

Date..... October 25, 2010

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 Paragraph (1) of Section 78-62, Paragraphs (4) and (9) of Section 78-66, Paragraphs (a) and (d) of Section 78-67, and Paragraph (i) of Section 78-74 thereof, and enacting a new Paragraph (1) of Section 78-62, Paragraphs (4) and (9) of Section 78-66, Paragraphs (a) and (d) of Section 78-67, and Paragraph (i) of Section 78-74, and by adding and enacting a new paragraph (m) to Section 78-74, regarding the licensing and regulation of transient merchants",

(Council Communication No. 10-644)

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K. Brown

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Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED		APPROVED		

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.

_____ Mayor

_____ City Clerk

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 Paragraph (1) of Section 78-62, Paragraphs (4) and (9) of Section 78-66, Paragraphs (a) and (d) of Section 78-67, and Paragraph (i) of Section 78-74 thereof, and enacting a new Paragraph (1) of Section 78-62, Paragraphs (4) and (9) of Section 78-66, Paragraphs (a) and (d) of Section 78-67, and Paragraph (i) of Section 78-74, and by adding and enacting a new paragraph (m) to Section 78-74, regarding the licensing and regulation of transient merchants.

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. 14,807 passed November 10, 2008, be and is hereby amended by repealing Paragraph (1) of Section 78-62, Paragraphs (4) and (9) of Section 78-66, Paragraphs (a) and (d) of Section 78-67, and Paragraph (i) of Section 78-74 thereof, and enacting a new Paragraph (1) of Section 78-62, Paragraphs (4) and (9) of Section 78-66, Paragraphs (a) and (d) of Section 78-67, and Paragraph (i) of Section 78-74, and by adding and enacting a new paragraph (m) to Section 78-74, regarding the licensing and regulation of transient merchants, as follows:

Sec. 78-62. 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 from a pushcart located within the area known as Nollen Plaza and bounded by Locust, Walnut and 3rd Streets and the extension of 4th Street. ~~in the C-3, C-3A, C-3B, C-3R and D-R zoning districts.~~
- ...

Sec. 78-66. Application for license.

Every transient merchant shall apply to the city clerk for a transient merchant license at least three business days prior to use by providing the following information upon a form to be provided by the city clerk:

- (4) The starting date and duration of the proposed sale, and the specific hours,

not less than six consecutive hours in every 24-hour period, when the site will be vacated as required by section 78-74(i). The hours of operation must also comply with the requirements of section 78-74(m), if applicable.

...

- (9) A site sketch which identifies the location of the licensed premises, the placement of any equipment and facilities used in the operation of the business, and the ~~required~~ three off-street parking spaces if required by section 78-67(5), in relationship to the adjoining streets, public sidewalks, and property lines.

...

Sec. 78-67. Site requirements.

A transient merchant license shall not be issued unless the licensed premises upon which the transient merchant operates satisfies the following requirements. A transient merchant shall maintain the licensed premises in a condition that satisfies the following requirements for the duration of the license.

- (a) *All licensed premises.* The licensed premises for all transient merchants shall conform with the following requirements:
 - (1) All applicable requirements of this article, the City Code, the Iowa Code and the Iowa Administrative Code.
 - (2) The licensed premises must be within a commercial or industrial zoning district.
 - (3) The licensed premises cannot be upon a parcel having a residential use as its principle use.
 - (4) All trailers, vehicles, tents, equipment, and areas used for the storage, display or sale of food or merchandise must be located on a paved surface outside required zoning setback for structures under chapter 134 and outside any required fire lanes and drive approaches.
 - (5) The licensed premises must provide at least three paved off-street parking spaces served by a paved driveway from the public right-of-way, provided however that no off-street parking is required in the C-3, C-3A, C-3B, C-3R and D-R zoning districts. The transient merchant may share parking required by chapter 134 for use by an existing business on the site, if the available parking is sufficient to serve the normal operations of both. The available parking shall be presumed to be insufficient to serve the normal operations of both businesses if within the past year the operation of a transient merchant at the site has caused an overflow of customer or employee parking into the street or other private parking lots in the vicinity.
 - (6) Bathroom facilities must be provided for the business workers on the licensed premises or by agreement for the use of bathroom facilities located within 500 feet of the licensed facilities. However, this requirement shall not apply to a pushcart.
 - (7) Only one transient merchant at a time may operate upon a parcel. A transient merchant license shall not be issued for the operation of more than one

transient merchant on a parcel on the same day. However, any number of pushcarts may operate on a single parcel, provided the only form of transient merchants on the parcel are pushcarts.

...
(d) *Additional requirements for a food service establishment.* The licensed premises for any transient merchant which operates as a food service establishment shall conform to the following additional requirements.

- (1) The business shall comply with the requirements established by Iowa Administrative Code § 481-31.7 for a mobile food unit/pushcarts.
- (2) Bathroom facilities must be provided for the business workers and customers on the licensed premises or by agreement for the use of bathroom facilities located within 500 feet of the licensed facilities. However, this requirement shall not apply to a pushcart.

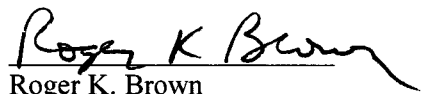
Sec. 78-74. Prohibited acts.

...
(i) A transient merchant shall remove all equipment, temporary structures, temporary toilet facilities, garbage, and any vehicle or trailer used in the operation of the business from the licensed premises and the underlying parcel at least six hours out of every 24 hour period. No transient merchant shall permit any equipment, temporary structures, temporary toilet facilities, garbage, vehicle or trailer used in the operation of the business to remain on the licensed premises or the underlying parcel during the hours identified for the site to be vacant in a license issued pursuant to this article. However, the requirements of this subsection (i) to evacuate the site shall not apply to the sale of raw fruits and vegetables, natural Christmas trees, live plants and nursery stock.

...
(m) No transient merchant shall sell food or beverages in the C-3, C-3A, C-3B, C-3R or D-R zoning districts between 1:30 a.m. and 5:30 a.m. each night.

Sec. 2. Paragraph (1) of Section 78-62 shall become effective January 1, 2011, to allow the pushcart operators who were formerly exempt from the licensing requirements time to obtain a transient merchant license. All other provisions of this ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Roger K. Brown
Assistant City Attorney