

ORDINANCE NO. 14,745

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,846 passed July 24, 2000, and Ordinance No. 13,923 passed February 26, 2001, and Ordinance No. 14,186 passed December 16, 2002, and Ordinance No. 14,329 passed April 5, 2004 by amending Sections 10-4, 78-28, 78-35, 78-66, 78-70, 78-74, 102-112, 102-1124, 102-1125, 102-1127, 102-1128, 102-1130 and adding and enacting new sections 102-1128.1, 102-1128.2 and 102-1130.1 thereof, regarding permits and licenses for street use, temporary outdoor service, peddlers, and transient merchants as related to street use events.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,846 passed July 24, 2000, and Ordinance No. 13,923 passed February 26, 2001, and Ordinance No. 14,186 passed December 16, 2002, and Ordinance No. 14,329 passed April 5, 2004 is hereby amended by amending Sections 10-4, 78-28, 78-35, 78-66, 78-70, 78-74, 102-112, 102-1124, 102-1125, 102-1127, 102-1128, 102-1130 and adding and enacting new sections 102-1128.1, 102-1128.2 and 102-1130.1 regarding permits and licenses for street use, temporary outdoor service, peddlers, and transient merchants as related to street use events, as follows:

Sec. 10-4. Duration of outdoor service/fencing and location.

- (a) A permanent outdoor service license or permit shall expire on the date of expiration of the alcoholic liquor license

or beer or wine permit for which the outdoor service license or permit applies.

- (b) A temporary outdoor service license or permit may be issued once per calendar year for a period not to exceed five consecutive days. Snow fence, field fence or plastic fence supported by columns or posts spaced no more than eight feet on center may be an acceptable retainer for temporary outdoor service subject to the approval of the building official.
- (c) A special event outdoor service license or permit may be issued when the outdoor service is in conjunction with and sanctioned by the sponsors of a community event, fair, or festival and shall authorize outdoor service for a period not to exceed five consecutive days.
 - (1) Retainer material listed in subsection (b) above shall apply.
 - (2) If the proposed special event requires use of a street, a street use permit will be required and the street use team will determine whether the event qualifies as a "special event".
- (d) A temporary or special event outdoor service license or permit shall not be issued without the prior written approval of the street use permit applicant for a location within the perimeter of a street closure, or within the perimeter of the event, when a street use permit application is on file with the city clerk or when a street use permit has been issued.

Sec. 78-28. Exemptions.

This article shall not apply to the following:

- (1) Persons making door-to-door sales for the purpose of a community improvement or benefit approved by the city council on behalf of nonprofit, tax-exempt corporations;
- (2) Newspaper vendors; or
- (3) Persons licensed as a salvage dealer under division 2 of article VIII of chapter 30 of this Code; or
- (4) Persons licensed as a solicitor under article IV of this chapter; or
- (5) Persons delivering and selling goods or merchandise to established customers.
- (6) Persons having written permission from a street use permit holder to make sales within the street area closed for an event.

Sec. 78-35. Prohibited acts.

(1) No peddler shall conduct peddling with any person situated in a motor vehicle upon any public street, alley, driveway access, or public way.

(2) No peddler shall conduct peddling upon any part of the public right of way along a parade route on the day of any permitted parade.

(3) No peddler shall conduct peddling within one thousand (1,000) feet of the perimeter of a street closure, or inside such perimeter, for an event where a street use permit has been issued unless written permission from the street use permit holder has been obtained.

Sec. 78-66. Information in application for license.

The application for a license as required by section 78-64 of this article shall include the following:

- (1) The full name, age, permanent address and phone number of the applicant.
- (2) A description of the merchandise to be sold.
- (3) The business name and address.
- (4) The date and length of the proposed sale.
- (5) The name and address of the private property where the sale will be held.
- (6) A written statement from the property owner listed in subsection (5) of this section that the applicant is authorized to use the property for a sale on the proposed dates.
- (7) An invoice or detailed statement of the amount of goods, wares, merchandise or stock the applicant proposes to offer for sale within the city.
- (8) The period of time the applicant has been engaged in such business.
- (9) A description of the structure, vehicle, tent, trailer or other configuration from which the sale will be conducted.
- (10) Written permission from a street use permit applicant if the proposed location for sales are within one thousand (1,000) feet of the perimeter of a street use closure for an event when an application is on file with the city clerk for a street use permit or when the street use permit has been issued.

Sec. 78-70. License issuance.

The city clerk or his or her duly authorized agent shall, upon satisfaction that the application requirements have been met for

a license as provided for in this article, the application is true and correct and upon payment of the license fee and posting of the cash or surety bond required by this article, issue the license required by this article.

Sec. 78-74. Prohibited acts.

