



Roll Call Number

Agenda Item Number

33

Date February 8, 2016

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 78-200, 78-201, 78-202, 78-204, 78-208, 78-211 and 78-212, and enacting a new Section 78-204.5, regarding the allowed locations, times and manner of operation of mobile food vendors",

presented.

(Council Communication No. 16-066)

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
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Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MOORE, WESTERGAARD, and 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.

MOTION CARRIED APPROVED

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 amending Sections 78-200, 78-201, 78-202, 78-204, 78-208, 78-211 and 78-212, and enacting a new Section 78-204.5, regarding the allowed locations, times and manner of operation of mobile food vendors.

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. 15,362, passed April 6, 2015, and as amended by Ordinance No. 15,418, passed October 26, 2015, be and is hereby amended by amending Sections 78-200, 78-201, 78-202, 78-204, 78-208, 78-211 and 78-212, and enacting a new Section 78-204.5, regarding the allowed locations, times and manner of operation of mobile food vendors, as follows:

ARTICLE V. - MOBILE FOOD VENDERS

Sec. 78-200. - 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:

Certified food protection manager is a person who holds an active certified food protection manager certificate from a program approved by the National Conference for Food Protection.

Fire marshal shall mean any individual designated by the fire chief to serve as the city fire marshal, or to perform the duties of the fire marshal under this article.

Food service establishment shall have that meaning established by § 481-30.2 of the Iowa Administrative Code.

Meter hood means a bag owned by the city and issued to a mobile vender for temporary use during the term of the mobile vender's license. Subject to the requirements of this article, the meter hood may be placed over a parking meter to reserve and hold a parking space within the mobile vender zones for use by the mobile vender to whom the meter hood was issued. However, nothing in this article shall be interpreted as authorizing a mobile vender vehicle to be parked at a location which would not otherwise then be available for general public use, unless the use of such location is specifically limited to use by mobile vender vehicles.

Mobile vender means a person engaged in the business of selling food or beverages from a mobile vender vehicle.

Mobile vender vehicle means a motorized vehicle or trailer used for the sale of food or beverages for immediate consumption.

Restaurant means a food service establishment which derives at least 50 percent of its gross receipts from the sale of food for immediate consumption on the premises.

Tow Vehicle means a motorized vehicle used to pull a trailer used as a mobile vender vehicle.

Zone means the mobile vender zones as defined in section 78-201 of this article.

Sec. 78-201. - Mobile vender zones.

(a) Subject to the requirements of this article, a mobile vender license is only valid for the sale of food or beverages for immediate consumption from a mobile vender vehicle lawfully parked within one of the following zones:~~at a parking meter within a mobile vender zone.~~

1) The downtown mobile vender zones identified in subsection (b), below.

2) The neighborhood mobile vender zones identified in subsection (c), below

(b) The downtown mobile vender zones consist of and are limited to the following street segments:

1) Downtown mobile vender Zone A:

Grand Avenue from 13th Street to 15th Street,
Locust Street from 13th Street to 15th Street,
Walnut Street from 13th Street to 15th Street,
13th Street from Grand Avenue to Walnut Street, and
15th Street from Grand Avenue to Walnut Street.

2) Downtown mobile vender Zone B:

Center Street from 5th Avenue to 9th Street,
Crocker Street from 5th Avenue to 9th Street,
Park Street from 3rd Street to 7th Street, and
Watson Powell Jr Way from 3rd Street to 7th Street.

3) Downtown mobile vender Zone C:

Cherry Street from 5th Avenue to 9th Street,
Mulberry Street from 5th Avenue to 7th Street, and
5th Avenue from Vacated Vine Street to Mulberry Street.

