



Legislation Details (With Text)

File #: 111679 **Version:** 1

Type: Ordinance **Status:** Placed On File

File created: 4/11/2012 **In control:** COMMON COUNCIL

On agenda: **Final action:** 2/27/2013

Effective date:

Title: A substitute ordinance relating to food peddler permitting and sales on the public way.

Sponsors: ALD. DUDZIK

Indexes: FOOD DEALERS, SALES

Attachments: 1. Support Letter - BYO Studio, 2. December 6 - Memo to Shirley Krug, 3. Notice to Food Truck Vendors.pdf, 4. Food Truck Sign-in 12-20-2012.pdf, 5. Hearing notice

Date	Ver.	Action By	Action	Result	Tally
4/11/2012	0	COMMON COUNCIL	ASSIGNED TO		
12/26/2012	1	PUBLIC SAFETY COMMITTEE	HEARING NOTICES SENT		
12/26/2012	1	PUBLIC SAFETY COMMITTEE	HEARING NOTICES SENT		
12/26/2012	1	PUBLIC SAFETY COMMITTEE	HEARING NOTICES SENT		
12/26/2012	1	PUBLIC SAFETY COMMITTEE	HEARING NOTICES SENT		
1/4/2013	1	PUBLIC SAFETY COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
2/8/2013	1	PUBLIC SAFETY COMMITTEE	HEARING NOTICES SENT		
2/14/2013	1	PUBLIC SAFETY COMMITTEE	RECOMMENDED FOR PLACING ON FILE	Pass	5:0
2/27/2013	1	COMMON COUNCIL	PLACED ON FILE	Pass	14:0

111679
SUBSTITUTE 1

ALD. DUDZIK

A substitute ordinance relating to food peddler permitting and sales on the public way.

74-1-1.5 cr
74-1-3-a am
74-1-6-b-0 rn
74-1-6-b-2 cr
74-1-7-c am
74-1-7-d rc
74-1-7-e rc
74-1-7-f rc
74-1-7-g rc
74-1-7-h rp
74-1-7-i rn
74-1-7-j rp
74-1-7-k rn

74-1-8 rc
74-1-9 rp
74-1-10-g cr
74-1-11 rc
74-3-4 am
81-84.5 cr
101-32-7 cr
101-32.5 cr
105-56-1 am
105-56-2-b am
105-56-4-0 am
105-56-4-a cr
105-56-4-b cr
105-56-4-c cr
105-57-3-b am
105-57-5-0 am
105-57-5-a cr
105-57-5-b cr
105-57-5-c cr
115-45 rc
115-45-4 cr

This ordinance amends the code to revise regulations relating to food peddlers. This ordinance:

1. Adopts state code provisions relating to food regulations.
 2. Creates exceptions to sales on the public way to allow for food peddler sales on private property.
 3. Creates additional operating regulations for food peddlers.
 4. Creates sidewalk clearance regulations for food peddlers.
 5. Increases penalties for persons violating provisions of the food peddler, sales on public premises, sales on public right of way (special events) and selling articles from parked vehicles regulations from not less than \$20 nor more than \$200 to a forfeiture of not less than \$250 with a maximum of \$1000.
 6. Moves and amends the food peddler parking duration provisions from ch. 74 to ch. 115 to allow for improved enforcement by the department of public works.
 7. Establishes a provision that allows a motorized food peddler vehicle to be parked in excess of the maximum time limit designated for a particular parking meter space.
 8. Establishes a motorized food peddler vehicle meter parking permit fee of \$125, if permit is purchased online a discount of \$50 will be applied to the permit fee. Additional fees shall be charged per instance that a motorized food peddler vehicle is parked in a meter parking space during the permit period: a fee of not more than \$23 for each parking meter space to be occupied by a motorized food peddler vehicle and a fee of \$65 for temporary meter hooding and signage.
- The Mayor and Common Council of the City of Milwaukee do ordain as follows:

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

74-1. Food Peddlers.

1.5. ADOPTION OF STATE CODE. Except as otherwise provided in this section, the city of Milwaukee adopts chs. 97 and 98, Wis. Stats., chs. ATCP 75, 80, 88 and DHS 196, Wis. Adm. Code, as amended.

Part 2. Section 74-1-3-a of the code is amended to read:

3. PERMIT REQUIRED. a. General. No person shall engage in the sale of any food from any >>carried container or food peddler<< vehicle on public streets >>or sidewalks<< without first receiving from the city clerk a food peddler permit. A permit issued under this section shall not permit any person to sell food from a temporary or permanent structure or a vehicle other than a >>carried container or food peddler<< vehicle selling food on public streets >>or sidewalks<< or contrary to any other ordinance of the city.

