

 **Roll Call Number**

Agenda Item Number

42

Date July 25, 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 78-61, 78-62, 78-64, 78-66, 78-68, 78-69, 78-70, 78-70.01, 78-71, 78-72, 78-73, 78-74, 78-200, 78-201, 78-206, 78-207, 78-208, 78-212, and adding and enacting new Sections 78-66.01, and 78-75, and by repealing Section 78-69.01, and by repealing Section 78-67 and adding and enacting new Section 78-67, relating to transient merchants and mobile food vendors",

which was considered and voted upon for the first time under Roll Call No. 16-0709 of April 25, 2016, and considered and voted upon for the second time under Roll Call No. 16-0789 of May 9, 2016, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

(Council Communication No. 16-400)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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 78-61, 78-62, 78-64, 78-66, 78-68, 78-69, 78-70, 78-70.01, 78-71, 78-72, 78-73, 78-74, 78-200, 78-201, 78-206, 78-207, 78-208, 78-212, and adding and enacting new Sections 78-66.01, and 78-75, and by repealing Section 78-69.01, and by repealing Section 78-67 and adding and enacting new Section 78-67, relating to transient merchants and mobile food venders.

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 amending Sections 78-61, 78-62, 78-64, 78-66, 78-68, 78-69, 78-70, 78-70.01, 78-71, 78-72, 78-73, 78-74, 78-200, 78-201, 78-206, 78-207, 78-208, 78-212, and adding and enacting new Sections 78-66.01, and 78-75, and by repealing Section 78-69.01, and by repealing Section 78-67 and adding and enacting new Section 78-67, relating to transient merchants and mobile food venders, as follows:

ARTICLE III. TRANSIENT MERCHANTS

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:

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

~~*Licensed premises* means an area approved for the operation of a transient merchant business under authority of a transient merchant license issued pursuant to this article.~~

Pushcart means a non-motorized cart which is self-propelled by the operator.

Transient merchant means a person, principal or agent who engages in a merchandising business from a temporary location or structure in the city, and who, for the purpose of carrying on such business, hires, leases or occupies any land, structure, trailer or truck for the exhibition and sale of such goods, wares or merchandise and including the sale of any 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) *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.
- (2) *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.
- (3) *Street Use Permit.* Sales activities conducted in compliance with a street use permit issued pursuant to article XVI of chapter 102 of this code.
- (4) *Special Permits.* 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) *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-city~~ parks ~~and rivers~~ with permission of ~~the park and recreation board~~ the department director.
- (7) *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.
- (8) *Mobile vendors.* Sales activities by a mobile vender which are conducted in compliance with a mobile vender license issued pursuant to article V of this chapter.
- (9) *Transient merchant premises permit means a permit issued to the owner of real estate pursuant to this article to allow a transient merchant or a mobile food vender to operate on the owner's real estate subject to the provisions of articles III and IV of chapter 78, premises owned or leased to the owner of the premises.*

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~~ Cowles Commons and bounded by Locust, Walnut and 3rd Streets and the extension of 4th Street.
- (2) The sale of raw fruits and/or vegetables.
- (3) The sale of natural Christmas trees during the months of November and December.
- (4) Sales activities by a charitable, educational 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, provided that such sales are not conducted by such organization in excess of three consecutive days in any 7-day period at the same location.
- (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. 78-64. Licenses and Permits required.

- (a) Except for premises listed in subsection b, the owner or tenant of premises upon which a transient merchant or mobile food vender operates shall obtain a transient merchant premises permit as provided in this article before allowing for sale of any food, goods, wares or merchandise in the city. ~~for those exempt activities identified in section 78-62, every transient merchant shall, before offering for sale any goods, wares or merchandise in the city, obtain a license for their sale from the city clerk as provided in this article.~~
- (b) The following premises are exempt from the requirements of subsection a:
- (1) Premises upon which sales occur that are exempt from license pursuant to section 78-62.
 - (2) Mobile vender zones.
 - (3) City parkland.
- (c) Except for those exempt activities identified in section 78-62, every transient merchant shall, before offering for sale any food, goods, wares or merchandise in the city, obtain a license for their sale from the city clerk as provided in this article.
- (~~b~~) A three-day transient merchant license shall permit the operation of the licensed business ~~at the licensed premises~~ during three consecutive days. A thirty-day transient merchant license shall permit the operation of the licensed business ~~at the licensed premises~~ during thirty consecutive days. An annual transient merchant license shall permit the operation of the licensed business for three hundred and sixty-five consecutive days. ~~at the licensed premises during one calendar year.~~

Sec. 78-66. Application for license—all applicants.

