

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b> July 25, 2016
	<b>Agenda Item No.</b> 42 <b>Roll Call No.</b> <u>16-1228</u> <b>Communication No.</b> <u>16-400</u> <b>Submitted by:</b> Phillip Delafield, <b>Community Development Director</b>

**AGENDA HEADING:**

Amendments to Chapter 78, regarding transient merchants.

**SYNOPSIS:**

The amendments will bring requirements for transient merchant license holders more aligned with mobile food vendors, establish a premise permit and set operational hours for vendors along neighborhood corridors.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

On April 25, 2016, by Roll Call No. 16-0709 the City Council passed the first reading of this amendment with direction for review of hours of operation.

On May 9, 2016, by Roll Call No. 16-0789 the City Council passed the second reading of amendments to the transient merchant ordinance with directions to staff to amend the ordinance regarding distance from restaurants, closing time in non-downtown locations and restroom distance and signage.

On June 13 2016, by Roll Call No. 16-0984 the City Council directed staff to hold another public meeting with stakeholders.

On June 29, 2016 staff held the second of two (2) public meetings with stakeholders. The ordinance and proposals were presented in English and Spanish. The presentation and comments from the stakeholders was translated into Spanish. After the discussion, staff heard concerns ranging from disparate impact, increased costs being passed to the license holders, reduction in sales hours and increased fire and insurance regulations.

On July 11, 2016, by Roll Call No. 16-1153 the City Council voted on specific requirements to be included in the ordinance for the third reading. Council directed staff to include in the ordinance the following provisions:

- (A) A premise permit. Require a premise permit be issued to a property owner or lease holder who wishes to allow a transient merchant to locate on their property. Cost of a premise permit to be \$100 annually.
  - i. Require a dumpster enclosure within one (1) year of the issuance of a premise permit.
- (B) Separation from a restaurant. The premise permit will not be granted if a transient merchant selling food wants to locate within 100 feet of a restaurant. Current properties where a transient merchant selling food has been licensed to locate that are within 100 feet of an existing restaurant will be granted a premises permit for that location unless a new restaurant opens within 100 feet.
- (C) Keep the requirements for restroom facilities unchanged.
- (D) Require the business employ at least one (1) state certified food protection manager by the next renewal application for a transient merchant license with food sales.
- (E) Require a type I hood with fire suppression system, approved fire extinguisher(s) and approved LP gas tank hook ups for all cooking spaces with a fire department inspection for new food sales transient merchant license applications. Require type I hood suppression system for all current transient merchant food sales license holders by the renewal application applied for after December 31, 2017. Require a fire inspection for all other requirements upon application for the renewal of the next transient merchant food sales license. Cost of the first inspection to be set at \$100 with no subsequent inspection fees to be charged. Council asked staff to consider allowing a third-party inspection of the fire suppression system and fire extinguishers to be used in place of the fire department annual inspection requirement. Staff will continue to explore this option.
- (F) Require commercial general liability insurance coverage in the amount of \$1,000,000 and automobile liability insurance coverage in the amount of \$500,000 per occurrence.
- (G) Require the vehicle and all equipment to be removed from the premise or provide storage in a completely enclosed building on the property at any time the vendor is not open for business. Staff was asked to consider allowing picnic tables to remain on the property. Staff feels that allowing picnic tables to stand alone on a property used for a transient merchant begins to open the door for other items to be stored on the property. Additionally, use of the property becomes more permanent in nature which is in conflict with the goal of making the vendor sales transient in nature. The better option is to continue to require all items be removed from the property or be stored in a completely enclosed commercial structure on the property.
- (H) Allow license holders to operate from 5:30 a.m. to 1:30 a.m. the following morning unless within 125 feet of a residentially zoned district in which case, license holders may operate from 8:00 a.m. to 10:30 p.m. the same day. Present license holders within 125 feet of residentially zoned property may operate with extended hours as long as neither the operator nor the location change.

The schedule of fees will be amended to increase the transient vendor license from \$550 to \$570. This fee aligns with the fee charged to the mobile food vendors. New fees will be added to reflect the \$100 premises permit fee and the \$100 fire department inspection fee.

**PREVIOUS COUNCIL ACTION(S):**

Date: July 11, 2016

Roll Call Number: [16-1153](#)

Action: Discussion and direction to City Staff regarding amendments to the Transient Merchant/Mobile Vendor Ordinance, as follows:

Property owner requirements.

(A) Premise Permit – Permit to be obtained by the property owner, and would allow one or many vendors (one at a time) to be invited to sell on the property. Property must meet current parking lot standards, paving must be in good repair, landscaping must be installed, setbacks must be restored and have an enclosed dumpster one-year after next license is issued. Property owner must stripe the area where vendor may locate upon issuance of the license. The area for the truck and all equipment must be 1,000 square feet or less, with no single dimension exceeding 50 feet with three off-street parking spaces. City staff will process the application, and the City inspector will work with property owner regarding where to locate/stripe the lot, and will conduct a 2nd inspection to ensure compliance. Cost is \$250 per year.