Part 3. Section 74-1-6-b-0 of the code renumbered 74-1-6-b-1.

Part 4. Section 74-1-6-b-2 of the code is created to read:

6. PROCEDURE FOR ISSUING NEW OR RENWAL PERMIT.

b. Night Operation.

b-2. Exception. No night operation permit shall be required if all retail sales are conducted at a temporary event as defined in s. 60-23-1, provided that average daily attendance is estimated at 5,000 persons or more.

Part 5. Section 74-1-7-c of the code is amended to read:

7. RULES AND OPERATING REGULATIONS.

c. Sales on the Public Way Only. All sales shall be made on the public way directly from pushed, pedaled, pulled or motorized vehicles or carried containers. >>A food peddler shall comply with all regulations provided under ss.105-56 and 115-45.<<

Part 6. Section 74-1-7-d to g is repealed and recreated to read:

d. Exceptions to Sales on the Public Way:

d-1. Food peddlers may sell on private property for the duration of a festival that has been issued a festival permit by the city development center.

d-2. Food peddlers may sell on private property for a sales promotion for 3 or less days in accordance with the health department's fiscal year which is July 1 to June 30 of each year.

d-3. Food peddlers may sell on private property at the invitation of a business owner provided all sales are made only to employees of the business and not to the general public.

e. Self-Contained Food Peddler Vehicles. All food peddler vehicles shall be self-contained so that all extensions, counter space, foldouts, awnings, or other contrivances for the preparation and sale of food shall be attached to the main body of the food peddler vehicle and move along with it.

f. Compliance with Police Department. A food peddler shall comply with any request from the police department to relocate for public health, safety or welfare reasons.

g. Pushed, Pedaled or Pulled Vehicle Specifications. A pushed, pedaled or pulled vehicle shall meet the specifications provided in s. 95-7-d.

Part 7. Section 74-1-7-i renumbered to 74-1-7-h.

Part 8. Section 74-1-7-j of the code is repealed.

Part 9. Section 74-1-7-k renumbered to 74-1-7-j.

Part 10. Section 74-1-8 of the code is repealed and recreated to read:

8. PROHIBITED ACTIVITIES. a. **Permits and Peddler Permit Stickers Not Transferable.** Permits and peddler permit stickers shall be nontransferable. Any food peddler selling, giving away or exchanging any permit or permit sticker, or any food peddler obtaining a permit by misrepresentation, or improperly registering his or her name or address shall be subject to the forfeitures provided for in sub.11.

b. **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 s. 115-45-2-a, and the peddler is otherwise in compliance with this section.

c. **Sale of Food Between the Hours of 9 p.m. and 6 a.m. Prohibited.** 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 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.6-b-1.

d. **Blocking Pedestrian Access to Doorways Prohibited.** Blocking or restricting an individual's access to a business or residential doorway shall be prohibited.

e. **Blocking Street or Sidewalk Prohibited.** Each measured distance and distance requirement shall be measured in a straight line from the nearest edge of the food peddler vehicle to the nearest edge of the object from which the food peddler vehicle is to be distant.

e-1. Occupying any sidewalk so as not to permit any pedestrian at any time to have a minimum 5-foot clearance shall be prohibited.

e-2. Occupying any street or sidewalk within 10 feet of the following shall be prohibited:

e-2-a. An entrance to a business or residence.

e-2-b. A pedestrian ramp.

e-2-c. A fire hydrant.

e-2-d. The limits of a crosswalk.

e-3. **Occupying a Bus Stop No Parking Zone Prohibited.** Occupying any street or sidewalk in or

within 10 feet of a bus stop no parking zone shall be prohibited.

f. Lewd Comments Prohibited. Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, profane, filthy or indecent shall be prohibited.

g. Door-to-Door Sales Prohibited. Selling food door-to-door shall be prohibited except as provided under s. 68-4.

h. 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.

i. Storage and Preparation of Raw Meat and Poultry Items Prohibited. A food peddler with a permit for carried container or pushed, pedaled or pulled vehicle shall not store or prepare any raw meat or poultry items with the exception of raw pasteurized eggs.

j. Cutting, Slicing, Mixing or Chopping Foods Prohibited. A food peddler shall not cut, slice, mix or chop any foods from a food peddler vehicle unless prior approval is obtained from the health department.

k. Unattended Vehicles Prohibited. A food peddler shall not at any time leave a pushed, pedaled or pulled vehicle unattended on any city street or sidewalk.

