

★ **Roll Call Number**

Agenda Item Number

44B

Date February 25, 2008

An Ordinance entitled, "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, as heretofore amended, by repealing Sections 78-61 through 78-74 thereof, and enacting a new Section 78-61, Section 78-64 and Sections 78-66 through 78-74, and by adding and enacting a new Section 78-10, Section 78-69.01 and Section 78-75, regarding transient merchants and sales of food and merchandise from temporary facilities",

which was considered and voted for the first time upon under Roll Call No. 08-146 of January 28, 2008, and amended to require proof of an Iowa Food Establishment License; again presented.

MOVED by \_\_\_\_\_ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk

MOTION CARRIED

APPROVED

.....  
Mayor

ORDINANCE NO. \_\_\_\_\_

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, as heretofore amended, by repealing Sections 78-61 through 78-74 thereof, and enacting a new Section 78-61, Section 78-64 and Sections 78-66 through 78-74, and by adding and enacting a new Section 78-10, Section 78-69.01 and Section 78-75, regarding transient merchants and sales of food and merchandise from temporary facilities.

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, as amended by Ordinance No. 14,190 passed December 16, 2002, be and is hereby amended by repealing Sections 78-61 through 78-74 thereof, and enacting a new Section 78-61, Section 78-64 and Sections 78-66 through 78-74, and by adding and enacting a new Section 78-10, Section 78-69.01 and Section 78-75, regarding transient merchants and sales of food and merchandise from temporary facilities, as follows:

**Sec. 78-10. Limitation on retail premises.**

No person shall engage in the business of displaying for sale, or selling, food, beverages or merchandise within the city from any vehicle, trailer, tent, or temporary structure or from any temporary location or place, except:

- (1) Permitted premises. Activities conducted in compliance with a certificate of occupancy issued pursuant to section 134-151.
- (2) Yard sales. The casual and occasional sales of used household goods by the owner thereof to the public, on a nonreceiving basis, if the seller, at the time of the sale, is not engaged for profit in the business of selling goods of that or a similar nature, so long as such sales are not conducted in excess of four consecutive days and no more than two times annually.
- (3) Licensed use of right-of-way. Sales activities conducted in compliance with an entertainment district license, a sidewalk sales permit, a farmers' or public market permit, or a sidewalk cafe license or lease issued for the premises pursuant to article VII of chapter 102 of this code.
- (4) Street Use Permit. Sales activities conducted in compliance with a street use permit issued pursuant to article XVI of chapter 102 of this code.
- (5) Peddlers. Sales activities conducted in compliance with a peddlers license issued pursuant to article II of this chapter.
- (6) Transient merchants. Sales activities conducted in compliance with a transient merchant license issued pursuant to article III of this chapter.
- (7) Parks. The sale of food and beverages in public parks and rivers with

- permission of the park and recreation board.
- (8) Food vendor carts. The sale of food and beverages in a C-3, C-3A, C-3B, C-3R, and D-R zoning districts on private property from a non-motorized food cart.
- (9) Raw fruits and vegetables. Sale of raw fruits and vegetables.
- (10) Christmas trees. Sale of Christmas trees during the months of November and December.
- (11) Emergency response sites. Sales of food and beverages at the site of an emergency or disaster with the permission of the police chief, fire chief or public works director.

### Sec. 78-61. 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:

*Transient merchant* means 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, beverage, fruit, vegetable or farm product; provided however that the following types of sales activities shall not constitute sales by a transient merchant:-

- (1) Permitted premises. Activities conducted in compliance with a certificate of occupancy issued pursuant to section 134-151.
- (2) Yard sales. The casual and occasional sales of used household goods by the owner thereof to the public, on a nonreceiving basis, if the seller, at the time of the sale, is not engaged for profit in the business of selling goods of that or a similar nature, so long as such sales are not conducted in excess of four consecutive days and no more than two times annually.
- (3) Licensed use of right-of-way. Sales activities conducted in compliance with an entertainment district license, a sidewalk sales permit, a farmers' or public market permit, or a sidewalk cafe license issued for the premises pursuant to article VII of chapter 102 of this code.
- (4) Street Use Permit. Sales activities conducted in compliance with a street use permit issued pursuant to article XVI of chapter 102 of this code.
- (5) Peddlers. Sales activities conducted in compliance with a peddlers license issued pursuant to article II of this chapter.
- (6) Parks. The sale of food and beverages in public parks and rivers with permission of the park and recreation board.
- (7) Food vendor carts. The sale of food and beverages in a C-3, C-3A, C-3B, C-

3R, and D-R zoning districts on private property from a non-motorized food cart.