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:

- (1) The full name, age, permanent address and phone number of the applicant.
- (2) A description of the merchandise or food to be sold.
- (3) The business name and address.
- (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.~~
- (5) If known, ~~T~~the address of the private property where the sale will be held, and the name and address of the property owner or person in control of that property.
- (6) If known, ~~A~~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) 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.
- (8) A description of the structure, vehicle, tent, trailer or other configuration from which the sale will be conducted.

- (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 three off street parking spaces if required by section 78-67(5), in relationship to the adjoining streets, public sidewalks, and property lines.~~
- (109) The application must be accompanied by a copy of all required permits and licenses, including but not limited to, a retail sales tax permit issued by the Iowa Department of Revenue. Applicant is required to obtain and establish in its application that it has obtained and insurance of the type and in the amounts specified by section 78-205 78-66.01. ~~the appropriate food establishment license issued by the Iowa Department of Inspections and Appeals.~~
- (110) Written permission from a street use permit applicant if the proposed location for sales are within one thousand eight hundred (1,800) feet of the perimeter of a street use closure for an event when an application is on file with the city clerk for a street use permit or when the street use permit has been issued.
- (121) IA description of how bathroom facilities will be provided to satisfy the requirements of section ~~78-69~~78-67.

Sec. 78-66.01. Application for license—licensees selling food.

In addition to the requirements in section 78-66, any transient merchant selling food must include in its application the information in section 78-204 and must comply with the requirements of sections 78-204.5, 78-205 and 78-212(g), except that automobile liability insurance must have a limit of not less than \$500,000.00 per occurrence, combined single limit. Merchants operating under a valid transient merchant license on the effective date of this amendment are exempt from the requirement of a Type 1 hood with fire suppression system on any vehicle already in use until the first inspection following December 31, 2017, at which time the vehicle must comply with all existing fire codes.

~~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 pusheart.~~
- ~~(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 pushearts may operate on a single parcel, provided the only form of transient merchants on the parcel are pushearts.~~
- ~~(b) — *Licensed premises for three-day licenses.* The licensed premises for all transient merchants holding a three-day transient merchant license shall conform with the following additional requirements:

 - ~~(1) — No three-day license shall be issued for the operation of a transient merchant at a site within 10 days before or 10 days after the term of any transient merchant license previously applied for and not denied for the same site.~~~~
- ~~(c) — *Licensed premises for thirty-day and annual licenses.* The licensed premises for all transient merchants holding a thirty-day or annual transient merchant license shall conform with the following additional requirements:

 - ~~(1) — Any seating area provided for customer use must be located on a paved surface.~~~~
- ~~(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/pushearts.~~
 - ~~(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 pusheart.~~~~

Sec. 78-67. Application for a transient merchant premises permit.

At least three days prior to allowing a transient merchant or mobile food vender, currently licensed by the city, to operate on premises within the city, an owner or lessee of the premises must obtain a transient merchant premises permit from the city clerk. The application for the permit must be on a form provided by the city clerk and must demonstrate to the satisfaction of the city clerk and the zoning administrator that the premises meet the following requirements:

- (1) All applicable requirements of this article, the City Code, the Iowa Code and the Iowa Administrative Code.

- (2) The premises is within a commercial or industrial zoning district.
- (3) The premises is not on a parcel having a residential use as its principle use.
- (4) Trailers, vehicles, tents, equipment, and areas used for the storage, display or sale of food or merchandise will be located only on a paved surface outside required zoning setback for structures under chapter 134 and outside any required fire lanes and drive approaches.
- (5) The premises has at least three paved off-street parking spaces dedicated to the transient merchant or mobile vender operations and is served by a paved driveway from a public right-of-way. Property located in C-3, C-3A, C-3B, C-3R and D-R zoning districts are exempt from the off-street parking requirement. For purposes of this subsection, a transient merchant or mobile vender may share parking with an existing business on the site only if available parking is sufficient to serve the normal operations of both. If the operation of a transient merchant or mobile vender at the site has caused an overflow of customer or employee parking into the street or other private parking lots in the vicinity within the past year, shared parking is presumed to be insufficient.
- (6) The premises must have a dumpster enclosure unless the premises is legally in use by a licensed transient merchant on the effective date of this amendment, in which case a dumpster enclosure must be provided within one year after the issuance of a premises permit.
- (67) Only one transient merchant or mobile vender currently licensed by the city is allowed to operate on the parcel at any time.
- ~~(7) The permit holder must provide a paved, marked area for display and sale by the transient merchant or mobile vender of 1,000 square feet or less, with no single dimension exceeding 50 feet plus three dedicated adequate parking spaces, if required. The area and the individual parking spaces must be clearly marked by paint. All transactions must occur within the marked area.~~
- (8) If the transient merchant or mobile vender is selling or serving food, the premises must also:
 - a. Assure that the transient merchant or mobile vender complies with the requirements established by Iowa Administrative Code §481-31 for a food establishment other than a food processing plant.
 - b. Provide bathroom facilities 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. Bathroom facilities must remain open to the public at all times during any operation of a transient business or mobile vendor on the premises. If bathroom facilities are located off the premises, the applicant must provide written permission for their use signed by a manager or other person with authority on a form provided by the city clerk.
 - c. The premises must not be located within 100 feet of any public entrance into the waiting of service area of any street level restaurant operating on the date of the application. This provision does not apply to premises permits issued to locations at which any transient merchant is legally operating within a 100 feet of an existing restaurant on the effective date of this ordinance; however, this provision applies if a permit lapses for any

