

Date September 10, 2012

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 amending Sections 78-70.01 and 78-73 thereof regarding the denial and revocation of transient merchant licenses",

presented.

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

FORM APPROVED:

(First of three required readings)

Roger K. Brown  
 Roger K. Brown  
 Assistant City Attorney

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

**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

## 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 amending Sections 78-70.01 and 78-73 thereof regarding the denial and revocation of transient merchant licenses.

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 heretofore amended, be and is hereby amended by amending Sections 78-70.01 and 78-73 thereof regarding the denial and revocation of transient merchant licenses, as follows:

**Chapter 78 PEDDLERS AND SOLICITORS**  
**Article III. Transient Merchants**

**Sec. 78.70.01. Appeal of denial.**

- (a) The denial of an application for a transient merchant license may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (b) In the event an application for a transient merchant license is denied, the city clerk or the city clerk's designee shall cause notice of such denial to be promptly communicated to the applicant or the applicant's representative by phone at the phone number provided in the application. Written notice shall also be sent to the applicant at the business address identified in the application informing the applicant of the denial, the reasons therefore, and the applicant's right to appeal the denial to an administrative hearing officer by giving filing a written notice of appeal to with the city clerk within 10 business days after the date of such notice. -written notice is mailed.
- ~~(b) In the event the denial of a application is timely appealed, the city clerk or the city clerk's designee cause notice of the hearing to be served upon the licensee by personal service at least three business days prior to the date set for the hearing, or by regular mail addressed to the licensee at the licensee's business address as shown on the application a minimum of five days prior to the date set for the hearing. Such notice shall inform the licensee of the time, date and place of hearing. The time within which to file the appeal may be extended by the city clerk or the city clerk's designee for good cause shown.~~
- ~~(c) If, after such hearing, the hearing officer makes a finding based on substantial evidence that the application and the proposed location and manner of operation of the business conforms to the requirements of this article and to all other applicable requirements of this Code, the hearing officer shall order the issuance of the license. Otherwise, the license shall be denied. -The hearing officer may continue the hearing for good cause shown.~~

- (d) ~~The applicant may appeal the decision of the hearing officer to the city council by filing a written notice of appeal with the city clerk within 10 days after the decision is entered of record. Failure to timely file such written notice of appeal shall constitute a waiver of the right to appeal the decision of the hearing officer. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the city clerk.~~
- (e) ~~The hearing on an appeal to the city council shall be scheduled within 20 days of the receipt of notice of appeal. The hearing may be continued for good cause. After such hearing the city council may affirm or reverse the decision of the hearing officer. Such determination shall be contained in a written decision and shall be filed with the city clerk within three days after the hearing or any continued session thereof. The hearing shall be confined to the record made before the hearing officer, the arguments of the parties or their representatives, any additional evidence which was not available at the time of the hearing before the hearing officer, and any other information the city council deems necessary.~~

### Sec. 78-73. Suspension or revocation of license.

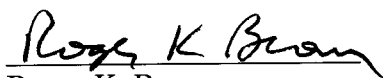
- (a) Upon complaint or reasonable suspicion that a licensee or the licensee's employees or agents has furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city clerk or the city clerk's designee may cause the matter to be investigated. Whenever ~~If~~ the city clerk or the city clerk's designee finds that the licensee or the licensee's 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 or the city clerk's designee may give notice to the licensee of the city's intent to suspend or revoke ~~suspend or revoke~~ the license, or to deny its renewal.
- (b) Notice of the city's intent to suspend, revoke, or deny the renewal of ~~suspend or revoke~~ a license and a brief summary of the factual basis for such remedial action shall be served upon the licensee, ~~by personal service or by service upon a cashier for the business at a licensed premises, or by regular mail addressed to the licensee at the licensee's business address as shown on the application a minimum of five days prior to the date set for the hearing.~~ Such notice shall inform the licensee of the time, date and place of a meeting where the licensee may meet with the city clerk or the city clerk's designee for the purpose of presenting additional information regarding the intended remedial action and the factual basis therefore, and that a final decision on appropriate remedial action will made after the schedule time for such meeting. ~~of a hearing before a hearing officer where the suspension or revocation shall be considered and shall set out briefly the reasons therefore.~~ Such notice shall be served upon the licensee by personal service or by service upon a cashier for the business at a licensed premises, or by regular mail addressed to the licensee at the licensee's business address as shown on the application a minimum of five business days prior to the date set for the meeting.
- (c) If, after the scheduled meeting and after consideration of all the available information including any information provided at the meeting by the licensee, the city clerk or the city clerk's designee ~~such hearing, the 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 hearing officer~~ city clerk or the city clerk's designee may suspend or revoke

the license or deny its renewal; the determination of whether to so suspend, ~~or revoke the license~~ or deny ~~its renewal such license~~ shall be in the discretion of the ~~hearing officer~~ city clerk or the city clerk's designee and shall be dependent upon the circumstances surrounding the violation and its severity. The decision to suspend, revoke or deny renewal of a license shall be in writing and shall identify the basis for such action. The decision shall be promptly served in the same manner as required for the service of the notice required under subsection (b), and shall not be effective until ten days after so served. The decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision. The hearing officer may continue the hearing for good cause shown.

- ~~(d) The applicant may appeal the decision of the hearing officer to the city council by filing a written notice of appeal with the city clerk within 10 days after the decision is entered of record. Failure to timely file such written notice of appeal shall constitute a waiver of the right to appeal the decision of the hearing officer. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the city clerk.~~
- ~~(e) The hearing on an appeal to the city council shall be scheduled within 20 days of the receipt of notice of appeal. The hearing may be continued for good cause. After such hearing the city council may affirm or reverse the decision of the hearing officer. Such determination shall be contained in a written decision and shall be filed with the city clerk within three days after the hearing or any continued session thereof. The hearing shall be confined to the record made before the hearing officer, the arguments of the parties or their representatives, any additional evidence which was not available at the time of the hearing before the hearing officer, and any other information the city council deems necessary.~~
- (d) The decision of the city clerk or the city clerk's designee to suspend, revoke or deny renewal of a license pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (ef) A licensee whose license has been revoked or denied for renewal shall not be eligible for another such license for a period of 180 days after such revocation or denial of renewal.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law. However, any administrative appeal for which the initial notice of appeal was received by the City Clerk prior to the date of such publication shall continue to be governed by the procedural rules in effect at the time such appeal was so received.

FORM APPROVED:



Roger K. Brown  
Assistant City Attorney