



# MEMORANDUM

## LEGISLATIVE REFERENCE BUREAU

WWW.MILWAUKEE.GOV/LRB

---

**To:** Honorable Members, Licenses Committee  
**From:** Amy E. Hefter – Legislative Fiscal Analyst-Lead, ext. 2290  
**Date:** March 26, 2012  
**Subject:** Common Council File Number 111646: A substitute ordinance relating to the procedures for application for, and issuance of, new or renewal food peddler permits and a reordering and revising of the food peddler permit to clarify language and code provisions.

---

Common Council File Number 111646, repeals and recreates s. 74-1 of the code. The major changes to this section are the creation of the following subsections: application (s. 74-1-4), fee (s. 74-1-5) and a procedure for issuing new or renewal permits (s. 74-1-6).

By creating a fee subsection, it's no longer necessary to include fee references within the permit categories. Currently, definitions for each peddler permit category are also contained within the permit categories. In this ordinance, the definition subsection is renumbered and expanded to include new definitions (s. 74-1-2).

Reordering of this section included dividing the current prohibited and required acts subsection (s. 74-1-7.5) into 2 separate subsections - a rules and operating regulations subsection and a prohibited activities subsection.

In addition, current subsections s. 74-1-2, s. 74-1-4.5, s. 74-1-8.5, and s. 74-1-9.5, were merged with s. 74-1-7.5-b to b-5 into the new rules and operating regulations subsection (s. 74-1-7). Also current subsections s. 74-1-2.5, s. 74-1-7, and s. 74-1-8, were merged with s. 74-1-7.5-a to a-5 and s. 74-1-7.5-c into the new prohibited activities section (s. 74-1-8).

Please see the attached drafting notes for detailed information.

**Drafting Notes for s. 74-1 M.C.O.**  
(CCFN 111646 / LRB 13034-2)

**74-1. ~~[[Vehicular]] Food Peddlers.~~ 1. FINDINGS.** The common council finds that regulation of the health conditions of food sold by food peddlers is necessary for the prevention of disease and sickness within Milwaukee and such regulation is vital to the health, safety and welfare of residents of and visitors to the city.

~~[[1.5]]~~ >>2<<. **DEFINITIONS.** In this chapter:

a. "Carried container" means a container carried on foot which contains food for sale.

~~[[a]]~~ >>b<<. "Commissioner" means the commissioner of health.

~~[[b]]~~ >>c<<. "Food" means all articles used for food, drink or condiment including ice or water used by humans, whether simple, mixed, or compound and articles used or intended for use as ingredients in the composition or preparation thereof.

~~[[e]]~~ >>d<<. "Food peddler" means any person who sells food ~~[[in this city]]~~ from a ~~[[pushed, pedaled, pulled or motorized vehicle]]~~ >>food peddler vehicle<< or from a carried container.

e. "Food peddler vehicle" means any pushed, pedaled, pulled or motorized vehicle from which food is prepared or sold.

f. "Motorized vehicle" means a vehicle which uses a mechanical engine to propel it.

~~[[d]]~~ >>g<<. "Person" means any individual, firm or corporation.

h. "Pushed, pedaled or pulled vehicle" means a vehicle which does not have a mechanical engine to propel it and is moved by human power.

i. "Veteran" means any ex-soldier of the United States in any war who has a 25% disability or more or has a cardiac disability recognized by the ~~[[United States veterans administration]]~~ >>U. S. department of veteran affairs<<.

~~[[2]]~~ >>3<<. **PERMIT REQUIRED.** a. ~~[[Parked One Hour or Less]]~~ >>General<<. No person shall engage in the sale of any food from any vehicle on public streets ~~[[,]]~~ without first receiving from the ~~[[commissioner of health]]~~ >>city clerk<< a >>food peddler<< permit ~~[[so to do; provided further that any person engaged in the sale of any food from a vehicle shall not remain in any location adjacent to any one block area, which block contains only nonresidential occupancy or use, more than one hour on any one day, except as provided in sub. 2-b. This section, and the]]~~ >>.<< ~~[[permits]]~~ >>A permit<< issued ~~[[hereunder,]]~~ >>under this

section<< shall not permit any person to sell food from a temporary or permanent structure or a vehicle other than a vehicle selling food on public streets or contrary to any other ordinance of the city.