- (8) Raw fruits and vegetables. Sale of raw fruits and vegetables.
- (9) Christmas trees. Sale of Christmas trees during the months of November and December.
- (10) Emergency response sites. Sales of food and beverages at the site of an emergency or disaster with the permission of the police chief, fire chief or public works director.

**Sec. 78-62. (not used) Exceptions.**

~~—The following sales by transient merchants do not require a license under this article; however, section 78-74 of this article shall apply to the conduct of all sales by transient merchants:~~

- ~~(1) The sale of food in the C-3 central business district.~~
- ~~(2) The sale of food in public parks with permission of the park and recreation board.~~
- ~~(3) The sale of raw fruits and/or vegetables; however, a transient merchant operating under this exception shall register with the city clerk by supplying all information required under section 78-66 of this article.~~
- ~~(4) Sales activities conducted pursuant to a special permit issued by the zoning board of adjustment pursuant to division 3 of article IV of chapter 134 of this Code.~~
- ~~(5) Sales activities conducted on property zoned for retail sales use and owned by a non-profit corporation where such sales activities are sponsored by the non-profit corporation and are limited to the weekends in the months of June through August.~~

**Sec. 78-63. (not used) Exemptions for charitable or religious societies.**

~~—Nothing in this article shall apply to or require the obtaining of a license by any church or religious organization which is exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code that shall conduct sales of goods, wares or merchandise when the proceeds thereof shall be applied to the payment of the expenses thereof and to the charitable or religious object for which the charitable or religious society exists. However, section 78-74 of this article shall apply to the conduct of such sales.~~

**Sec. 78-64. License required.**

Every transient merchant shall, before offering for sale any goods, wares or merchandise in the city, obtain a transient merchant license for their sale. ~~The license shall be conspicuously displayed.~~

**Sec. 78-65. (not used) ~~License application.~~**

~~\_\_\_\_\_ A transient merchant shall apply for a license to the city clerk.~~

**Sec. 78-66. ~~Information in application~~ Application for license.**

Every transient merchant shall apply to the city clerk for a transient merchant license at least five business days prior to use by providing the following information upon a form to be provided by the city clerk: 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 starting date and number of days 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 or person in control of the property 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 the same or similar such-business and the jurisdictions in which the applicant has previously conducted business.
- (9) A description of the structure, vehicle, tent, trailer or other configuration from which the sale will be conducted.
- (10) Proof that the applicant holds a retail sales tax permit issued by the Iowa Department of Revenue; and, if the business is a food establishment, the appropriate food establishment license issued by the Iowa Department of Inspections and Appeals.
- (11) If the proposed location for the sale is within one thousand (1,000) feet of the perimeter of a street closure on the same day for a street use event that occurs no more than four (4) times per calendar year, then the application for the transient merchant license must be accompanied by written permission from the applicant for the street use permit.

**Sec. 78-67. ~~Investigation of license application.~~**

~~The city clerk or his or her duly authorized agent shall make an thorough investigation of the facts contained in the application for a transient merchant license, required by this article.~~

**Sec. 78-68. Bond.**

- (a) Except as provided in paragraph (c), no transient merchant license shall be issued until the applicant has executed and delivered ~~Before a license, as required by section 78-64 of this article, shall be issued, the applicant shall execute and deliver~~ to the city clerk a cash or surety bond for no less than \$200.00. The cash or surety bond shall be held to indemnify and pay the city any penalties or costs incurred in the enforcement of any of the sections of this article and indemnify or reimburse any purchaser of goods, wares, merchandise or stock for any judgment which may be obtained by a purchaser for damages in any action commenced within three months from the date of purchase, due to misrepresentations as to the kind, quality or value of such goods, wares, merchandise or stock, whether the misrepresentations were made by the owner or by his or her servants, agents or employees, either at the time of making the sale or through any advertisement of any character, printed or circulated, with reference to such stock of goods, wares or merchandise or any part thereof.
- (b) The bond shall be released by the city clerk and returned to the applicant upon request by the applicant at any time more than 4 months after expiration of the transient merchants license for which the bond was provided, unless the city clerk has received notice of a pending action in the state or federal courts seeking a judgment upon a claim eligible for payment from the bond. Except as otherwise provided by court order, the city clerk shall not release any bond during the pendency of any such action.
- (c) No bond shall be required for the issuance of a transient merchant license to an applicant who is exempt from payment of the license fee pursuant to section 78-69.

