



Council Communication

Office of the City Manager

Date February 11, 2008

Agenda Item No. 38
Roll Call No. 08-
Communication No. 08-047
Submitted by: Richard A. Clark, City Manager

AGENDA HEADING:

Amending Chapter 78 of the Municipal Code regarding Transient Merchants.

SYNOPSIS:

Recommend approval of revisions to Chapter 78 of the Municipal Code; this chapter contains various regulations that govern the operation of transient merchants within Des Moines. The proposed revisions would prohibit retail food and merchandise sales within the city from any vehicle, trailer, tent, or temporary structure or from any temporary location or place, with the exception of: permitted premises with Certificates of Occupancy; yard sales; licensed use of right-of-way; street use permit; licensed peddlers; parks (with Park and Recreation Board approval); food vendor carts in downtown zoning districts (C-3, C-3A, C-3B, C-3R, and D-R); raw fruits and vegetables; Christmas trees (during November and December); at emergency and disaster sites with City approval; and licensed transient merchants.

Under the new regulations, all transient merchants would be required to obtain a license from the City Clerk. In order to obtain the license, they would be required to provide proof of an Iowa retailer sales tax permit and food establishment license (if applicable). The transient merchant license would be valid for a maximum of three consecutive days at a cost of \$50. At least 10 days must elapse between the times when a parcel is used for the operation of a transient merchant license.

The Community Development Department and the Police Department would enforce the new regulations. Staff proposes that the regulations become effective May 15, 2008, in order to allow time for staff to inform local transient merchants and other interested parties of the changes.

FISCAL IMPACT:

Amount: Indeterminate

It is unclear how the new regulations will affect the number of transient merchants that apply for a transient merchant license. In calendar year 2007, 12 transient merchants were issued licenses, resulting in \$1,200 in revenue. This ordinance will expand the number of businesses that need a transient merchant license for operation. Operating costs associated with enforcement will be absorbed by current departmental budgets.

Funding Source:

Revenue from license fees will be deposited in FY 2007-08 Operating Budget, GE001 CCL010000, pg. 76.

ADDITIONAL INFORMATION:

Current City regulations define a transient merchant as “a person, principal, or agent who engages in an outdoor merchandising business from a temporary location or structure in the city, and whose lease on the premises on which the business is conducted is for a period of less than one year, and who, for the purpose of carrying on such business, hires, leases or occupies any land, temporary structure, railway car, trailer or truck for the exhibition and sale of such goods, wares or merchandise and including the sale of any manufactured article, food, fruit, vegetable or farm product.” (Sec. 78-61).

Before operating within the City, a transient merchant meeting the definition above is required to obtain a license from the City Clerk unless he or she wishes to conduct one of a number of exempted sales, such as the sale of food in the C-3 central business district or the sale of raw fruits and/or vegetables. A transient merchant license is valid for up to 30 days and can be renewed. Per City code, a vendor with a property lease that is valid for one year or more can operate without a transient merchant license.

Mobile food vendors fall into the category of transient merchants and must abide by City licensing regulations depending on the nature and location of their operations. Further, all mobile food vendors must be licensed with the Iowa Department of Inspections and Appeals, which also regulates and inspects their operations.

Staff has reviewed City regulations pertaining to transient merchants and recommends several ordinance amendments. In general, staff recommends that the City prohibit retail food and merchandise sales within the city from any vehicle, trailer, tent, or temporary structure or from any temporary location or place, with the exception of the exempted sales outlined in the “Synopsis” of this communication.

Under the new regulations, all transient merchants (regardless of the length of their property leases) would be required to obtain a license from the City Clerk. The license would be valid for a maximum of three consecutive days at a cost of \$50. At least ten days must elapse between the times when a parcel is used for the operation of a transient merchant. No transient merchant license would be issued for the operation of a transient merchant business on the same parcel within 10 days prior, nor 10 days after the time a transient merchant business is allowed to operate on the parcel under any license previously issued. In addition to current application requirements, transient merchants would be required to submit their application five business days prior to use and offer proof of Iowa retailer sales tax permit. Further, as directed by Council on January 28, 2008, by roll call 080-146, proof of an Iowa food establishment license would be necessary if the transient merchant intends to sell prepared food.

Staff has made special provisions for transient merchants who wish to operate during specific events that last more than three days. Basically, licensed vendors can operate for the duration of the Iowa State Fair and Drake Relays provided that they are at a location within one-half mile of the boundaries of the Iowa State Fairgrounds or the Drake University campus. Transient merchants may operate at the site of a major construction project (over \$5 million) during construction. Also, transient merchants would be allowed to operate during an event that Council has identified as one of state-wide or national interest and believes that the number of visitors to the event warrants the allowance of transient merchants.