- (a) No transient merchant shall sell to any person situated in a motor vehicle upon any public street, alley, driveway access, or public way.
- (b) No transient merchant shall erect a sign in and around the location of the sale in a manner such that the sign leans or is temporarily propped against a display area. Nothing in this subsection, however, shall be deemed to prohibit the erection of a sign permanently affixed to the place of sale so long as it complies with all other sections of this article and with chapter 134 of this Code.
- (c) No transient merchant shall conduct a transient sale with a display and sale area in excess of 1,000 square feet, but in no event shall any one dimension exceed 50 feet.
- (d) No transient merchant shall conduct a transient sale with a display height in excess of 15 feet.
- (e) No transient merchant shall display wares or products without anchoring or affixing such wares or products in such a manner so as to prevent their displacement by weather conditions.
- (f) No transient merchant shall conduct a transient sale within the setback area designated by chapter 134 of this Code.
- (g) No transient merchant shall conduct a transient sale without displaying the license required by this article within the place of sale in a manner such that it is readily visible to all persons attending the sale.
- (h) No private property owner shall allow, permit or authorize any person to conduct a transient sale without the license required by this article.
- (i) No private property owner or lessee shall allow, permit, or authorize the use of any property within the control of the private property owner or lessee in violation of any of the sections of this article.
- (j) No transient merchant shall conduct a transient sale within one thousand (1,000) feet of the perimeter of a street closure, or inside such perimeter, for an event where a street use permit has been issued unless written permission from the street use permit holder has been obtained.

Sec. 102-1122. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Des Moines, in the county of Polk, in the state of Iowa.

Entertainment district means a specifically identified area or zone of the city, other than residential, which is composed of a group or organization of businesses such as restaurants and bars.

Farmer's or public market means the sale of products, the majority of which have been produced in the state, including but not limited to, raw fresh vegetables, fruit, honey, herbs, flowers, plants, nuts, baked goods or handcrafted items which conform to all applicable city, county or state health and safety provisions, particularly state department of agriculture regulations, and which are offered for sale by any person, persons, business, or organization on a portion of, or entirely on a public street, sidewalk, alley, park or public place during set hours, no more than two days per week within a one-year period.

Person means any natural person, his or her heirs, executors, administrators or assigns, firm, partnership, association, corporation, company or organization, its or their successors or assigns, or the agent of any of them.

Residential event means a neighborhood-centered activity on a non-primary street in an area that is not zoned commercial or industrial.

Street means that portion of the public right-of-way normally used for vehicular traffic and including the abutting sidewalks except for any portion of the sidewalk that has been leased or licensed.

Timed event means any event, activity, competition or race, not including the use of motorized vehicles, involving three or more people for which the successful completion relies upon a participant's time or order of finish which obstructs the free flow of pedestrian or vehicular traffic on the streets, sidewalks, alleys or public places of the city.

Sec. 102-1124. Street use team.

- (a) The street use team shall consist of representatives of the city departments of engineering (traffic and transportation division), police, fire, city clerk, public works, park and recreation, finance (risk manager), and community development (building safety division). Other city representatives or outside representatives will be added as

necessary.

- (b) The street use team may require the person or representative of the group applying for a street use permit to be present when the street use team meets regarding the application for a permit. At that time, the applicant may be required to provide any additional information that is reasonably necessary to make a fair determination.

Sec. 102-1125. Application.

- (a) *Contents.* A written application for a street use permit by persons or groups desiring the same shall be made on a form provided by the city clerk and shall be filed with the city clerk. The application shall set forth the following information regarding the proposed street use:
 - (1) The name, address, telephone number, facsimile number and e-mail address of the applicant(s) or sponsor(s) of the event and contact person(s).
 - (2) If the proposed street use is to be conducted for, on behalf of, or by an organization, the name, address, and telephone number of the headquarters of the organization and of the authorizing responsible heads of such organization.
 - (3) The date(s) and duration of time for which the requested use of the street is proposed to occur.
 - (4) An accurate description of that portion of the street proposed to be used, including a map.
 - (5) The estimated number of participants/attendees .
 - (6) The proposed use, described in detail, including a description of the activities planned.
 - (7) After initial filing of the application, any additional information may be requested that the street use team deems reasonably necessary to make a fair determination as to whether a permit should be issued, including but not limited to a crowd control plan.
- (b) *Deadline for applications.*
 - (1) Applications that include a commercially zoned district must be submitted not less than 90 calendar days prior to the date of the event. Applications received less than 90 days in advance will be assessed the late fee set in the schedule of fees and may be denied.
 - (2) Applications limited to a residential district must be submitted not less than 30 calendar days prior to the date of the event. Applications received less than 30

days in advance will be assessed the late fee set in the schedule of fees and may be denied.