4) Downtown mobile vender Zone D:

East Court Avenue from East 2nd Street to East 6th Street,
East Grand Avenue from Robert D Ray Drive to East 4th Street,
Locust Street and East Locust Street from the west end of the Locust Street bridge over the Des Moines River to East 4th Street,
East Walnut Street from East 1st Street to East 7th Street,
Robert D Ray Drive from East Grand Avenue to East Locust Street,
East 2nd Street from East Walnut Street to E Court Avenue,
East 3rd Street from East Walnut Street to E Court Ave,
East 4th Street from East Walnut Street to East Court Avenue, and
East 7th Street from East Walnut Street to a point 240 feet south of East Court Avenue.

(c) The neighborhood mobile vender zones consist of and are limited to the following street segments during the days of the week and the hours of the day identified for each such zone below:

1) Neighborhood mobile vender zone 1: *Reserved*

Location:

Days and hours of operation:

Sec. 78-202. - Reserved. Pilot project — Transitional provisions.

- (a) ~~This article is being adopted as a pilot project for a limited duration, after which the city council will determine whether to repeal this article, or to repeal the transitional provisions under this section and make any other changes to this article as may be appropriate in light of the lessons learned during the pilot project.~~
- (b) ~~Notwithstanding anything in this article to the contrary, the following provisions shall be controlling during the pilot project:~~
- ~~(1) All mobile vender licenses shall expire on October 31, 2015. No mobile vender license shall be issued for any term extending or commencing after October 31, 2015.~~
 - ~~(2) The regulations set forth in this article are subject to change at any time.~~
 - ~~(3) If the city council determines by resolution at any time that the number of licensed mobile vendors exceed that number that can be reasonably accommodated by the mobile vender zones it may direct the city clerk to immediately cease issuance of new mobile vender licenses. In that event the city clerk shall maintain a list of applicants who have filed a mobile vender license application which could not be granted because of such restriction, and the date and time at which each such application was received.~~

Sec. 78-204. - Application for license.

- (a) Every mobile vender shall apply to the city clerk for a mobile vender license at least three business days prior to use by providing the following information upon a form to be provided by the city clerk, and paying the application fee in the amount set in the schedule of fees adopted by the city council by resolution:
- (1) The full name, age, permanent address and phone number of the applicant.
 - (2) The business name and address.
 - (3) A description of the motorized vehicle or trailer from which the sale will be conducted, including the license plate number, and the length of the motorized vehicle or the trailer and tow vehicle.
 - (4) A summary of the cuisine of food to be sold.
 - (5) The period of time the applicant has been engaged in the same or similar business, and the jurisdictions in which the applicant has previously conducted business in the last year.
 - (6) The application must be accompanied by a copy of a retail sales tax permit issued to the applicant by the Iowa Department of Revenue.
 - (7) If the mobile vender sells food or beverages other than prepackaged items that do not require hot or cold handling procedures, then the application shall also contain the following:
 - a. A copy of the mobile food unit license issued by the Iowa Department of Inspections and Appeals for the mobile vender vehicle.
 - b. A copy of the appropriate food establishment license issued by the Iowa Department of Inspection and Appeals for any commissary kitchen or other premises where food is prepared for sale from the mobile vender vehicle, and the name and contact information for the individual or business responsible for the operation of such kitchen or premises.
 - c. The name of one or more certified food protection managers employed by the business and a copy of their current certification as a certified food protection manager.

- d. The addresses of the businesses or facilities at which any fat, oil or grease generated in the operation of the mobile vender business are disposed of, including the contact information for the individual or business responsible for the operation of each such business or facility. Any change in the businesses or facilities used for the disposal of such fat, oil and grease shall be reported to the city clerk in writing by the mobile vender within three business days of the first use of a the new business or facility.
 - e. A certificate of annual compliance issued by the fire marshal pursuant to section 78-204.5 identifying that the mobile vender vehicle has been inspected within the prior six months and determined to be in compliance with the fire code.
- (8) The location where the mobile vender vehicle will be regularly parked when not in use.
 - (9) Evidence of liability insurance for operation of the mobile vender vehicle, or the tow vehicle if the mobile vender vehicle is a trailer, providing the coverages required by section 78-205.
- (b) A mobile vender shall notify the city clerk in writing of any change to the information provided pursuant to subsection a, above, within five business days of such change.