period of time or if a restaurant subsequently begins operations within 100 feet of the premises, then this provision applies to all future applications.

Sec. 78-68. Cash bond.

- (a) Except as provided in paragraph (be) below, no transient merchant license shall be issued until the applicant has delivered to the city clerk a cash bond ~~for no less than \$200.00~~ as set out in the schedule of fees. 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 food, 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 food, 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 food, goods, wares or merchandise or any part thereof.
- ~~(b) — A single bond may be used for all licenses obtained by the same transient merchant.~~
- (eb) The balance of the bond shall be released by the city clerk and returned to the applicant upon request by the applicant at any time more than four months after expiration of all transient merchant licenses 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. 78-69. License and Permit fee.

- (a) The applicant for a transient merchant license or a transient merchant premises permit 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 or a transient merchant premises permit 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.

Sec. 78-69.01. Repealed by Ord. No. 15,--- ~~Priority of street use events, refund of license fee.~~

- ~~(a) — Subject to paragraph (d), 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 an approved 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.~~
- ~~(b) — Subject to paragraph (d), upon issuance of a street use permit the city clerk shall immediately give notice to any applicants then seeking a 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) The application for a transient merchant license shall contain a notice stating substantially as follows:~~

~~"Transient merchant licenses will not be issued for sales on the same day as, and at a location within one thousand (1,000) feet of the perimeter of a street closure made under authority of a previously issued 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."~~

- ~~(d) 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.~~

- ~~(e) The issuance of a street use permit shall not affect any previously issued transient merchant license.~~

Sec. 78-70. License or permit issuance.

- (a) A transient merchant license or transient merchant premises permit shall not be issued more than fifteen days in advance of the commencement of the term of the license. ~~Prior to issuance of three-day or thirty-day transient merchant 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) A transient merchant license or transient merchant premises permit shall be denied to any applicant who has operated a transient merchant business or transient merchant premises in material violation of any of the requirements of this article or any other chapter of this Code within the prior 180 days.
- (c) The city clerk or the city clerk's designee shall, upon satisfaction that the information provided in an application for a transient merchant license or transient merchant premises permit is true and correct, and that the requirements of this article for issuance of the license or permit have been satisfied, and upon payment of the license or permit fee and posting of ~~the~~ a cash bond, if required by this article, issue the license.
- (d) The city clerk shall deny any application for the operation of a transient merchant business or transient merchant premises that does not conform with all applicable requirements of this article, the City Code, the Iowa Code and the Iowa Administrative Code.

Sec. 78-70.01. Appeal of denial.

- (a) The denial of an application for a transient merchant license or transient merchant premises permit 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 or transient merchant premises permit 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 [by first class mail](#) 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 10 business days after the date of such notice.

Sec. 78-71. Transferability of license [or permit](#).

Transient merchant licenses [or transient merchant premises permits](#) issued under this article shall not be transferable.

Sec. 78-72. Renewal of license [or permit](#).

Annual and thirty-day transient merchant licenses 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 bond required by section 78-68 of this article. Three-day transient merchant licenses are not subject to renewal. [Transient merchant premises permits may be renewed so long as there have been no violations of this article, upon payment of the fee required by section 78-69 of this article.](#)

Sec. 78-73. Suspension or revocation of license [or permit](#).

