

★ **Roll Call Number**

Agenda Item Number

35

Date January 28, 2013

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 adding and enacting a new Section 78-25, and by amending Sections 78-26, 78-27, 78-28, 78-29, 78-30, 78-31, 78-34 and 78-35, relating to licensing and regulating peddlers",

which was considered and voted upon for the first time under Roll Call No. 12- 1957 of December 17, 2012, and considered and voted upon for the second time under Roll Call No. 13- 0051 of January 14, 2013, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

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



January 25, 2013

Honorable Mayor
and
Members of the City Council

On December 17, 2012, per Roll Call No. 12-1957 you approved first consideration of an ordinance amending the ordinance regarding Peddlers. On January 14, 2013 per Roll Call No. 13-0051 you approved second consideration, and asked that staff meet with MediaCom to address their concerns with the proposed ordinance amendments. Staff met with MediaCom representatives Bill Peard and Bret Dublinske on January 17th, to discuss two minor changes:

1. Cash Bond Requirement—Requires a cash bond of \$200 per person, or \$1,000 per employer who employs 5 or more peddlers.
2. Display of License—the section has been amended to clarify that a permit is not left at the residence when no one is home.

The ordinance before you for final consideration contains the changes requested by MediaCom and staff is recommending it to you. We will monitor the effectiveness of the changes, and report any concerns to the Council.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is fluid and cursive, with the first name "Diane" and last name "Rauh" clearly legible.

Diane Rauh, City Clerk
City of Des Moines

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 adding and enacting a new Section 78-25, and by amending Sections 78-26, 78-27, 78-28, 78-29, 78-30, 78-31, 78-34 and 78-35, relating to licensing and regulating peddlers.

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, is hereby amended by adding and enacting a new Section 78-25, and by amending Sections 78-26, 78-27, 78-28, 78-29, 78-30, 78-31, 78-34 and 78-35, relating to licensing and regulating peddlers, as follows:

ARTICLE II. PEDDLERS

Sec. 78-25. Purpose.

The purpose of this article is to protect residents of the city against fraud, and to ensure the safety of the residents by protecting them from intrusion into the privacy of their homes by licensing and regulating peddlers.

Sec. 78-26. 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:

Peddler means any person carrying goods, ~~or~~ merchandise or offering services who sells or offers for sale such goods, ~~or merchandise, or services~~ from house to house or upon the public streets including any person who takes orders house to house for goods, ~~or merchandise or services~~ for later delivery.

Peddling means the selling or offering for sale services, goods or merchandise which are carried by a person from house to house or upon the public streets including the taking of orders house to house for goods, ~~or~~ merchandise, or services for later delivery.

Sec. 78-27. License and bond required.

(a) Any person engaging in peddling in this city without first obtaining a license as provided in this article shall be in violation of this article.

(b) No peddlers license shall be issued until the applicant has delivered to the city clerk a cash bond for no less than \$200.00 per license or \$1,000.00 for an employer employing a group of five (5) or more license applicants.

(1) The 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 services, 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 services, 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, merchandise, services or any part thereof.

(2) The balance of the bond shall be released by the city clerk and returned to the applicant or employer upon request by the applicant or employer at any time more than four months after expiration of the peddlers license(s) for which the cash 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.

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; or

- ~~(2) Newspaper vendors; or~~
- (32) Persons licensed as a salvage dealer under division 2 of article VIII of chapter 30 of this Code; or
- (43) Persons licensed as a solicitor under article IV of this chapter; or
- (54) Persons delivering and selling goods or merchandise to established customers; or
- (65) Persons having written permission from a street use permit holder to make sales within the street area closed for an event.

Sec. 78-29. Application for license.

An application in writing shall be filed in person with the city clerk for a license required under this article. ~~Such application shall set forth the~~ The applicant shall provide the following information:

- (1) applicant's name, e-mail address, if any, and local phone number or cell phone number;
- (2) permanent and local address, business address, business e-mail address, and phone number, if any; ~~and physical description.~~
- (3) physical description and a government-issued photo I.D.;
- (4) ~~The application also shall set forth the~~ applicant's employer, if any, and the employer's address, e-mail address, and phone number, if any;
- (5) the nature of the applicant's business;
- (6) the last three places of such business; ~~and~~
- (7) the length of time sought to be covered by the license;
- (8) applicant's federal identification number and the federal identification number for any business applicant is peddling under as an agent, employee or otherwise;
- (9) an Iowa sales tax permit number or a letter from the Iowa Department of Revenue confirming a sales tax permit is not required;
- (10) a Department of Criminal Investigation criminal history report/record for applicant from the state of applicant's residence for the previous five (5) years to include pending charges, such report or record must be dated no more than 30 days prior to the application;
- (11) whether applicant has been listed on any sex offender registry within the last five (5) years;

(12) whether applicant has had a peddlers license suspended, revoked, or denied by this or any other city in the last five (5) years and the reasons therefore;

(13) the dates of any previous peddlers licenses issued by the city clerk.