(c) *Petition required.*

- (1) For all street closure applications with planned street closures at any one location lasting more than 1 hour except events taking place entirely in a residentially zoned district, a petition is required designating the proposed areas of the street to be used and the time of the proposed use. The petition shall be signed by more than 50 percent of the business owners either abutting or within a building that abuts the portion of the street to be closed for more than one hour.
- (2) A good faith attempt shall be made to obtain signatures from all business owners/managers either abutting or within a building that abuts the portion of the street to be closed for more than one hour.
- (3) Applications with petitions that do not have more than 50% approval pursuant to this section will be denied unless appealed pursuant to section 102-1133 of this division.
- (4) The petition form shall be available from the street use team and when completed the petition may be verified by the street use team.
- (5) Applicants who have obtained a farmers or public market permit for the current year pursuant to sections 102-556 through 102-564 are exempt from the petition required by this section.

(d) *Notice.*

The applicant shall provide notice of the event to all residents and commercial tenants, owners, and lessees satisfactory to the street use team.

Sec. 102-1127. Related licenses and permits/vendor exception.

- (a) All related licenses and permits required by the Des Moines Municipal Code shall be obtained by licensee/permittee. The street use team will advise which additional licenses and permits may be required based upon information provided by the applicant.
- (b) A vendor that has permission to operate within the street closure may operate under the street use permit if authorized by the street use permit holder and shall not be required to obtain a license or permit while participating in the event except for either the sale of alcoholic beverages, or sales made where a sidewalk café lease or license has been issued.

Sec. 102-1128. Fire apparatus access road.

Fire apparatus access roads shall be provided as required in the currently adopted International Fire Code, unobstructed access width of not less than 20 feet and unobstructed vertical clearance of not less than 13 feet 6 inches.

Sec. 102-1128.1. Clear passage on sidewalks.

A six (6) foot clear passage on all sidewalks must be maintained during the street closure.

Sec. 102-1128.2. Access to businesses.

Access to businesses that abut the street closure shall be maintained during the normal business hours of the affected business.

Sec. 102-1130. Criteria and standards in reviewing street use permit applications.

The criteria to be considered in reviewing street use permit applications may include:

- (1) Whether the applicant appeared at the street use meeting at the request of the street use team and/or supplied information requested by the street use team.
- (2) Whether the time and size of the event would substantially interrupt the safe and orderly movement of pedestrian and vehicular traffic in the vicinity of the event's location;
- (3) Whether the concentration of persons at the event would unduly interfere with proper fire and police protection of, or other emergency service through, the event or to areas adjacent to the event's location;
- (4) Whether the estimated number of participants or the size or type of event equipment is sufficient to close a street or if there is an alternative available to closing a street;
- (5) Whether another street use permit has already been granted for substantially the same time and location;
- (6) Whether the size or time of the event would require so great a diversion of the city police department as to prevent normal police protection of the city or to prevent adequate police protection at another previously scheduled city-wide event;
- (7) Whether a recurring event conflicts with the requested

location and time.

- (8) Whether city personnel necessary to regulate and monitor the event can reasonably be made available.
- (9) Whether the event is reasonably likely to cause injury to persons or property and there is adequate planning for crowd control or participants;
- (10) Whether adequate sanitation or other health facilities will be available at the event;
- (11) Whether there is a sufficient number of parking places within a reasonable distance to accommodate the number of vehicles expected;
- (12) Whether the time, size, or nature of the events are compatible with the normal activity at that location;
- (13) Whether the proposed use or event will have a significantly adverse environmental impact;
- (14) Whether negative police or other official reports of past activities sponsored by the same applicant or in the same location merit a recommendation of denial; or
- (15) Whether the sponsor, applicant, their employees or agents have violated the Des Moines Municipal Code at past events.
- (16) Whether applicant(s) have paid the City all fees due and owing under any chapter of the Des Moines Municipal Code.

Sec. 102-1130.1 Buffer zone.

- (a) A street use permit shall not be granted when the proposed location is within one thousand (1,000) feet of the perimeter of the street closure and conflicts with the time of another street use permit, unless the event organizer/applicant of the earlier applied for street use permit approves of the issuance of the street use permit proposed for a location closer than one thousand (1,000) feet to the perimeter of the street closure for the event. This subsection does not apply to events that occur four (4) or more times per calendar year.
- (b) The holder of a street use permit may give written permission to peddlers and transient merchants to operate within one thousand (1,000) feet of the perimeter of their event as provided under sections 78-66 and 78-35.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Douglas P. Philip, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 08-326), passed by the City Council of said City at a meeting held February 25, 2008 signed by the Mayor on February 25, 2008 and published as provided by law in the Business Record on March 10, 2008. Authorized by Publication Order No.6055.

Diane Rauh, City Clerk