- (a) Upon complaint or reasonable suspicion that a licensee [or permit holder](#) or the licensee's [or permit holder'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. If the city clerk or the city clerk's designee finds that the licensee [or permit holder](#) or the licensee's [or permit holder'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 the license, or to deny its renewal.
- (b) Notice of the city's intent to suspend, revoke, or deny the renewal of a license [or permit](#) and a brief summary of the factual basis for such remedial action shall be served upon the licensee [or permit holder](#). Such notice shall inform the licensee [or permit holder](#) of the time, date and place of a meeting where the licensee [or permit holder](#) 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 [or permit holder](#) by personal service or by service upon a cashier, [18 years of age or older](#), for the ~~business where~~ [business where business is conducted 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 or permit holder, 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 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 permit or deny its renewal; the determination of whether to so suspend or revoke the license or permit 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 or permit 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) The decision of the city clerk or the city clerk's designee to suspend, revoke or deny renewal of a license or permit pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (e) A licensee or permit holder whose license or permit has been revoked or denied for renewal shall not be eligible for ~~another such a~~ license or permit under this article for a period of 180 days after such revocation or denial of renewal.

Sec. 78-74. Restrictions on operations of transient merchants and transient merchant premises. Prohibited acts.

- (a) ~~No transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not~~ sell to any person located on ~~situated in a motor vehicle upon~~ any public street, alley, driveway access, or public way.
- (b) ~~No transient merchant shall have more than~~ Only one sign is allowed in the painted area for any transient merchant or mobile food vendor operating on a premises that are subject to a transient merchant premises permit. Such sign shall be located outside the required front yard setback area designated by chapter 134 of this Code. Such sign shall have a single face or two parallel faces, with each face not to exceed 24 square feet in area. Such sign shall be securely anchored so as to prevent its displacement by weather. Vehicle signs painted or attached directly to the body of the vehicle shall not be subject to this limitation.
- ~~(c) No transient merchant shall conduct a transient sale with a display and sale area in excess of 1,000 square feet, but in no event shall any one dimension exceed 50 feet.~~
- (~~c~~d) ~~No transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not~~ conduct a transient sale with ~~use any a~~ display that exceeds the height of ~~height in excess of~~ 15 feet.
- (~~d~~e) ~~No transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall display wares or products~~ without using anchoring or affixing such wares or products in such a manner so as to prevent their displacement by weather conditions.
- (~~e~~f) ~~No transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not~~ conduct a transient sale ~~business~~ within the setback area designated by chapter 134 of this Code. ~~No transient merchants and mobile~~

food vendors operating on premises subject to a transient merchant premises permit shall are only allowed to sell, display or store merchandise or equipment ~~outside~~within the boundaries of the area designated for the operation of such business in a ~~license~~permit issued pursuant to this article.

- (fg) ~~No~~Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall ~~conduct a transient sale without~~must displaying the license required by this article and a valid sales tax permit ~~for such business within the place of sale~~ in a manner ~~such~~ that it is readily visible to ~~all persons attending the sale~~the public during operation.
- (gh) ~~No~~Transient merchants shall operate the business in a manner that does not violates any applicable food and sanitation laws.
- (hi) ~~A~~Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shallpermit 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 from 1:30 a.m. to 8:00 a.m. at any time not open for business and during hours business is prohibited. This section does not apply to temporary closures of the business of up to 30 minutes two times during allowed hours of operations. any period in a twenty-four hour period. 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 This requirements does not apply to 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.
- (ij) ~~No~~Private property owner shall not allow, permit or authorize any person to conduct a transient sale or allow a mobile food vender to operate on the premises without ~~the license a premises~~ permit required by this article.
- (jk) ~~No~~Private property owners or lessees shall not 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.
- (kl) ~~No~~Transient merchants and mobile food vendors operating on premises subject to a transient merchant premises permit shall not 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.
- (lm) Only one transient merchant or mobile vender may operate on a premises with permit at any time. 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.
- (mn) Hours of operation. Transient merchants are permitted to operate between 5:30 a.m. and 1:30 a.m. the following day unless the premises is located within 125 feet of any residentially-zoned property. Within 125 feet of a residential property, transient merchants are allowed to operate between 8:00 a.m. and 10:30 p.m. on the same day. For any transient merchant licensed to operate on the effective date of this amendment, the transient merchant is allowed to operate between 5:30 a.m. and 1:30 a.m. the following day as long as the transient merchant is operating with a license on the same premises it operated on the effective date of this amendment and its ownership does not change. If a license lapses

for any period of time, the licensee is not permitted to operate outside of 8:00 a.m. to 10:30 p.m. the same day within 125 feet of a residential property. For purposes of this section, C-3, C-3A, C-3B, C-3R and D-R, are not considered residentially zoned property

- (n) The display and sale area cannot exceed 1,000 square feet, with no side exceeding 50 feet in length.