~~[[2.2. PERMIT NOT REQUIRED]]~~ >>b. Exceptions<<. A person selling only bottled or canned non-alcohol drinks that don't require refrigeration and no other food items is not required to have a permit issued under this section but shall comply with all other requirements of this section.

~~[[5]]~~ >>4<<. APPLICATION. ~~[[Each person requiring a permit shall make written application to the city clerk.]]~~ >>Application for a food peddler permit shall be made in writing to the city clerk on forms provided by the city clerk and shall contain the following information:<<

- a. Name, home address and telephone number of the applicant. Post office box numbers shall not be acceptable for addresses required on applications.
- b. Applicant's date of birth.
- c. Motor vehicle driver's license number used.
- d. If the applicant will be selling food provided by a food service establishment, the name and address of the establishment.
- e. The category of permit being applied for specified in sub. 6, including whether the applicant is a veteran or is applying for a night operation permit.
- f. A description of the location or locations where the applicant intends to sell food.
- g. The hours of the day during which the applicant intends to sell food.
- h. Whether the applicant is an individual, corporation or partnership, including:
  - h-1. If the applicant is a corporation, the registered agent's name, address and date of birth, and verification that the corporation has been registered with the secretary of state as provided in ch. 180, Wis. Stats.
  - h-2. If the applicant is a partnership, the names and addresses of the partners.
- i. A unique serial number, vehicle identification number or a permanent unique number or alpha identifier distinguishing each food peddler vehicle or carried container to be permitted.
- j. Such other reasonable and pertinent information the city clerk, commissioner of health or chief of police may from time to time require.

k. The signature of all applicants and their agents to confirm that all the information on the application is correct and acknowledge that any change in the information on the application shall be reported to the city clerk within 10 days of the change.

5. FEE. a. All new and renewal applications shall be accompanied by the applicable fees specified in ss. 60-29 and 60-31.

b. If payment for the permit fee is made by check or other draft and payment on the draft is stopped or the draft is drawn upon a non-existent or an account containing insufficient funds, the applicant shall, within 15 days after the receipt of notice from the city clerk of the insufficiency, pay by cashier's check or other certified draft, money order or cash, the fees, late fees and processing charges as specified by the code. Non-payment of all applicable fees, late fees and processing the changes within 15 days after the applicant received notice of the insufficiency shall render the permit null and void until all fees, late fees and processing charges are paid in full.

~~[[e. Veteran. Any ex-soldier of the United States in any war who has a 25% disability or more or has a cardiac disability recognized by the United States veterans administration shall,]] >>c. A veteran<< upon presenting proof to the [[commissioner of health]] >>city clerk<< that he or she satisfies [[these]] >>the<< conditions >>provided in sub. 2-j<<, >>shall<< be granted a food peddler permit for one motorized, pushed, pedaled or motorized vehicle or container without payment of any fee. >>The veteran shall be the operator of the food peddler vehicle or carried container for which the fee has been waived.<<~~

6. PROCEDURE FOR ISSUING NEW OR RENEWAL PERMIT. a. ISSUANCE. All applications shall be referred to the commissioner of health who shall cause an investigation to be made. The city clerk shall issue a permit to each applicant for a new or renewal permit who meets all the requirements of this section, has paid to the city treasurer the applicable fees, provided approval has been made by the commissioner of health of a satisfactory investigation. Permits shall be issued for the following categories:

~~[[a]] >>a-1<<. Pushed, pedaled or pulled vehicles. [[A food peddler permit shall be issued by the commissioner of health upon the payment of the fee required in s. 60-29 for each approved pushed, peddled or pulled vehicle which does not have a mechanical engine to propel it, and shall be in such form as the commissioner of health may direct.]]~~