**Sec. 78-69. License fee.**

- (a) Except as provided in paragraph (c), the ~~The~~ applicant for a transient merchant license shall pay a fee at the time of filing the application in the amount set in the Schedule of Fees adopted by City Council by resolution.
- (b) In the event the application for a transient merchant license is denied or withdrawn by the applicant, either all or a portion of the license fee in an amount set in the Schedule of Fees adopted by the City Council shall be retained by the city to defray the administrative costs incurred.
- (c) A transient merchant may obtain a license under this article to conduct the following types of sales without paying a license fee and without posting the bond required by section 78-68:
  - (1) Sales activities conducted pursuant to a special permit issued by the zoning board of adjustment pursuant to division 3 of article IV of chapter 134 of this Code.
  - (2) Sales activities conducted on property zoned for retail sales use and owned by a non-profit corporation where such sales activities are sponsored by the non-profit corporation and are limited to the weekends in the months of June

through August.

- (3) Sales activities by any church or religious organization which is exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code when the proceeds thereof shall be applied to the payment of the expenses thereof and to the charitable or religious object for which the charitable or religious society exists.

**Sec. 78-69.01. Priority of street use events, refund of license fee.**

- (a) The application for a transient merchant license shall contain a notice stating substantially as follows:
- A transient merchant license will not be issued for sales on a parcel on the same day as, and within one thousand (1,000) feet of the perimeter of a street closure made under authority of a street use permit, unless written permission from the applicant for the street use permit for operation of the transient merchant has been filed with the city clerk prior to issuance of the transient merchant license. This limitation shall not apply to street use permits issued for events that occur more than four (4) times per calendar year.
- (b) Subject to paragraph (e), upon issuance of a street use permit, the city clerk shall immediately give notice to the applicant for any transient merchant license for sales on the same day as the street use event at a location within one thousand (1,000) feet of the perimeter of such street closure, informing the transient merchant that their application will not be granted for each day of the street closure, unless written permission from the applicant for the street use permit for operation of the transient merchant is filed with the city clerk.
- (c) Subject to paragraph (e), no transient merchant license shall be issued for sales on a parcel on the same day as, and within one thousand (1,000) feet of the perimeter of a street closure made under authority of a street use permit, unless written permission from the applicant for the street use permit for operation of the transient merchant has been filed with the City Clerk.
- (d) If an application for a transient merchant license for a duration of three days or less is not granted for one or more of those days by operation of this section, the city clerk shall refund a portion of the application fee paid for that transient merchant license equal to that portion of the duration of the license which cannot be granted by operation of this section.
- (e) The priority given to an event for which a street use permit is issued, and the denial of a transient merchant license for sales within one-thousand feet of the perimeter of the street closure, shall not apply to those street use events which occur more than four (4) times per calendar year.

**Sec. 78-70. License issuance.**

- (a) A transient merchant license shall not be issued more than fifteen days in advance of

the commencement of the term of the license. Prior to issuance of the license the City shall confirm that no street use permit has been issued for an event that limits operation of the transient merchant pursuant to section 78-69.01.

- (b) The city clerk or the city clerk's designee his or her duly authorized agent shall, upon satisfaction that the information provided in an application for a transient merchant license as provided for in this article is true and correct, that the conditions for issuance of the license are satisfied, and upon payment of the license fee and posting of the cash or surety bond, if any, required by this article, issue the transient merchant license. required by this article.

**Sec. 78-71. Transferability of license.**

Transient merchant licenses Licenses issued under this article shall not be transferable.