Sec. 78-75. Municipal infractions and penalties.

- (a) Any person who violates this article shall be guilty of a municipal infraction punishable pursuant to Municipal Code section 1-15. Any person who violates a section of this article after having previously been found guilty of violating the same section of this article shall be guilty of a repeat offense.
- (b) Relief under this section shall be in addition to the remedies set forth in section 78-73.

Secs. 78-765--78-100. Reserved.

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. For purposes of operation in a city park pursuant to section 74-210, the term "mobile vender" includes a transient merchant licensed to sell food pursuant to Article III. A transient merchant licensed to sell food and operating in a city park must comply with all relevant provisions in Article III, including specifically, but not limited to, the requirements of sections 78-66 and 78-66.01-78-67.

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. Location of operation ~~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:
 - (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:

- (d) Subject to the requirements of this article, a mobile food vendor license is valid for the sale of food or beverages for immediate consumption from a mobile food vendor vehicle on premises for which a transient merchant premises permit has been issued. In addition to being subject to the requirements of this article, a mobile vendor operating on private property is deemed a transient merchant for purposes of Article III during those operations and is subject to all requirements contained in Article III except for the requirement that it obtain a transient merchant license.

Sec. 78-206. Cash bonds.

- (a) Except as provided in paragraph (c) below, no mobile vendor license shall be issued until the applicant has delivered to the city clerk a cash bond as set out in the schedule of fees.~~for no less than \$200.00.~~ 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 food or beverages 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 food or beverages, whether the misrepresentations were made by the owner or by his or her 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 food or beverages.
- (b) A single bond may be used for all licenses obtained by the same mobile vendor.
- (c) The balance of the bond shall be released by the city clerk and returned to the applicant upon request by the applicant at any time more than four months after expiration of all mobile vendor licenses 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. 78-207. Meter hoods.

- (a) In order to operate in a downtown mobile vendor zone, ~~a~~^{Every} mobile vendor, is required to obtain a meter hood to be issued by the city clerk for each licensed mobile vendor vehicle. If the mobile vendor vehicle, or the mobile vendor vehicle and tow vehicle if the mobile vendor is a trailer, is longer than twenty feet and no longer than twenty-five feet the mobile vendor may elect to obtain a second meter hood from the city clerk. If the mobile vendor vehicle is a trailer, and the mobile vendor vehicle and tow vehicle are longer than twenty-five feet, the mobile vendor is required to obtain a second meter hood to be issued by the city clerk
- (b) The annual fee for the use of the first and second meter hoods issued with each mobile vendor license shall be in the amount set in the schedule of fees adopted by the city council by resolution.
- (c) To secure the return of each meter hood at the expiration or termination of the mobile vendor license, a deposit in the amount set in the schedule of fees adopted by the city council by resolution shall be collected by the city clerk for each meter hood so issued,

including replacement hoods. Upon request to the city clerk and return of the meter hood in good condition, excepting ordinary wear, the city clerk shall cause the deposit to be refunded to the mobile vender by mailing payment to the address of record for such vender.

- (d) In the event any meter hood is lost, stolen or damaged, the mobile vender may obtain a replacement meter hood upon payment of the replacement hood fee and deposit in the amounts set in the schedule of fees adopted by the city council by resolution.

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, if required to operate, 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 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. 78-212. - 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. Between 1:45 a.m. and 5:30 a.m., no mobile vender vehicle may be parked within the downtown mobile vender zones.

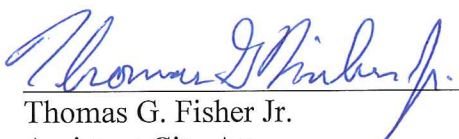
- (2) *Neighborhood mobile vender zones.* No mobile vender vehicle shall be open for business within a neighborhood mobile vender zone at any time outside the hours of operation established for that mobile vender zone in section 78-201. No mobile vender vehicle shall be parked within a neighborhood mobile 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 parallel parking space in a mobile vender zone.
 - (2) No mobile vender shall conduct any sale from a parking space which is designated as an accessible 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 37 feet long 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 feet long, 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 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 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. This requirement does not apply to mobile vendors operating on private property.
- (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.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:


 Thomas G. Fisher Jr.
 Assistant City Attorney