



Legislation Text

File #: 971622, Version: 2

971622
SUBSTITUTE 2

THE CHAIR

A substitute ordinance relating to regulation of food peddlers and other food sellers and providing for fees for certain food-related licenses and permits.

60-21-5 cr
60-31-4 cr
60-91-1-c cr
60-91-2-c cr
60-91-3-b rc
60-91-3-c cr
60-91-4-c cr
60-91-5-c cr
60-91-6-c cr
68-4-1-e cr
68-4-1.5 cr
74-1-1-a rn
74-1-1-b rn
74-1-1-c rn
74-1-1.5-a cr
74-1-1.5-c am
74-1-2.2 cr
74-1-3-c am
74-1-4 am
74-1-6 rc
74-1-7.5 rc
95-1-2-c rc
- Analysis -

This ordinance modifies current food sales regulations. The ordinance requires food peddlers selling perishable foods to keep them at specified temperatures, to have a scale for foods sold by weight and to comply with existing parking restrictions. Persons selling bottled water or canned soda do not need a permit but must comply with all other food sales regulations. The ordinance adds appeal procedures for food peddlers whose permits are suspended or revoked. Appeals are to the food license review board and must be filed with the health commissioner within 5 days of the action being appealed. The ordinance clarifies that a food peddler's permit may be immediately suspended without notice for a violation of the ordinance, state statute or any rules or regulations issued under such ordinance or statute when the violation constitutes a substantial hazard to the public health, safety or welfare.

The ordinance specifies that door-to-door food sales are prohibited except for "occasional sales" by a religious, fraternal, youth, civic or patriotic organization, service club or church. "Occasional sales" are sales for not more than 3 days in any 12-month period.

The ordinance also institutes a \$5 duplicate license fee for health department licenses issued for food peddlers, food dealers, linear meters, retail petroleum meters, scales, taximeters, timing devices and vehicle tank or bulk plant meters.

The ordinance adds findings by the common council that regulation of the health conditions of food sold by food peddlers is necessary to prevent disease and sickness and is vital to the health, safety and welfare of persons in the city. The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 60-21-5 of the code is created to read:

60-21. Food Dealer's License.

5. The fee for a duplicate license is \$5.

Part 2. Section 60-31-4 of the code is created to read:

60-31. Food Peddler Permits.

4. The fee for a duplicate permit or identifying device is \$5.

Part 3. Section 60-91-1-c of the code is created to read:

60-91. Weighing and Measuring Device Licenses.

1. LINEAR METERS.

c. The fee for a duplicate linear meter license is \$5.

Part 4. Section 60-91-2-c of the code is created to read:

2. RETAIL PETROLEUM METERS.

c. The fee for a duplicate retail petroleum meter license is \$5.

Part 5. Section 60-91-3-b of the code is repealed and recreated to read:

3. SCALES.

b. The fee for the filing of a late renewal application is \$15.

Part 6. Section 60-91-3-c of the code is created to read:

c. The fee for a duplicate scale license is \$5.

Part 7. Section 60-91-4-c of the code is created to read:

4. TAXIMETERS.

c. The fee for a duplicate taximeter license is \$5.

Part 8. Section 60-91-5-c of the code is created to read:

5. TIMING DEVICES.

c. The fee for a duplicate timing device license is \$5.

Part 9. Section 60-91-6-c of the code is created to read:

6. VEHICLE TANK AND BULK PLANT METERS.

c. The fee for a duplicate vehicle tank or bulk plant meter license is \$5.

Part 10. Section 68-4-1-e of the code is created to read:

68-4. Food Dealer License.

1. REQUIRED.

e. No person may sell food door-to-door except for occasional sales by representatives of a religious, fraternal, youth, civic or patriotic organization, service club or church. In this paragraph, "occasional sales" means that food is offered for sale on not more than 3 days in any 12-month period.