Sec. 78-204.5. – Inspection.

- (a) If an applicant for a mobile vender license proposes to sell food or beverages other than prepackaged items that do not require hot or cold handling procedures, the mobile vender vehicle must be inspected by the fire marshal and determined to be in compliance with the fire code as provided in this section.
- (b) An applicant for a mobile vender license who sells food or beverages other than prepackaged items that do not require hot or cold handling procedures shall pay an inspection fee to the city clerk in the amount set in the schedule of fees adopted by the city council by resolution. The city clerk shall direct the applicant to contact the fire marshal to schedule an inspection of the mobile vender vehicle and to present the receipt to the fire marshal as proof of payment of the inspection fee.
- (c) Upon direction by the city clerk after paying the inspection fee, the applicant shall contact the fire marshal to schedule an inspection of the mobile vender vehicle and shall cooperate in scheduling and completing the inspection.
- (d) If the fire marshal determines after inspection that the mobile vender vehicle satisfies the applicable requirements of the fire code, the fire marshal shall issue a certificate of annual compliance identifying that the mobile vender vehicle has been inspected and determined to be in compliance with the fire code.

Sec. 78-208. - License issuance.

- (a) A mobile vender license shall be denied to any applicant who has operated a mobile vender business in material violation of any of the requirements of this article or any other chapter of this Code within the prior 180 days.
- (b) The city clerk or the city clerk's designee shall, upon satisfaction that the information provided in an application for a mobile vender license is true and correct and that the requirements of this article for issuance of the license have been satisfied, and upon payment of the cash bond required by section 78-206 and the meter hood fee and deposit required by section 78-207, issue the license and one or two meter hoods as provided in section 78-207. The license shall identify whether the mobile vender is limited to the

sale of prepackaged food and beverages that do not require hot or cold handling procedures.

- (c) The city clerk shall deny any application for the operation of a mobile vender business that does not conform with all applicable requirements of this article, the City Code, the Iowa Code and the Iowa Administrative Code.
- (d) In the event an application for a mobile vender 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 filing a written notice of appeal with the city clerk within ten business days after the date of such notice.
- (e) If no appeal from the denial of a license is timely filed, or if the denial is not reversed upon final disposition of any appeal, the city clerk shall promptly refund the refundable portion of the application fee, as set in the schedule of fees adopted by the city council by resolution.
- (f) A mobile vender license shall be effective for one ~~calendar~~ year, or the portion thereof remaining after issuance of the license until the following March 1st. All mobile vender licenses shall expire on March 1st.

Sec. 78-211. - 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~~ provisions of this Code, the city clerk or the city clerk's designee may cause the matter to be investigated. 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~~ provisions 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 the license, or to deny its renewal.
- (b) Notice of the city's intent to suspend, revoke, or deny the renewal of a license and a brief summary of the factual basis for such remedial action shall be served upon the licensee. 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 be made after the scheduled time for such meeting. 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 makes a finding based on substantial evidence that a violation of this article or another ~~chapter~~ provision of this Code did in fact take place as alleged, the 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 shall

be in the discretion of the 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.

- (d) If the city clerk or the city clerk's designee upon investigation of a complaint or reasonable suspicion, makes a finding based upon substantial evidence that a licensee or the licensee's employees or agents has again furnished any false information required under this article or again has violated or failed to comply with any of the requirements of this article or any other provisions of this Code which are the same as, or of a similar nature to, violations which were determined to have occurred within the prior eighteen (18) months in a decision issued pursuant to subsection (c) above, the city clerk or the city clerk's designee may decide to suspend, revoke or deny the license without another meeting with the licensee. The determination of whether to so suspend or revoke the license or deny its renewal shall be in the discretion of the city clerk or the city clerk's designee and shall be dependent upon the circumstances surrounding the violations and their 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.
- (de) 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. 78-212. - General regulations.

