



Legislation Text

File #: 101039, **Version:** 1

101039

SUBSTITUTE 1

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A substitute ordinance relating to regulations for vehicular food peddlers.

74-1-1	am
74-1-1.5-c	am
74-1-1.5-e	cr
74-1-1.5-f	cr
74-1-2	rc
74-1-3-d	am
74-1-4.5	am
74-1-6-0	am
74-1-7.3	cr
74-1-7.5	rc
74-1-8	rc
74-1-8.5	rc
74-1-10	rc

This ordinance prohibits a food peddler vehicle from being parked on a public street for the preparation or sale of food within 6 blocks of any public street parking location where a food peddler vehicle owned by the same food peddler has been parked within 24 hours to prepare or sell food.

This ordinance further amends code penalty provisions as follows:

1. The maximum permit suspension is increased from 30 to 90 days.
2. Forfeitures of not less than \$20 nor more than \$200 for each violation are replaced by:
 - a. A forfeiture of not less than \$250 nor more than \$500 if no previous violation has occurred in the prior 24 months.
 - b. A forfeiture of not less than \$500 nor more than \$750 if one previous violation has occurred in the prior 24 months.
 - c. A forfeiture of not less than \$750 nor more than \$1,000 if 2 or more

previous violations have occurred in the prior 24 months.

This ordinance also clarifies the code's one-hour parking limit for food peddler vehicles preparing or selling food while parked on a public street, makes minor technical amendments and reorganizes various provisions for greater clarity.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

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

74-1. Vehicular Food Peddlers.

1. FINDINGS. The common council finds that ~~[[regulation of]]~~ >>regulating <<the health conditions of food sold by food peddlers is necessary for the prevention of disease and sickness within Milwaukee>>, and further finds that regulating the amount of time vehicular food peddlers are allowed to park in any one city vicinity eases traffic congestion, noise, litter, commotion and the congregation of disorderly persons in city neighborhoods,<< and ~~[[such regulation is]]~~ >>these regulations are<< vital to the health, safety and welfare of residents [[øf]] and visitors to the city.

Part 2. Section 74-1-1.5-c of the code is amended to read:

1.5. DEFINITIONS.

c. "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.

Part 3. Section 74-1-1.5-e and f of the code is created to read:

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

f. "Market zone" means the 3-block radius surrounding the first spot on a public street a food peddler vehicle parks each day to prepare for, or engage in, the sale of any food, or any similarly constituted 3-block radius surrounding any spot a food peddler vehicle parks to prepare for, or engage in, the sale of food after vacating the first market zone established by the vehicle each day. No 2 market zones established on the same day by the same vehicle, or by vehicles permitted to the same person, may overlap.

Part 4. Section 74-1-2 of the code is repealed and recreated to read:

2. PERMIT REQUIRED. No person shall engage in the sale of any food from any vehicle on public streets, without first receiving a permit from the commissioner. Permits issued 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.

Part 5. Section 74-1-3-d of the code is amended to read:

3. PERMIT CATEGORIES.

d. 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, upon presenting proof to the commissioner of health that he or she satisfies these conditions, be granted ~~[[a]]>>one<<~~ food peddler permit without payment of any fee.

Part 6. Section 74-1-4.5 of the code is amended to read:

4.5. COMPANY NAME>> AND IDENTIFICATION<<. Each side of the vehicle shall display the name of the person to whom the permit is issued, and local telephone number in lettering not less than 4 inches high. >>Each food peddler vehicle permitted to the same person shall also display a unique number or alpha identifier of the person's choice on each side of the vehicle in lettering not less than 4 inches to aid in distinguishing one permitted vehicle from another. <<

Part 7. Section 74-1-7.3 of the code is created to read:

7.3. OPERATING REGULATIONS. A food peddler shall:

- a. Make all sales on the public way directly from a pushed, peddled, pulled or motorized vehicle or a carried container. All food peddler vehicles shall be self-contained so that all extensions, counter space, foldouts, awnings or other contrivances for preparation or sale of food shall be attached to the main body of the vehicle and move along with it.
- b. Keep all perishable foods in one of the following ways:
 - b-1. Frozen.
 - b-2. Refrigerated at 41° F or lower by means of mechanical refrigeration.
 - b-3. Heated and maintained at 135° F.
- c. 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.
- d. Comply with the noise nuisance regulations of s. 80-65-4 and all other noise regulations of this code.
- e. Comply with all parking regulations under ss. 105-56 and 115-45.
- f. Sell soda water in single service cups or aluminum cans only.

