

★ **Roll Call Number**

**Agenda Item Number**

32

**Date** January 22, 2018

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 Section 78-67, relating to application for a transient merchant premises permit",

which was considered and voted upon under Roll Call No. 18- 0069 of January 8, 2018; again presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
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

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b> January 8, 2018
	<b>Agenda Item No.</b> 45 <b>Roll Call No.</b> [ 18-0069 ] <b>Communication No.</b> 18-009 <b>Submitted by:</b> Phillip Delafield, Community Development Director

**AGENDA HEADING:**

Amendments to Chapter 78 transient merchant ordinance.

**SYNOPSIS:**

Minor amendments to the transient merchant ordinance regarding dumpster enclosures and employee restroom requirements.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

- On July 25, 2016, the ordinance pertaining to transient merchants amended in part to include the following requirements:

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.

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. 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.

- City Council asked staff to meet with stakeholders and determine how the ordinance changes impacted them.
- On August 29, 2017, a public meeting was held to discuss the:
  - Restroom requirements
  - Insurance requirements
  - Grease and gray water disposal
  - Hours of operation

- Staff was told the dumpster enclosures were an expense passed onto the person who leased the lot and might lose the investment.
- The license holders were concerned about the restroom requirements for customers. They are being charged \$200 to \$500 a year for the agreement. They felt the requirement should only be for employees and be located a reasonable distance from the leased space.
- The ordinance will be amended to allow a license holder to provide proof that they have an agreement with a commercial business to take trash, grease and gray water. This eliminates the need for a dumpster with an enclosure on the leased property.
- The ordinance will be amended to require proof of a restroom available for employees within a reasonable distance from the leased property.

**PREVIOUS COUNCIL ACTION(S):**

Date: July 25, 2016

Roll Call Number: 16-1228 and 16-1229

Action: Amending Chapter 78 of the Municipal Code regarding transient merchants and mobile vendors, (as amended). Spanish Version (Council Communication No. 16-400) Moved by Coleman to make two amendments to the ordinance as written, and approve final passage of the amended ordinance as follows: 1. That the Safe Serve Certification will be required for applicants who apply or renew after January 1, 2018. 2. That a paved surface will be required for Premise Permits for all new applicants. Those vendors currently licensed on the effective date of the ordinance will be exempt from this requirement on the premises they currently occupy. The City Manager will send a letter to the State on behalf of the City Council expressing concern about the difficulty of the training and testing for the Safe Serve Certification for non-English registrants, #15,489. Motion Carried 7-0.

(A) Approving amendment to the Schedule of Fees. Moved by Coleman to adopt. Motion Carried 7-0.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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 Administration Building, 400 E. Court Avenue Ste.116. 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](mailto:cityclerk@dmgov.org).

18-5069  
45  
30

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 Section 78-67, relating to application for a transient merchant premises permit.

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 Section 78-67, relating to relating to application for a transient merchant premises permit, as follows:

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

At least three business 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:

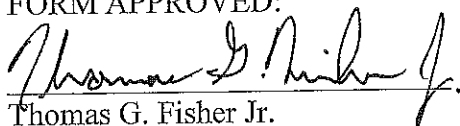
- (1) All applicable requirements of this article, the City Code, the Iowa Code and the Iowa Administrative Code.
- (2) The premises is within a commercial or industrial zoning district.
- (3) The premises is not on a parcel having a residential use as its principle use.
- (4) Trailers, vehicles, tents, 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.

18-0069  
45  
32

- (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. The requirement for a dumpster enclosure may be waived if permit holder can establish to the satisfaction of the neighborhood inspection zoning administrator that it has a non-residential alternative location for taking its garbage.
- (7) Only one transient merchant or mobile vender currently licensed by the city is allowed to operate on the parcel at any time.
- (8) The permit holder must provide a paved area for display and sale by the transient merchant. This provision does not apply to premises that are covered by a valid transient merchant license on the effective date of this ordinance if a premises permit is applied for on or before the expiration of the existing transient merchant license. This exemption terminates when a premises permit is not timely renewed or is denied for any reason. The owner of the premises must comply with all zoning requirements relating to the premises.
- (9) 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 a reasonable distance from the licensed facilities that are open the same hours as the transient merchant or mobile vendor. ~~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.

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