Community Development zoning inspectors, with the assistance of NBSD officers, will enforce the new regulations Monday through Friday, 8 AM – 5 PM. The Police Department will be responsible for enforcement during the evening hours and on weekends. As a condition of obtaining and operating

under the transient merchant license, vendors must display their licenses so that they are visible from the street.

Another significant change in the regulations is the establishment of a 1,000 foot buffer zone around events for which a street use permit has been issued. No transient merchant may operate within the buffer zone without the prior written consent of the applicant for the street use permit for that event. The buffer zone will not apply to food cart vendors in the downtown zoning district.

Staff proposes that the new transient merchant regulations become effective May 15, 2008, and that no license shall be issued under the existing regulations for any business activities to occur after May 25, 2008. The overlap between the old and new regulations is needed because any application under the new regulations cannot be officially filed until May 15, 2008, and must be filed at least 5 business days before the business starts operation.

If Council approves the new regulations, staff will conduct public outreach to make all stakeholders aware of the ordinance changes. Staff will send letters concerning new regulations to former licensees and other registrants, property owners that lease to transient merchants, and interested organizations. Also, staff will explore options for financial assistance to transient merchants who wish to transition to a permanent structure for their business operations. Staff intends to monitor compliance with and enforcement of the new transient merchant regulations and will report findings to Council one year after the new ordinance is enacted.

Staff has conducted a random review of transient merchant ordinances statewide, with an emphasis on neighboring communities. Several similarities and differences among regulations were found during this review. The following represents the most significant findings:

Licensing Regulations:

Most towns and cities require a transient merchant to obtain a license. No cities or towns flatly prohibit all transient businesses. A few cities, such as Johnston, only regulate transient merchants if conducting door to door sales. Vendors who wish to operate in municipalities that lack a transient merchant licensing process are subject to state control pursuant to Iowa Code Chapter 9C.

When compared to other ordinances, staff's proposal includes less stringent licensing requirements. For example, many municipalities require that the applicant provide date of birth, physical descriptions, and criminal background information. Two jurisdictions, West Des Moines and Windsor Heights, require fingerprints. In addition, with the exception of Des Moines, every municipality requires the applicant to provide a list of the last three places from which they have operated. Our proposed ordinance would require that the applicant provide information on previous sites, but would not specify a particular number of previous locations that must be disclosed.

All jurisdictions require a bond. The City of Des Moines has the lowest set bond at \$200. This will not change with staff's recommendation. Council Bluffs has the highest set bond at \$10,000. Cedar Rapids, Council Bluffs, and Cedar Falls require additional insurance. Some cities allow a bond as required by code provisions in Chapter 9C of the Iowa Code (2007).

Most ordinances provide for license denial based on specific criteria. Staff's recommendation would allow the city clerk to deny a license request after verifying application information. Cedar Rapids requires an investigation by the chief of police. West Des Moines provides for denial for specific

criminal violations. Ankeny, West Des Moines, Windsor Heights, and Council Bluffs have provisions for a criminal background check, conducted by the police department.

In terms of license revocation, most towns and cities provide for it in a manner similar to Des Moines. The revocation hearings are held before the city clerk, city council or, as in our case, the administrative hearing officer. Grounds for license revocation include providing fraudulent statements, statute or ordinance violation, and public welfare or safety concerns.

Operational Regulations:

The amount of time that transient merchants are allowed to operate at a specific site varies from community to community. Staff's proposal allows for three consecutive days of sales at a specific property, with no other vendor allowed to operate on the property for ten days afterward. West Des Moines, Cedar Rapids, and Cedar Falls allow sales for seven days, with no other vendor allowed to operate on the property for thirty days afterward. Other municipalities grant a license for an amount of time between thirty days to sixty days and have no restriction on days between sales. The least restrictive license staff identified has no limitation on the number of days of sales during the course of a year.

Some communities define a mobile vendor as a vehicle that can sell from the street only. Other communities allow vendors to operate from a specific location only for the amount of time specified in the transient merchant ordinance.

PREVIOUS COUNCIL ACTION(S):

Date: January 28, 2008

Roll Call Number: 08-146

Action: [Amending](#) Chapter 78 of the Municipal Code regarding transient merchants and sales of food and merchandise from temporary facilities. ([Council Communication No. 08-034](#)) Moved by Meyer that this ordinance be considered and given first vote for passage; refer to the City Manager to receive input and to include the requirement that applicants provide proof of an Iowa Health Inspection License. Motion Carried 7-0.

Date: December 3, 2007

Roll Call Number: 07-2322

Action: [Request](#) from Council Member Brian Meyer to speak regarding ordinances on mobile vendors and transient merchants. Moved by Meyer to refer to the City Manager, Legal and other related departments to prepare discussion for a Council Workshop before January 28, 2008; prepare ordinance for first reading on the January 28, 2008 Council Meeting and prohibit issuance of transient merchant licenses for more than sixty days effective December 4, 2007. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Third reading of ordinance.