Sec. 78-30. Issuance of license; fee; appeal.

~~If the city clerk finds the application is made out in conformance with section 78-29 of this article and the facts stated therein are correct, a license shall issue upon the payment of the license fee in advance.~~

(a) The city clerk, upon review of the license application with the police department and any other appropriate department or agency, shall determine whether a license will be issued to the applicant. A waiting period of not less than three (3) business days from the date of the application shall be in effect to provide sufficient time for the city clerk's fact gathering process to be completed in a reasonable period. In making his/her decision, the clerk shall consider the following factors:

- (1) The information in the application is found to be correct.
- (2) All information required has been provided and the application is complete.
- (3) The required bond is paid.
- (4) Applicant does not have a peddlers license under suspension or revocation under this article.

(b) Upon the city clerk deciding the factors have been satisfied by the applicant a license shall issue upon payment of the bond and the nonrefundable fee in advance as set in the schedule of fees adopted by the city council by resolution.

(c) A denial of a license may be appealed in the same manner and under the same procedures stated at section 78-34 of this article.

Sec. 78-31. Display of license.

Each peddler shall at all times while doing business in this city keep in his or her possession the license provided for in section 78-30 of this article and shall leave a copy of the license with each prospective customer while peddling ~~upon request exhibit the license as~~ evidence that he or she has complied with all requirements of this article.

Sec. 78-34. Suspension, or revocation, or denial of license and appeal.

(a) Suspension, revocation or denial. Any license issued pursuant to this article ~~may~~ shall be either summarily suspended or revoked by the city clerk or its renewal denied for violation of this article or any other chapter of this Code for misrepresentation of facts in the application. A license may be denied for failure to meet the factors stated in section 78-30(a) of this article.

(b) Notice and appeal process. A summary suspension, revocation or denial, shall 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 mailed by U.S. mail to the applicant at the business address identified in the application informing the applicant of the suspension, revocation or denial, the reasons therefore, and the applicant's right to appeal to a hearing officer pursuant to Chapter 3 of this code. The only issue on appeal shall be whether the suspension, revocation or denial is supported by a preponderance of the evidence., and the procedures for such suspension, revocation or denial shall be those contained in section 30-30 of this Code.

(c) Effect or suspension or revocation. A suspension shall be for the amount of time stated in the suspension which may be for up to one (1) year. A licensee whose license has been revoked shall not be eligible for another such license for two (2) years after such revocation.

Sec. 78-35. Prohibited acts.

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

(b) 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.

(c) 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.

(d) No peddler shall conduct peddling between the hours of 9:00 p.m. and 9:00 a.m.

(e) No peddler shall do business or attempt to do business upon any property on which has a posted notice prohibiting peddling or soliciting.

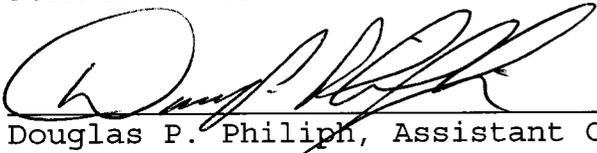
(f) No peddler shall harass, intimidate, coerce or threaten any individual to induce a sale.

(g) No peddler shall falsely or fraudulently misrepresent the quality, character or quantity of any article, item or commodity offered for sale or sell any unwholesome or tainted food or foodstuffs.

(h) No peddler shall conduct business in such a manner as to endanger the public health, welfare, or safety of the public.

Section 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

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January 11, 2013

Honorable Mayor
and
Members of the City Council

On December 17, 2012, per Roll Call No. 12-1957 you approved first reading of an ordinance amending the Peddler regulations. The Legal Department has notified me regarding two required changes, due to related rulings by our Federal 8th Circuit Court of Appeals concerning First Amendment issues and peddling.