- (a) Hours of operation.
- (1) Downtown mobile vender zones. Between 1:30 a.m. and 5:30 a.m., no mobile vender vehicle shall be open for business within the downtown mobile vender zones, and no mobile vender shall be parked within a mobile vender zone. Between 1:45 a.m. and 5:30 a.m., no mobile vender vehicle may be parked within the downtown mobile vender zones.
- (2) Neighborhood mobile vender zones. No mobile vender vehicle shall be open for business within a neighborhood mobile vender zone at any time outside the hours of operation established for that mobile vender zone in section 78-201. No mobile vender vehicle shall be parked within a neighborhood mobile vender zone at any time outside the hours of operation established for that mobile vender zone in section 78-201, except that the mobile vender shall be allowed 15 minutes beyond the end of such hours of operation to prepare the mobile vender vehicle for movement.
- (b) Allowed locations.

- (1) No mobile vender shall conduct any sale from a mobile vender vehicle which is not lawfully parked in a ~~metered~~-parallel parking space in a mobile vender zone.
 - (2) No mobile vender shall conduct any sale from a parking space which is designated as a handicap parking space with a blue meter, or designated as a 30 minute parking space with a green meter, or designated as restricted for residential permit parking only.
 - (3) No mobile vender shall conduct any sale from a mobile vender vehicle located within 100 feet of any public entrance into the waiting or service area of any street level restaurant then open for business.
 - (4) During the time that any part of a street is closed for an event for which a street use permit has been issued, and except as allowed within the event area by the party holding the street use permit, no mobile vender shall conduct any sale within the affected blocks or within two blocks of the affected blocks. For purposes of this section:
 - a. A "block" is the entire right-of-way of a public street extending from the centerline of an intersecting street or the lateral centerline of any river bridge, to the centerline of the next intersecting street or the lateral centerline of any river bridge, whichever is closer; and,
 - b. The "affected blocks" are any blocks containing any portion of the street closure for which the street use event has been issued.
- (c) Mobile vender vehicle.
- (1) Any motorized vehicle used as a mobile vender vehicle shall be no larger than ~~25~~ 37 feet long, ~~10½ feet tall~~ and eight and one-half feet wide. Any trailer used as a mobile vender vehicle together with the tow vehicle shall be no larger than ~~37~~ 35 feet long, ~~10½ feet tall~~ and eight and one-half feet wide.
 - (2) Except for the storage and preparation of food and beverages at a separate kitchen or commissary kitchen, all storage and preparation of food and beverages offered for sale by a mobile vender shall occur within a fully enclosed space within the mobile vender vehicle.
 - (3) A trailer used as a mobile vender vehicle ~~must remain attached to the~~ may be detached from the tow vehicle for leveling, but the tow vehicle must remain in front of the trailer at all times while the trailer is parked in a mobile vender zone.
 - (4) A mobile vender vehicle shall not have a second story or any interior space used for customer service or seating.
- (d) Display of license. The license required by this article and a valid sales tax permit for such business shall be displayed within the mobile vender vehicle a manner such that it is readily visible to all persons seeking to conduct business with the mobile vender.
- (e) Sale of merchandise. No mobile vender shall offer any merchandise or wares for sale other than food and beverages for immediate consumption. If the license identifies that the mobile vender is limited to the sale of prepackaged food and beverages that do not require hot or cold handling procedures, the vender shall not offer any other items for sale.
- (f) Meter hoods.
- (1) No mobile vender shall cause or permit any meter hood issued to them to be placed over any parking meter outside the mobile vender zones at any time. No mobile vender shall cause or permit any meter hood issued to them to be placed over any parking meter inside the mobile vender zones at any time between 1:~~45~~30 a.m. and 5:30 a.m. Any meter hood found being used in violation of this paragraph may be

immediately confiscated by any police officer or community development inspector who shall cause it to be returned to the city clerk. Confiscation of a meter hood may include cutting, ripping or destroying the meter hood if required for its prompt removal.