Part 11. Section 74-1-9 of the code is repealed.

Part 12. Section 74-1-10-g of the code is created to read:

10. PERMIT SUSPENSION AND REVOCATION.

g. A food peddler's permit shall be suspended for not less than 10 days nor more than 90 days, or may be revoked for the remainder of the food peddler's permit term.

Part 13. Section 74-1-11 of the code is repealed and recreated to read:

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 together with the cost of prosecution shall be subject to the following penalties or in default of payment imprisonment as provided by law:

a-1. A forfeiture of not less than \$250 nor more than \$500 if a person has not committed a previous violation within 24 months of the violation.

a-2. A forfeiture of not less than \$501 nor more than \$750 if a person has committed one previous violation within 24 months of the violation.

a-3. A forfeiture of not less than \$750 nor more than \$1000 if a person has committed 2 or more previous violations within 24 months of the violation.

b. A penalty as described under par. a may be imposed on the agent, business, organization or

person that holds the food peddler's permit under which the agent's sales are made or a person who lacks a food peddler permit.

Part 14. Section 74-3-4 of the code is amended to read:

74-3. Peddling of Food by Minors.

4. EXCEPTION. The provisions of sub. 3-d shall not apply when the roadway, street or alley has been closed to traffic under ~~[[s. 74-1-7-d-1]]~~ >>s. 115-45-2-a-1<< and the minor food peddler and any responsible older youth or adult are otherwise in compliance with this chapter and with the provisions of chs. 68 to 73 and s. 75-25, where applicable.

Part 15. Section 81-87.5 of the code is created to read:

81-84.5. Parking Meter Permit: On-Street Motorized Food Peddler Vehicle.

1. ISSUANCE PERIOD. Each permit shall be issued for a date or dates specified within a one-year period beginning on July 1 and ending on the following June 30.

2. FEES. a. The fee for a motorized food peddler vehicle meter parking permit shall be \$125. A discount of \$50 shall be applied for each parking permit purchased online.

b. The following fees shall be charged per instance that a motorized food peddler vehicle is parked in a meter parking space during the permit period:

b-1. The fee for each parking meter space to be occupied by a motorized food peddler vehicle shall be not less than \$9 nor more than \$23 per space.

b-2. The fee for temporary meter hooding and signage shall be \$65.

c. An application made less than 5 business days prior to the date a motorized food peddler vehicle will be parked on-street shall be subject to a late fee of \$25.

3. REFUND. Permit fee payments may be refunded, except for a \$50 permit processing fee, if notification of cancelation is received by the department of public works 4 days prior to the date the motorized food peddler vehicle is permitted to be parked.

Part 16. Section 101-32-7 of the code is created to read:

101-32. Parking Meter Regulations and Zones.

7. EXCEPTIONS. A motorized food peddler vehicle as defined in 101-32.5-1, shall be permitted to be parked in excess of the maximum time limit designated for a particular space as provided in s. 101-32.5.

Part 17. Section 101-32.5 of the code is created to read:

101-32.5. Motorized Food Peddler Vehicle Meter Parking Permit.

1. DEFINITION. In this section, “motorized food peddler vehicle” means any vehicle from which food is prepared or sold, which uses a mechanical engine to propel it.

2. APPLICATION. Any person, group, organization or association, other than a city official in the conduct of city business, desiring a motorized food peddler vehicle meter parking permit shall make an online or a written application with the commissioner of public works at least 5 business days prior to the date the motorized food peddler vehicle will be parked on-street. The application shall contain the following information:

a. The name, address, home and business telephone numbers, and e-mail address of the applicant, or if the applicant is an organization, the name, address, home and business telephone numbers, and e-mail address of the authorized representative of the organization.

b. The food peddler permit number specified in s. 74-1-6-c. A food peddler permit number shall be provided for each motorized food peddler vehicle applying for a meter parking permit.

c. The license plate number of the motorized food peddler vehicle.

d. The dates and times the motorized food peddler vehicle will be parked in meter spaces.

e. The number of parking meter spaces designated to be hooded for a motorized food peddler vehicle desiring to be parked at meter parking spaces.

f. Such other reasonable and pertinent information the department of public works may from time to time require.