1. Hours of Operations --The first change is in section 78-35 regarding the hours of operation for a Peddler. Under your first reading, a peddler would have to cease peddling at 7 p.m. The Legal Department recommends the hours of peddling be allowed from 9am to 9pm.
2. Prior Misconduct cannot be use to deny -- The second change is in Section 78-30. We can ask about criminal history in the application at section 78-29, but we cannot use prior misconduct as a basis to deny a peddling license due to application of the First Amendment.

The ordinance before you for second consideration contains the changes recommended by the Legal Department, and also contains a request from me to waive future readings.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Rauh". The signature is written in a cursive, flowing style. It is positioned above a horizontal line that spans the width of the page.

Diane Rauh, City Clerk
City of Des Moines



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January 10, 2013

Hon. Frank Cownie, Mayor
Hon. Halley Griess, City Council
Hon. Robert Mahaffey, City Council
Hon. Christine Hensley, City Council
Hon. Brian Meyer, City Council
Hon. Chris Coleman, City Council
Hon. Skip Moore, City Council
Richard Clark, City Manager
Doug Philiph, Assistant City Attorney
Diane Rauh, City Clerk

FILED
2013 JAN 10 PM 2:57
CITY CLERK
DES MOINES, IA

City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891

Via Hand Delivery

**Re: Proposed Amendments to Chapter 78, Peddlers
Comments of Mediacom**

Dear Mayor, Council Members, and Staff:

Mediacom appreciates the opportunity to provide input on the Council's Ordinance amending regulation of direct sales in Des Moines. Mediacom has asked me to assist them in developing such input, which is the purpose of my letter. On behalf of Mediacom, we are proud of our long relationship with the city and its residents, and of the suite of communications and entertainment services we provide. We support the city and its citizens by employing over 800 people in the Des Moines metro area, through the community and local government programming we air, and by engaging in numerous charitable and civic activities.

GONZALEZ SAGGIO & HARLAN LLP
Attorneys at Law

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Wayne, NJ

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Mediacom's local in-person sales team employs around 20 people and has been an important part of Mediacom's growth in Des Moines. As a result, we have an interest in city regulation of such sales, and in particular, in having regulations that strike a balance between important protections of citizens' safety and privacy, while not being overly burdensome on legitimate businesses seeking to communicate directly with customers and potential customers. Since we became aware of the proposed amendments to Chapter 78, Mediacom has been proactive in working with city staff, and have appreciated the prompt, helpful information we have received. In light of our review, Mediacom respectfully makes several suggestions that we believe would help strike an appropriate balance of interests. For several provisions, Mediacom is able to propose specific changes to the language of the Ordinance. In other cases, however, there are issues about which we have concerns, and we believe the best approach would be to carry the Ordinance over to a third reading to allow Mediacom, staff and any other interested parties to attempt to work out appropriate language.

Exemptions. The current language of Section 78-28 includes six exemptions, one of which the amendment proposes to strike. Mediacom believes an additional narrow exception would be appropriate for entities subject to regulation that requires a finding that their services are in the public interest, and who are subject to continuing jurisdiction of the city or a state regulatory agency. Specifically, Mediacom proposes to replace Section 78-28(2) with the following language:

(2) Persons selling services that are provided pursuant to a certificate of public convenience and necessity, or filed tariff, or franchise issued by or approved by the city or the State of Iowa.

We believe this exemption is consistent with the purpose of the Ordinance: entities that have to undertake significant regulatory approvals are unlikely to be "fly by night" operations that do not respect the city or its citizens. Mediacom's proposed language addresses a narrow class of entities who are accountable to other regulatory processes and who have already been deemed to provide services in the public interest. In the event, however, that the city is not amenable to such an exemption, Mediacom has other specific concerns, suggestions and issues it would like to further explore with staff, discussed below.

Display of License. The proposed amendment to Section 78-31 requires that a peddler leave a copy of his or her license with each potential customer. It is not clear from the language whether that would include doors knocked but unanswered. And the number of potential copies a person would need to carry is potentially burdensome. Moreover, Mediacom is concerned that forcing a copy on a person in an effort to comply is bothersome to the potential customer, in the nature of unwanted commercial "junk" mail or "spam" e-mail. Accordingly, Mediacom suggests providing the customer or potential customer in control of the choice, much like a store clerk

asking if you want your receipt. Mediacom proposes the following language, shown as a mark-up to the submitted Amendment:

Sec. 78-31. Display of license.