- (2) No person shall place a meter hood over the parking meter for a parking space that is then occupied by any vehicle other than the mobile vender vehicle operated by the mobile vender to whom the meter hood was issued.
- (3) When a parking meter is covered by a mobile vender bag, no person shall park any vehicle in the corresponding parking space except the mobile vender vehicle operated by the mobile vender to whom the meter hood was issued. Violation of this paragraph shall also constitute illegal parking in violation of a traffic control device.
- (4) No mobile vender shall conduct any sale from a mobile vender vehicle within the downtown mobile vender zones unless such vehicle, including the tow vehicle if applicable, is lawfully parked in one or two metered parallel parking spaces with the corresponding parking meters covered by a meter hood issued for that mobile vender vehicle.
- (5) Nothing in this article shall be interpreted as authorizing a mobile vender vehicle to be parked at a location which is not then available for general public use, but for the use of the meter hood, unless the use of such location is specifically limited to use by mobile vender vehicles.
- (6) Mobile vendors shall cooperate with any person authorized to place a street closure bag or restricted parking bag over a parking meter then covered by a meter hood, including but not limited to promptly and temporarily removing the meter hood to allow a street closure bag to be placed over the meter and under the hood.
- (g) Food safety. Any mobile vender who offers food or beverages for sale, other than prepackaged items that do not require hot or cold handling procedures, shall be subject to the following additional requirements:
 - (1) A valid mobile food unit license for the mobile vender vehicle shall be displayed within the mobile vender vehicle in a location that is readily visible to all customers.
 - (2) Any such mobile vender who is not a certified food protection manager shall employ at least one certified food protection manager; shall maintain a copy of their certification(s) as a certified food protection manager in the mobile vending vehicle; and shall produce the certification documents for inspection upon request by any police officer or community development department inspector.
 - (3) No mobile vender shall operate the business in a manner that violates any applicable food and sanitation laws.
- (h) Noise. No mobile vender shall operate the business in a manner that violates the Noise Control Ordinance of the City of Des Moines set forth in article IV of Chapter 42 of this Code. No person shall offer for sale or sell anything from a mobile vending vehicle by shouting or raised voice.
- (i) Use of street and sidewalk. No mobile vender shall place any tables, chairs, furniture, equipment, signage or other material on the ground, streets or sidewalks. No mobile vender shall place any food, materials or equipment on the ground or on tables, chairs, or shelves that are not incorporated into the mobile vending vehicle.
- (j) Trash receptacles. A mobile vender shall provide one or more trash receptacles readily accessible to its customers either in or attached to the mobile vender vehicle. All such

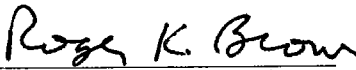
trash receptacles and all accumulations of trash and litter shall be removed from the site by the mobile vender before departing.

- (k) All sales from sidewalk side. No mobile food vender shall conduct any sales from outside the mobile vender vehicle. All sales activities and the transfer of food and beverages to the customer shall occur only on the sidewalk side of the mobile vender vehicle. No mobile vender shall sell to any person situated in a motor vehicle. However, nothing in this paragraph shall be interpreted to prohibit such reasonable accommodation as may be needed to serve a customer with a disability
- (l) Grease disposal.
 - (1) All fat, oil and grease generated in the operation of a mobile vender business shall be disposed of at the business or facility identified in the mobile vender's application for a license. Any change in the businesses or facilities used for the disposal of such fat, oil and grease shall be reported to the city clerk in writing by the mobile vender within three business days of the first use of a the new business or facility.
 - (2) All fat, oil and grease generated in the operation of a mobile vender business shall be disposed of in compliance with the requirements of division 5, article III of chapter 118 regarding the discharge of fat, oil and grease by food service establishments.

Sec. 2. Notwithstanding the Section 28-208(f) of the Des Moines Municipal Code as amended above, mobile vender licenses issued in February of 2016 shall be effective until March 1, 2017.

Sec. 3. This ordinance shall be in full force and effect from and after the later of its passage and publication as provided by law.

FORM APPROVED:



Roger K. Brown, Assistant City Attorney

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