**Sec. 78-72. Duration and renewal of license.**

- (a) Except as allowed by paragraph (c), a transient merchant license The license required by section 78-64 of this article shall be in effect for a maximum of three (3) consecutive days, commencing on the starting date identified in the application. 30 days from the date of issuance and may be renewed for the same period so long as there have been no violations of this article, upon payment of the fee required by section 78-69 of this article and upon posting of the cash or surety bond required by section 78-68 of this article.
- (b) At least ten days must elapse between the times when a parcel is used for the operation of a transient merchant. A license shall not be issued for the operation of a transient merchant business on a parcel unless at least 10 days will elapse between the time sought to be approved by such license, and the time a transient merchant is allowed to operate on that parcel under any license previously applied for pursuant to this article.
- (c) A transient merchant license may be issued for the duration of the following events provided the business is located within the area established below for each event:
- (i) During the Iowa State Fair, at a location within one-half mile of the boundaries of the Iowa State Fairgrounds.
  - (ii) During the Drake Relays, at a location within one-half mile of the boundaries of the Drake University campus.
  - (iii) During a construction project at the site of the construction project, where the estimated value of the work as established for permitting or public bidding purposes is in excess of five million dollars.
  - (iv) During an event and within the boundaries established for that event by resolution of the City Council, upon a finding by the City Council that the event is one of state-wide or national interest and that the number of visitors to the event warrants the allowance of transient merchants.



**Sec. 78-73. ~~Appeal. Suspension or revocation of license.~~**

- (a) Whenever the city ~~clerk council~~ or the city clerk's ~~designee~~ finds that the licensee or the licensee's ~~his or her~~ employees or agents has furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city ~~clerk council~~ or the city clerk's ~~designee~~ may suspend or revoke the license or deny its issuance or renewal.
- (b) ~~No such suspension, revocation or denial shall issue except upon notice delivered to the licensee by regular mail addressed to the licensee at the licensee's last known address a minimum of five days prior to the date set for hearing before the council. Such notice shall inform the licensee of the time, date and place of hearing and shall set out briefly the reasons therefor. Any party aggrieved by any decision of the city clerk or the city clerk's designee to grant, deny or revoke a transient merchant license may appeal the decision to the administrative hearing officer. Such an appeal must be in writing and must be filed with the city clerk no later than ten business days after the license is granted, denied or revoked, unless the administrative hearing officer waives such ten-day requirement upon a showing of good and sufficient cause. The city clerk shall fix a reasonable time for a public hearing on the appeal, post notice thereof and give due notice to the applicant and to the appellant, if different from the applicant. The administrative hearing officer shall decide the appeal within a reasonable time.~~
- (c) If, after such hearing, the ~~city council~~ administrative hearing officer makes a finding based on substantial evidence that a violation of this article or another chapter of this Code did in fact take place as alleged, the ~~city council~~ administrative hearing officer may ~~grant, deny suspend or revoke the license or deny its renewal~~; the determination of whether to so ~~grant, suspend, revoke or deny or revoke~~ such license shall be in the discretion of the ~~city council~~ administrative hearing officer and shall be dependent upon the circumstances surrounding the violation and its severity.
- (d) A licensee whose license has been revoked or denied shall not be eligible for another such license for a period of 180 days after such revocation or denial.

**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

- (d) excess of 1,000 square feet, but in no event shall any one dimension exceed 50 feet. 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 from the adjoining street. ~~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.

**Sec. 78-75. Penalty.**

Any person who fails to perform an act required by this chapter or who commits an act prohibited by this chapter shall be guilty of a misdemeanor punishable by fine or ~~fine or~~ imprisonment as provided by section 1-15 of this Code or shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.

Sec. 2. The amendments to the City Code set forth in Section 1, above, shall be in full force and effect from and after May 15, 2008.

Sec. 3. No transient merchant license shall be issued pursuant to the existing provisions in Article III, of Chapter 78 of the City Code for the conduct of any transient merchant business after May 25, 2008. No transient merchant shall operate in the City of Des Moines after May 25, 2008, without a transient merchant license issued pursuant to Article III, of Chapter 78 of the City Code as amended by this Ordinance.

FORM APPROVED:

*Roger K. Brown*

Roger K. Brown, Assistant City Attorney