Part 11. Section 68-4-1.5 is created to read:

1.5. LICENSE NOT REQUIRED. A person selling only bottled or canned water or bottled or canned soda and no other food items is not required to have a license issued under this section.

Part 12. Section 74-1-1-a, b and c is renumbered 74-1-1.5-b, c and d.

Part 13. Section 74-1-1 of the code is created to read:

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.

Part 14. Section 74-1-1.5-a of the code is created to read:

1.5. DEFINITIONS.

a. "Commissioner" means the commissioner of health.

Part 15. Section 74-1-1.5-c of the code is amended to read:

c. "Food peddler" means any person who sells [[or distributes]] food in this city from a pushed, peddled, pulled or motorized vehicle or from a carried container [[for 6 hours or less at the same specific site]].

Part 16. Section 74-1-2.2 of the code is created to read:

2.2. PERMIT NOT REQUIRED. A person selling only bottled or canned water or bottled or canned soda and no other food items is not required to have a permit issued under this section but must comply with all other requirements of this section.

Part 17. Section 74-1-3-c of the code is amended to read:

3. PERMIT CATEGORIES.

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

Part 18. Section 74-1-4 of the code is amended to read:

4. IDENTIFYING DEVICE >>(LICENSE PLATE)<<. Together with each permit, the commissioner [[of health]] shall issue an identifying device not less than 4" by 8" in size and having stamped on it the words "Milwaukee Health Department - permit no", which shall be numbered in such manner as directed by the commissioner [[of health]]. 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 [[their]] >>the peddler's<< vehicle or container and prominently display it at all times. >>Each peddler shall at all times have on his or her person the paper permit whose number matches the number on the identifying device.<<

Part 19. Section 74-1-6 of the code is repealed and recreated to read:

6. PERMIT SUSPENSION AND REVOCATION. a. Any permit issued in accordance with this section is 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 therewith, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of such 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 employe in charge of the food peddler operation citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken. If the commissioner deems it necessary, the order shall state that the permit is immediately suspended and all food service operations are to be immediately discontinued. Any person to whom such an order is issued shall immediately comply therewith, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of such petition. Failure to allow an inspector immediate access to determine whether such grounds exist shall be grounds for suspension.

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 subject to revocation, and advising that the permit shall be revoked at the end of 5 working days following service of such notice, unless the permit holder files with the commissioner a request for a hearing within such 5-day period.

d. 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 such hearing, the commissioner shall be charged with enforcing the decision of the board. The commissioner shall furnish the permit holder with a written report of the hearing decision.

e. 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 a court.

Part 20. Section 74-1-7.5 of the code is repealed and recreated to read:

7.5. PROHIBITED AND REQUIRED ACTS. a. A food peddler shall not:

a-1. Block or restrict an individual's access to a business or residential doorway.

- a-2. Block or restrict pedestrians on the public way.
- a-3. Make any comment, request, suggestion or proposal which is obscene, lewd, lascivious, profane, filthy or indecent.
- a-4. Sell food door-to-door except as provided under s. 68-4.
- b. A food peddler shall:
 - b-1. Make all sales on the public way directly from a pushed, peddled, pulled or motorized vehicle or a carried container.
 - b-2. Keep all perishable foods in one of the following ways:
 - b-2-a. Frozen.
 - b-2-b. Refrigerated at 40(F or lower by means of mechanical refrigeration.
 - b-2-c. Heated and maintained at 150(F.
 - b-3-d. 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.
- c. Comply with all parking regulations under ss. 105-56 and 115-45.

Part 21. Section 95-1-2-c of the code is repealed and recreated to read:

95-1. Direct Sellers.

2. DEFINITIONS.

c. "Direct seller" means any person who sells goods or takes sales orders for the later delivery of goods on any public way or other public premises, and includes peddlers and solicitors. "Direct seller" does not include a transient merchant or permanent merchant conducting a temporary sidewalk sale. "Direct seller" does not include a food peddler, who is regulated under ch. 74.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Health Department

LRB98007.4

CAW

2/4/98