Part 8. Section 74-1-7.5 of the code is repealed and recreated to read:

7.5. PROHIBITED PRACTICES. A food peddler shall not:

- a. Sell food between the hours of 9 p.m. and 6 a.m. the following morning. This prohibition shall not apply on January 1, Memorial Day, Juneteenth, the 3rd and 4th 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.
- b. Block or restrict an individual's access to a business or residential doorway.
- c. Occupy any sidewalk so as not to permit any pedestrian at any time to have a minimum 5-foot clearance.
- d. Make any comment, request, suggestion or proposal which is obscene, lewd, lascivious, profane, filthy or indecent.
- e. Sell food door-to-door except as provided under s. 68-4.
- f. Use any type of horn.
- g. 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.

Part 9. Section 74-1-8 of the code is repealed and recreated to read:

8. PARKING DURATION RESTRICTIONS. A food peddler vehicle shall not park on a public street to prepare for, or engage in, the sale of any food within a single market zone for more than one hour, and shall not return to the same market zone to prepare for, or engage in, the sale of any food for 24 hours from the time the vehicle was first parked in this market zone, except as follows:

- a. A food peddler vehicle may park on a public street within a market zone for more than one hour, provided the vehicle is in compliance with all applicable parking regulations, and provided the total time the vehicle is parked in a single market zone does not exceed the longest parking time limit posted within that market zone.
- b. A food peddler vehicle permitted to be parked as provided under sub. 8.5 shall be subject to the parking duration restrictions of that subsection, although the vehicle's parking location shall create a market zone for the purposes of this chapter, and the vehicle shall not be returned to the same market zone to prepare for, or engage in, the sale of any food for 24 hours from the time the vehicle first parked in this market zone.

Part 10. Section 74-1-8.5 of the code is repealed and recreated to read:

8.5. VEHICLE PARKING ON CLOSED STREETS. Streets, or portions of streets, may be closed to traffic by common council resolution for any civic event.

- a. The city clerk may, upon receipt of the required fee, issue a permit to any permitted food peddler to park a food peddler vehicle for as long as a traffic thoroughfare is closed to traffic. The permit shall specify the dates for which it is valid. The fee required in ch. 60 shall be charged for each date. No permit shall be issued without the approval of the chief of police, unless the common council so directs by resolution.
- b. The number of food peddler vehicles at any event, in any block, and the spacing of food peddler vehicles, as well as the number of blocks within the closed traffic section allocated for food peddler vehicles, shall be determined by the police department in cooperation with the local council member and sponsoring group.
- c. Exceptions. The common council may, by resolution, designate specific exceptions as to locations, dates or individual events, to the provisions of sub. 2.
- d. Penalty. Any food peddler vehicle parked in a closed traffic section, or outside the barricaded street section longer than allowed by existing ordinances, without a permit shall be fined \$100, and the food peddler vehicle shall be towed away at the owner's expense.

Part 11. Section 74-1-10 of the code is repealed and recreated to read:

10. PENALTIES. a. Any person who shall sell any food product from any vehicle or any carried container as provided 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 or 8, shall be subject to penalty as set forth in s. 61-8.

b. A person who violates sub. 7.5 or 8 shall be subject to any or all of the following penalties:

b-1. A forfeiture of not less than \$250 nor more than \$500 if the person has not committed a previous violation within 24 months of the violation, a forfeiture not less than \$500 nor more than \$750 if the person has committed one previous violation within 24 months of the violation, and a forfeiture not less than \$750 nor more than \$1000 if the person has committed 2 or more previous violations within 24 months of the violation. All costs of prosecution shall be paid by the person penalized.

b-2. A suspension of the food peddler's permit for not less than 10 days nor more than 90 days, or a revocation of the food peddler's license for the remainder of its term.

c. A penalty under par. b may be imposed on any permitted or unpermitted person, or agent.

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: _____

LRB #125369

Aaron Cadle

02/23/11