~~[[b]]>>a-2<<. Motorized vehicles. [[The food peddler permit fee required in s. 60-29 shall be charged for each approved motorized vehicle and shall be in such form as the commissioner of health may direct.]]~~

~~[[e]] >>a-3<<. Carried Containers. [[The food peddler permit fee required in s. 60-29 shall be charged for each person who carries food on foot for retail sale.]]~~

~~[[d]] >>b<<. Night Operation. The [[commissioner]] >>city clerk<< shall provide for issuance of a of a sub-category of each of the permit types identified in [[par. a to e]] >>par. a<< to allow for a food peddler to sell food between the hours of 9 p.m. and 3 a.m., in addition to sales between 6 a.m. and 9 p.m., except that a food peddler with a nighttime sales permit may sell food until 3:30 a.m. on Saturday and Sunday and at any time on January 1. The applicant for a permit allowing nighttime sales shall pay a surcharge required [[by]] >>under<< s. 60-31.~~

~~[[4. IDENTIFYING DEVICE (LICENSE PLATE)]] >>c. Peddler Permit Sticker<<. Together with each permit, the [[commissioner]] >>city clerk<< shall issue [[an identifying device]] >>a peddler permit sticker<< [[not less than 4" x 8" in size and having stamped on it]] >>with<< the words "[[Milwaukee Health Department]] >>City of Milwaukee Food Peddler<< - permit no.....," [[which shall be numbered in such manner as directed by the commissioner]] >>stamped on it<<. Any food peddler, before engaging in the sale of any food products, shall have the [[identifying device securely fastened to the outer or inside right side of]] >>peddler permit sticker affixed to<< the peddler's vehicle or container [[and prominently display it at all times]] >>in a prominent place<<. Each peddler shall at all times have [[on his or her person]] >>available for inspection<< the paper permit whose number matches the number on the [[identifying device]] >>peddler permit sticker<<.~~

7. RULES AND OPERATING REGULATIONS. ~~[[4.5. COMPANY NAME]] >>a. Identifying Signage<<. Each [[side of the]] >>food peddler<< vehicle >>or carried container used for business purposes subject to permitting as a food peddler under this section shall have identifying signs printed or affixed, in a prominent position, to 2 sides of the vehicle or container. Each identifying sign<< shall [[display]] >>include<< the name of the >>business or<< person [[to whom the permit is issued]] >>operating the vehicle or container<<, [[and local]] >>a valid<< telephone number >>for the business, and the unique serial number, vehicle identification number, permanent unique number or alpha identifier distinguishing the food peddler vehicle or carried container<< in lettering not less than [[4]] >>3<< inches high.~~

~~[[9.5. PEDDLERS ARE AGENTS OF PERMIT HOLDERS]] >>b. Agents of Permit Holders<<. Whenever a business, organization or individual holds a food peddler's permit and individual peddlers make sales under the authority of that permit, each such individual peddler is an agent of that business, organization or individual for purposes of those sales. Any violation of this section by an agent~~

shall be imputed to the business, organization or person that holds the food peddler's permit under which the agent's sales are made.

~~[[b. A food peddler shall:]]~~

~~[[b-1]]~~ >>c. Sales on the Public Way Only<<. ~~[[Make-all]]~~ >>All<< sales >>shall be made<< on the public way directly from ~~[[a]]~~ pushed, ~~[[peddled]]~~ >>pedaled<<, pulled or motorized ~~[[vehicle]]~~ >>vehicles<< or ~~[[a-carried-container]]~~ >>carried containers<<.

