

ORDINANCE NO. 15,130

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 78-70.01 and 78-73 thereof regarding the denial and revocation of transient merchant licenses.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, be and is hereby amended by amending Sections 78-70.01 and 78-73 thereof regarding the denial and revocation of transient merchant licenses, as follows:

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

Sec. 78.70.01. Appeal of denial.

- (a) The denial of an application for a transient merchant license may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (b) In the event an application for a transient merchant license is denied, the city clerk or the city clerk's designee shall cause notice of such denial to be promptly communicated to the applicant or the applicant's representative by phone at the phone number provided in the application. Written notice shall also be sent to the applicant at the business address identified in the application informing the applicant of the denial, the reasons therefore, and the applicant's right to appeal the denial to an administrative hearing officer by filing a written notice of appeal with the city clerk within 10 business days after the date of such notice.

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

- (a) Upon complaint or reasonable suspicion that a licensee or the licensee's employees or agents has furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city clerk or the city clerk's designee may cause the matter to be investigated. If the city clerk or the city clerk's designee finds that the licensee or the licensee's employees or agents has furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city clerk or the city clerk's designee may give notice to the licensee of the city's intent to suspend or revoke 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 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) 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.
- (e) A licensee whose license has been revoked or denied for renewal shall not be eligible for another such license for a period of 180 days after such revocation or denial of renewal.

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

FORM APPROVED:

Roger K. Brown, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 12-1442), passed by the City Council of said City at a meeting held September 10, 2012 signed by the Mayor on September 10, 2012 and published as provided by law in the Business Record on September 28, 2012. Authorized by Publication Order No. 7938.

Diane Rauh, City Clerk