- (1) Require a premise permit; or
- (2) Not require a premise permit

Moved by Coleman to adopt the following items:

1. Require a Premise Permit for all new applicants; for locations whose premise/licensee applications are currently pending or issued at the time of publication of the ordinance, a Premise Permit would be required during their next permit/license cycle.
2. Reduce the Premise Permit fee to \$100 per year
3. Require a dumpster enclosure:
  - i. For new locations, dumpster enclosure required immediately
  - ii. For all locations for which permits are currently pending or issued at the time of publication of the ordinance, a dumpster enclosure will be required one year after their next permit cycle.

Motion Carried 5-2. Nays: Moore and Westergaard.

Proximity to Restaurants.

(B) Distance from restaurants. Premise Permit location not allowed within 100 feet of any public entrance into the waiting or service area of any street level restaurant.

- (1) Require separation of 100 feet from a restaurant; or
- (2) Not require separation of 100 feet from a restaurant.

Moved by Coleman to select option 1, but to exempt those premise/licensee applications for which permits are currently pending or issued at the time of publication of the ordinance, until their next permit cycle. Motion Carried 7-0.

License holder requirements.

(C) Posting of restroom signs. Notice of location of the restroom facilities must be conspicuously posted during operations. Sales of food must only occur during times the restroom is available.

- (1) Require posting of restroom signs; or
- (2) Not require posting of restroom signs.

Moved by Hensley to select option 2; continue to require a restroom agreement, but not require the restroom be open during all hours the vendor is open for business. Motion Carried 5-2. Nays: Coleman and Gatto.

(D) Certified Food Protection Manager. Business shall employ at least one Certified Food Protection Manager, and maintain a copy of the certification in the vehicle.

- (1) Require a Certified Food Protection Manager upon application; or
- (2) Not require a Certified Food Protection Manager as part of the license requirements. (State will require all food sales establishments meet the requirement by January 2018.)

Moved by Coleman to select option 1. Motion Carried 7-0.

(E) Fire safety. Vendor vehicle must be inspected by the City of Des Moines Fire Marshall and determined to be in compliance with the fire code (\$100 annual inspection fee). Will need to provide a type I hood with fire suppression system, approved fire extinguisher and approved LP gas tank hook ups.

- (1) Require compliance with fire safety inspection with the next application; or
- (2) Not require fire safety inspection as part of the license requirements.

Moved by Coleman to require new and renewal applicants to pass a first-time Fire Inspection (\$100) for each vehicle; refer to the City Manager to work with the Fire Department to make a recommendation regarding necessary follow-up inspections (at no charge). The Type 1 hood with fire suppression system requirement for those licensees with vehicles already in use in conjunction with licenses which are currently pending or issued at the time of publication of the ordinance will go into effect after December 31, 2017. Any replacement vehicles will not be exempt from the requirement. Motion Carried 7-0.

(F) Insurance. An insurance policy shall include commercial general liability insurance coverage **and** automobile liability insurance coverage, for operation of the mobile vendor vehicle, or the tow vehicle if the mobile vendor vehicle is a trailer.

- (1) Require limits of liability to include commercial general liability insurance coverage **and** automobile liability insurance coverage in the amount of \$1,000,000 per occurrence; or

(G) Removal of all equipment. The vehicle and all equipment must be removed at any time the vendor is not open for business.

- (1) Require the vehicle and all equipment be removed or provide storage in a completely enclosed building on the property at any time the vendor is not open for business; or
- (2) Not require the vehicle and all equipment be removed at any time the vendor is not open for business.

Moved by Coleman to select option 1; refer to the City Manager for recommendation regarding a stronger definition of reasonable absence, when equipment may remain on the property but the vendor is not onsite; and to provide a recommendation regarding what equipment/tables could permanently remain on the property. Motion Carried 7-0.

Hours of operation.

(H) Opening time for transient merchants.

- (1) 5:30 a.m. city wide; or
- (2) 8:00 a.m. outside the designated city center and 5:30 a.m. inside the designated city center.

Moved by Coleman that all grandfathered licensees – (license applications that are currently pending or licenses that are issued at the time of publication of the ordinance) are allowed to operate between 5:30 AM and 1:30 AM unless their location or ownership changes. For all transient merchants who are not grandfathered licensees and for all premises with permits other than those with a grandfathered licensee operating on the premises, the hours of operation are allowed to be between 5:30 AM and 1:30 AM unless the premise is located within 125' of any residentially-zoned property. If the Premise is located within 125' of residentially-zoned property, vendors are allowed to operate between 8:00 AM and 10:30 PM. Motion Carried 6-1. Nays: Cownie.

(I) Closing time for transient merchants.

- (1) 1:30 a.m. city wide; or
- (2) 10:30 p.m. city wide; or
- (3) 1:30 a.m. in the designated city center and 10:30 p.m. outside the designated city center; or
- (4) 1:30 a.m. in the designated city center and 10:30 p.m. outside the designated city center if the permitted sales area is less than 75' from the lot line of an adjoining residential property; or
- (5) 1:30 a.m. in the designated city center and 10:30 p.m. outside the designated city center if the permitted sales area is less than 75; from the lot line of an adjoining residential property with sales allowed until 1:30 a.m. on weekends and designated city holidays.

No vote was taken on Item I. This was considered in conjunction with item H.

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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