~~[[a]]~~ >>d<<. Parked One Hour or Less. ~~[[No person shall engage in the sale of any food from any vehicle on public streets, without first receiving from the commissioner of health a permit so to do; provided further that any]]~~ >>Any<< person engaged in the sale of any food from a vehicle shall not remain in any location adjacent to any one block area, which block contains only nonresidential occupancy or use, more than one hour on any one day, except as ~~[[provided in sub. 2-b. This section, and the permits issued thereunder, shall not permit any person to sell food from a temporary or permanent structure or a vehicle other than a vehicle selling food on public streets or contrary to any other ordinance of the city.]]~~ >>follows:<<

~~[[b. Exceptions to One Hour Limit.]]~~

~~[[b-1]]~~ >>d-1<<. Whenever any street or portion thereof has been closed to traffic by common council resolution in connection with any civic event, the city clerk may, upon receipt of the required fee, issue a permit to any person holding a permit for the sale of food from a vehicle further permitting such person to park on such closed streets longer than the one-hour limit provided in ~~[[par. a]]~~ >>this paragraph<<. The permit shall specify the dates for which >>it is<< issued >>1<< and the fee required in ch. 60 shall be charged for each ~~[[such]]~~ date. No ~~[[such]]~~ permit shall be issued without the approval of the chief of police, unless the common council by resolution shall so direct.

~~[[b-2]]~~ >>d-2<<. A motorized food peddler vehicle may be parked in one location on a nonresidential block in excess of the one-hour limit specified in ~~[[par. a]]~~ >>this paragraph<<, provided the vehicle is parked in compliance with all posted time limits on parking and with all other applicable parking regulations.

~~[[c. Location of Vehicle: Penalty.]]~~

~~[[c-1]]~~ >>d-3<<. The number of vehicles at any given event, in any given block, and the spacing of such vehicles, as well as the number of blocks within the closed traffic section allocated for such vehicles, shall be determined by the police department in cooperation with the local ~~[[alderman]]~~ >>common council member<< and sponsoring group.

~~[[d. Exceptions]]~~ >>e. Exceptions<<. The common council may, by resolution, designate specific exceptions as to locations, dates ~~[[and/or]]~~ >>or<< individual events, to the provisions of ~~[[sub. 2-a]]~~ >>par. d<<.

~~[[e-2]]~~ >>f. Penalty<<. Any vehicle parking in ~~[[such]]~~ a closed traffic section, or parking outside the barricaded street section longer than allowed >>under par. d or<< by existing ~~[[ordinances]]~~ >>code provisions<<, without ~~[[said]]~~ >>a<< permit shall be fined \$100 and >>the<< vehicle shall be towed away at >>the<< owner's expense.

~~[[b-2]]~~ >>g. Keeping of Perishable Food<<. ~~[[Keep all]]~~ >>All<< perishable foods >>shall be kept<< in one of the following ways:

~~[[b-2-a]]~~ >>g-1<<. Frozen.

~~[[b-2-b]]~~ >>g-2<<. Refrigerated at 41° F or lower by means of mechanical refrigeration.

~~[[b-2-c]]~~ >>g-3<<. Heated and maintained at 135° F.

~~[[b-3]]~~ >>h. Scale Required<<. ~~[[Provide]]~~ >>A food peddler shall provide<< a scale for items that are sold by weight and weighed at the time of sale. The scale shall be approved and licensed under ss. 60-91 and 82-14.

~~[[b-4]]~~ >>i. Noise Restricted<<. ~~[[Comply]]~~ >>A food peddler shall comply<< with the noise nuisance regulations of s. 80-65-4 and all other noise regulations of this code.

~~[[b-5]]~~ >>j. Parking Restrictions<<. ~~[[Comply]]~~ >>A food peddler shall comply<< with all parking regulations >>provided<< under ss. 105-56 and 115-45.

~~[[8.5 SALE OF SODA WATER]]~~ >>k. Sale of Soda Water<<. Soda water shall be sold in single >>service cups or aluminum cans only.

**8. PROHIBITED ACTIVITIES.** ~~[[7. PERMITS AND IDENTIFYING DEVICES NOT TRANSFERABLE]]~~ >>a. Permits and Peddler Permit Stickers Not Transferable<<. Permits and ~~[[permit identifying devices]]~~ >>peddler permit stickers<< shall be nontransferable except upon order of the commissioner of health. Any food peddler selling, giving away or exchanging any permit or permit ~~[[identifying device]]~~ >>sticker<<, or any food peddler obtaining a permit by misrepresentation, or improperly registering ~~[[their]]~~ >>his or her<< name or address shall be subject to the ~~[[fines]]~~ >>forfeitures<< provided for in sub.~~[[10]]~~ >>11<<.

