one hundred dollars ($ 100) for the first offense, two hundred dollars $ 200 for the second offense, and three hundred dollars $ 300 for third and subsequent offenses. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under the provisions set forth in this chapter.

SECTION 2. This act shall take effect upon its passage.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts In the General Court Assembled.

The undersigned, Domenic J. Sarno, Mayor of the City of Springfield, respectfully in the name and on behalf of said City, and in the pursuance of an order, a duly attested copy of which is hereto annexed, petition the General Court for legislation entitled AN ACT RELATIVE TO THE SALE AND STORAGE OF GOODS IN PUBLIC WAYS IN THE CITY OF SPRINGFIELD," in substantially the same form as a draft Act attached hereto.

Respectfully submitted,

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Domenic J. Sarno, Mayor

City of Springfield

36 Court Street

Springfield, MA 01103

C I T Y O F S P R I N G F I E L D

In the City Council March 7, 2011

ORDERED, that the mayor be, and hereby is authorized on behalf of the City of Springfield, to take any and all steps necessary to secure the passage by the General Court of the special legislation entitled "AN ACT RELATIVE TO THE SALE AND STORAGE OF GOODS IN PUBLIC WAYS IN THE CITY OF SPRINGFIELD," in substantially the same form as a draft Act attached hereto, except for clerical or editorial errors