

ORDINANCE NO. 15,155

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding and enacting a new Section 78-25, and by amending Sections 78-26, 78-27, 78-28, 78-29, 78-30, 78-31, 78-34 and 78-35, relating to licensing and regulating peddlers.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by adding and enacting a new Section 78-25, and by amending Sections 78-26, 78-27, 78-28, 78-29, 78-30, 78-31, 78-34 and 78-35, relating to licensing and regulating peddlers, as follows:

ARTICLE II. PEDDLERS

Sec. 78-25. Purpose.

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

Sec. 78-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

Sec. 78-27. License and bond required.

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

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

(1) The bond shall be held to indemnify and pay the city any penalties or costs incurred in the enforcement of any of the sections of this article and indemnify or reimburse any purchaser of services, goods, wares, merchandise or stock for any judgment which may be obtained by a purchaser for damages in any action commenced within three months from the date of purchase, due to misrepresentations as to the kind, quality or value of such services, goods, wares, merchandise or stock, whether the misrepresentations were made by the owner or by his or her servants, agents or employees, either at the time of making the sale or through any advertisement of any character, printed or circulated, with reference to such stock of goods, wares, merchandise, services or any part thereof.

(2) The balance of the bond shall be released by the city clerk and returned to the applicant or employer upon request by the applicant or employer at any time more than four months after expiration of the peddlers license(s) for which the cash bond was provided, unless the city clerk has received notice of a pending action in the state or federal courts seeking a judgment upon a claim eligible for payment from the bond. Except as otherwise provided by court order, the city clerk shall not release any bond during the pendency of any such action.

Sec. 78-28. Exemptions.

This article shall not apply to the following:

- (1) Persons making door-to-door sales for the purpose of a community improvement or benefit approved by the city council on behalf of nonprofit, tax-exempt corporations; or
- (2) Persons licensed as a salvage dealer under division 2 of article VIII of chapter 30 of this Code; or
- (3) Persons licensed as a solicitor under article IV of this chapter; or
- (4) Persons delivering and selling goods or merchandise to established customers; or
- (5) Persons having written permission from a street use permit holder to make sales within the street area closed for an event.

Sec. 78-29. Application for license.

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

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

- (11) whether applicant has been listed on any sex offender registry within the last five (5) years;
- (12) whether applicant has had a peddlers license suspended, revoked, or denied by this or any other city in the last five (5) years and the reasons therefore;
- (13) the dates of any previous peddlers licenses issued by the city clerk.

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

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

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

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

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

Sec. 78-31. Display of license.

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

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

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

(b) *Notice and appeal process.* A summary suspension, revocation or denial, shall be promptly communicated to the applicant or the applicant's representative by phone at the phone number provided in the application. Written notice shall also be mailed by U.S. mail to the applicant at the business address identified in the application informing the applicant of the suspension, revocation or denial, the reasons therefore, and the applicant's right to appeal to a hearing officer pursuant to Chapter 3 of this code. The only issue on appeal shall be whether the suspension, revocation or denial is supported by a preponderance of the evidence.

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

Sec. 78-35. Prohibited acts.

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

(b) No peddler shall conduct peddling upon any part of the public right of way along a parade route on the day of any permitted parade.

(c) No peddler shall conduct peddling within one thousand (1,000) feet of the perimeter of a street closure, or inside such perimeter, for an event where a street use permit has been issued unless written permission from the street use permit holder has been obtained.

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

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

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

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

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

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

FORM APPROVED:

Douglas P. Philip, Assistant City Attorney

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. 13-0131), passed by the City Council of said City at a meeting held January 28, 2013 signed by the Mayor on January 28, 2013 and published as provided by law in the Business Record on February 15, 2013. Authorized by Publication Order No. 8212.

Diane Rauh, City Clerk