~~[[8. SALE OF UNWHOLESOME FOOD PROHIBITED]]~~ >>b. Sale of Unwholesome Food Prohibited<<. No food peddler shall sell any food or food

product that is unwholesome or tainted, or that is unclean, or that has been handled in an unclean manner, or has been exposed to unclean or contaminating things or conditions, or contrary to any rules or regulations adopted by the commissioner of health.

~~[[2.5. SALES FROM MEDIAN OR SAFETY ISLAND PROHIBITED]]~~ >>c. Sales from the Median or Safety Island Prohibited<<. No food peddler shall sell or offer for sale any food while the person is on a roadway median or safety island, except when the roadway has been closed to traffic under ~~[[sub. 2-b]]~~ >>subd. 7-d-1<< and the peddler is otherwise in compliance with this section.

~~[[a. A food peddler shall not:]]~~

~~[[a-1]]~~ >>d. Sale of Food Between the Hours of 9 p.m. and 6 a.m. Prohibited<<. ~~[[Sell food between the hours of 9 p.m. and 6 a.m. the following morning]]~~ >>The sale of food between the hours of 9 p.m. and 6 a.m., the following morning shall be prohibited<<. This prohibition shall not apply on January 1, Memorial Day, Juneteenth, the 3<sup>rd</sup> and 4<sup>th</sup> of July, Labor Day, on city streets adjacent to State Fair Park during the run of the Wisconsin State Fair or during any other specific dates specified by the common council by resolution. Nor shall it apply to a food peddler to whom the commissioner has issued a food peddler's permit allowing nighttime operation, pursuant to sub.~~[[3-e]]~~ >>6-b<<.

~~[[a-2]]~~ >>e. Blocking Pedestrian Access to Doorways Prohibited<<. ~~[[Block or restrict]]~~ >>Blocking or restricting<< an individual's access to a business or residential doorway >>shall be prohibited<<.

~~[[a-3]]~~ >>f. Blocking Sidewalk Prohibited<<. ~~[[Occupy]]~~ >>Occupying<< any sidewalk so as not to permit any pedestrian at any time to have a minimum 5-foot clearance >>shall be prohibited<<.

~~[[a-4]]~~ >>g. Lewd Comments Prohibited<<. ~~[[Make]]~~ >>Making<< any comment, request, suggestion or proposal which is obscene, lewd, lascivious, profane, filthy or indecent >>shall be prohibited<<.

~~[[a-5]]~~ >>h. Door-to-Door Sales Prohibited<<. ~~[[Sell]]~~ >>Selling<< food door-to-door >>shall be prohibited<< except as provided under s. 68-4.

~~[[e]]~~ >>i. Horn Use Prohibited<<. A food peddler with a permit for a >>carried container or<< pushed, pedaled or pulled vehicle shall not use any type of horn.

9. ~~[[RULES AND REGULATIONS]]~~ >>AUTHORITY OF COMMISSIONER<<. The commissioner of health ~~[[is authorized to]]~~ >>may<< make and adopt ~~[[the]]~~ written rules and regulations as may be necessary for the proper enforcement of this section. The commissioner of health shall file a certified copy of all rules and regulations which he >>or she<< may adopt with the city clerk, and a certified



copy of ~~[[such]]~~ >>the<< rules and regulations shall also be on file in the office of the commissioner of health. ~~[[Such]]~~ >>The<< rules and regulations shall have the same force and effect as the provisions of this section, and the penalty for violations thereof shall be the same as the penalty for violations of this section ~~[[as hereinafter provided]]~~.