Each peddler shall at all times while doing business in this city keep in his or her possession the license provided for in section 78-30 of this article and shall ~~leave a copy of the license with each prospective customer offer to each prospective customer with whom the peddler speaks a copy of the license upon request exhibit the license as evidence that he or she has complied with all requirements of this article.~~

Multiple Permits, Multiple Bonds, Waiting Period. There are certain business process issues raised by the Ordinance that concern Mediacom, but for which we are not presently proposing specific edits – we believe it would be fruitful to have a further opportunity to work with staff to see if we can arrive at mutually acceptable changes. Because we have numerous customer sales staff working at a given time, the requirement that each person obtain an individual permit and bond is potentially a substantial burden. We would like to determine if there can be a process for companies conducting their business within the city to have umbrella permitting. Similarly, if there is any way to shorten the waiting period – perhaps for companies that are prior applicants, companies with good records – that also would be helpful in successfully conducting our business. These are issues that potentially impact the jobs we create for in-person sales representatives, because they amount to an additional cost that adds up quickly for each additional representative in the field.

Again, thank you for your consideration of our input. Mediacom looks forward to working with the city and continuing its successful relationship with the Des Moines community, and to abiding by the regulations you pass. To this end, Mediacom will have a representative at the meeting on Monday, January 14 and will be available to speak to these issues. We also welcome any question or comments from your staff at any time before or after the meeting. We believe that the suggestions above – whether for specific language changes or for ideas to discuss further – will help make the Ordinance and more balanced solution. We also respectfully ask that you set this Ordinance for third reading to provide additional time to consider these issues.

Respectfully,



Bret A. Dublinske

On behalf of Mediacom



**Council
Communication**
Office of the City Manager

Date:	December 17, 2012
Agenda Item No.	41
Roll Call No.	12-1957
Communication No.	12-614
Submitted by:	Diane Rauh, City Clerk

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AGENDA HEADING:

Amending Chapter 78 of the Municipal Code regarding peddling and peddlers.

SYNOPSIS:

Recommend approval of Amending Chapter 78 of the Municipal Code regarding peddling and peddlers. In April, the City received several complaints from residents regarding peddlers in Des Moines. At the request of the City Council, staff reviewed several ordinances from cities surrounding Des Moines, and from other larger cities in Iowa. Staff is recommending various changes to the ordinance that should help alleviate many of the concerns.

FISCAL IMPACT:

Amount: Potential revenue reduction of up to \$1,000.

Funding Source: FY2013 City Clerk Budget, GE001 CCL010000 455260, page 26.

ADDITIONAL INFORMATION:

Proposed changes to the Peddlers ordinance fall into three main categories as listed below:

Definition/Purpose

1. Creates a new definition.
2. Requires peddlers acknowledge that they are aware of and will abide by Chapter 555A State of Iowa regulations.
3. Requires that everyone going door-to-door obtains a permit, (including those offering a service; tree service, lawn care, security systems, newspapers, dish/cable).
4. Establishes hours peddlers are allowed to operate – 9:00 AM – 9:00 PM.
5. Establishes a Peddler’s Code of Conduct.

Require a Thorough Background Check

1. Establishes a minimum three business day waiting period prior to issuance of permit.
2. Requires Sex Offender Registry inquiry.
3. Requires DCI check from peddler’s state(s) of residence for previous five years (provided by applicant).
4. Applicant will provide their Federal Identification Number/State Sales Tax permit number (if applicable).

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5. Applicant will provide information if a similar license has ever been revoked/suspended/denied by any other city.

Process to Follow-Up on Complaints

1. \$200 cash bond required (held for 4 months after expiration of permit, to cover any enforcement costs or claims).
2. Peddlers are to leave a copy of their permit at each location, so each citizen has the name of the peddler and information regarding process to make a complaint.
3. If the City Clerk has received and investigated three (3) or more written complaints where it is found that peddler's actions were prohibited by the ordinance, the revocation process will commence.
4. Denial or revocation appeals will be heard by the City of Des Moines' Administrative Hearing Officer.

The current revenue estimate for FY 2012 is \$2,000, and the City may experience a reduction in revenue due to the stricter application process.

PREVIOUS COUNCIL ACTION(S):

Date: April 23, 2012

Roll Call Number: 12-0625

Action: Request from Council Member Christine Hensley to discuss complaints received about peddlers in Des Moines. Moved by Hensley to refer to the City Manager and Legal Department for review and recommendation back to Council within 30 days. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Second and final consideration of the ordinance, unless the ordinance is waived at the December 17 Council meeting.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.