~~[[6]]~~ >>10<<. PERMIT SUSPENSION AND REVOCATION. a. Any permit issued in accordance with this section ~~[[is]]~~ >>shall be<< subject to summary revocation by the commissioner or any of the commissioner's authorized agents at any time that the holder thereof is guilty of a violation of any of the provisions of this code or state laws governing the sale or handling of food. Any person to whom ~~[[such]]~~ an order is issued shall immediately comply ~~[[herewith]]~~ >>with the orders<<, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of ~~[[such]]~~ >>the<< petition.

b. Whenever the commissioner finds unsanitary or other conditions related to the operation of a food peddler which are in violation of this section, rules and regulations adopted by the commissioner, state statutes or rules promulgated by an agency of the state, and the violations, in the commissioner's opinion, constitute a substantial hazard to the public health, safety and welfare, the commissioner may, without warning, notice or hearing, issue a written order to the permit holder, operator or ~~[[employee]]~~ >>employee<< in charge of the food peddler operation citing ~~[[such]]~~ >>the<< condition, specifying the corrective action to be taken, and specifying the time period within which ~~[[such]]~~ >>the<< action shall be taken. If the commissioner deems it necessary, the order shall state that the permit ~~[[is]]~~ >>shall be<< immediately suspended and all food service operations ~~[[are to]]~~ >>shall<< be immediately discontinued. The commissioner shall promptly notify the city clerk of any suspension. Any person to whom an order is issued shall immediately comply ~~[[therewith]]~~ >>with the order<<, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of ~~[[such]]~~ >>the<< petition. Failure to allow an inspector immediate access to determine whether such grounds exist shall be grounds for suspension, and the commissioner shall promptly notify the city clerk of this failure.

c. For serious or repeated violations of any of the requirements of this section, or for interference with the commissioner in the performance of his or her duties, a permit may be revoked after an opportunity for a hearing has been provided by the food license review board. Prior to such action, the commissioner shall notify the permit holder in writing, stating the reasons for which the permit ~~[[is]]~~ >>shall be<< subject to revocation, and advising that the permit shall be revoked at the end of 5 working days following service of ~~[[such]]~~ >>the<< notice, unless the permit holder files with the commissioner a request for a hearing within the 5-day period. The commissioner shall promptly notify the city clerk of any revocation.

d. The commissioner may, following the same procedures set forth in pars. a to c, suspend or revoke only the portion of a permit allowing late-night sales pursuant to sub. ~~[[3-e]]~~ >>6-b<<.

e. The hearings provided for in this section shall be conducted by the food license review board at a time and place designated by the commissioner. Based upon the record of the hearing, the commissioner shall be charged with enforcing the decision of the board. The commissioner shall furnish the permit holder and the city clerk with a written report of the hearing decision.

f. No person, association or corporation may operate after a permit suspension or revocation unless the suspension is released in writing or the revocation is not upheld by the food license review board or court.

~~[[10]]~~ >>11<<. PENALTIES. a. Any person who shall sell any food product from any vehicle or any carried container as described in this section without having first received a permit in accordance with the provisions of this section, or who shall violate any of the other provisions of this section, except sub. ~~[[7-5]]~~ >>7-c, g to j and sub. 8-d to i<<, shall be subject to penalty as set forth in s. 61-8.

b. A person who violates sub. ~~[[7-5]]~~ >>7-c, g to j and sub. 8-d to i<< shall be subject, at the discretion of the court, to any or all of the following penalties:

b-1. A forfeiture of not less than \$20 nor more than \$200 for each violation.

b-2. A suspension of the identifying device described under sub. ~~[[4]]~~ >>6-d<< for not less than 10 days nor more than 30 days, or a revocation of the identifying device for the remainder of its term.

b-3. A suspension of the food peddler's license for not less than 10 days nor more than 30 days, or a revocation of the food peddler's license for the remainder of its term.

c. At the discretion of the court, a penalty under par. b may be imposed as follows:

c-1. A penalty may be imposed on an agent.

c-2. Whenever the court finds that the business, organization or person that holds the food peddler's permit under which the agent's sales are made has failed to properly supervise the agent, a penalty may be imposed on the business, organization or person.

c-3. A penalty as ~~[[described under]]~~ >>provided in<< subds. 1 and 2 may be imposed on both an agent and the business, organization or person that holds the food peddler's permit under which the agent's sales are made.

LRB130343-Drafting Notes  
Amy E. Hefter  
3/26/2012