3. FEE. Applications for a motorized food peddler vehicle meter parking permit shall be accompanied by the applicable fees specified in s. 81-84.5. The commissioner of public works shall have the authority adjust fees up to 25% of the base fees specified in s. 81-84.5. Fee changes exceeding 25% shall be approved by the common council.

4. PERMIT. The motorized food peddler vehicle meter parking permit shall be displayed in a manner designated by the department of public works. The permit shall contain the following information:

a. The department of public works’ seal.

b. The permit number.

c. The dates and times the permit is valid.

d. The license plate number of the motorized food peddler vehicle.

5. PARKING FUND. The revenues received from fees paid for the motorized food peddler vehicle meter parking permits shall be credited to the city’s parking fund.

6. PENALTY. Any person convicted of violating any provisions of this section together with the cost of prosecution shall be subject to any of the following penalties:

a. A forfeiture of not less than \$250 nor more than \$500 if a person has not committed a previous

violation within 24 months of the violation.

b. A forfeiture of not less than \$501 nor more than \$750 if a person has committed one previous violation within 24 months of the violation.

c. A forfeiture of not less than \$751 nor more than \$1000 if a person has committed 2 or more previous violations within 24 months of the violation.

Part 18. Section 105-56-1 of the code is amended to read:

105-56. Sales on Public Premises.

1. PURPOSE. It is determined and declared that the use of certain public premises for the specific public purposes to which such premises are intended is preeminent. It is further determined and declared that sales on the designated public premises interfere with their use for their intended purposes. It is further determined and declared that the use of the public sidewalk and streets outside of the entrance to the ~~[[Midwest Express]]~~ >>Delta<< Center, the Auditorium, the Arena, the Milwaukee ~~[[public museum]]~~ >>Public Museum<<, the >>BMO Harris<< Bradley Center, the Performing Arts Center, the ~~[[Eagles Auditorium]]~~ >>Rave/Eagles Club<<, the Riverside Theater, Summerfest and Miller Park parking facilities, for sales interferes with the orderly ingress and egress to and from those premises and therefore with their use for their intended purposes.

Part 19. Section 105-56-2-b of the code is amended to read:

2. REGULATIONS.

b. It shall be unlawful for any person to sell, or offer to sell, any goods, merchandise, foodstuffs, tickets or any other article of any kind on any public street ~~[[or]]~~ >>_<< public sidewalk >>or public property<<within 500 feet of the premises of the ~~[[Midwest Express]]~~ >>Delta<< Center, the Auditorium, the Arena, the Milwaukee ~~[[public museum]]~~ >>Public Museum<<, the >>BMO Harris<< Bradley Center, the Performing Arts Center, the ~~[[Eagles Auditorium]]~~ >>Rave/Eagles Club<<, the Riverside Theater, Summerfest or Miller Park parking facilities, for the period of time beginning 2 hours immediately before the commencement of any scheduled event therein and ending one hour immediately after the conclusion of the event. This paragraph does not apply to any sales or offers to sell on the premises listed.

Part 20. Section 105-56-4-0 of the code is amended to read:

4. PENALTY. Any person convicted of violating any provisions of this section >>together with the cost of prosecution<< shall be ~~[[fined not less than \$20 nor more than \$200 for each violation plus costs of prosecution. Each day's violation shall constitute a separate offense.]]~~ >>subject to any of the following penalties:<<

Part 21. Section 105-56-4-a to c of the code is created to read:

a. A forfeiture of not less than \$250 nor more than \$500 if a person has not committed a previous violation within 24 months of the violation.

b. A forfeiture of not less than \$501 nor more than \$750 if a person has committed one previous violation within 24 months of the violation.

c. A forfeiture of not less than \$751 nor more than \$1000 if a person has committed 2 or more previous violations within 24 months of the violation.

Part 22. Section 105-57-3-b of the code is amended to read:

105-57. Sales on Public Right of Way (Special Events).

3. REGULATIONS.

b. An organization sponsoring a special event specified in sub. 2 shall assign locations to vendors for the event. ~~[[All vendor vehicles or tents must be located at least 15 feet apart from each other.]]~~

Part 23. Section 105-57-5-0 of the code is amended to read:

5. PENALTY. Any person convicted of violating this section shall ~~[[be fined \$300 plus]]~~ >>together with the<< costs of prosecution, [[or in default of payment the violator shall be imprisoned for not more than 10 days.]] >>be subject to the following penalties or in default of payment imprisonment as provided by law:<<

Part 24. Section 105-57-5-a to c of the code is created to read:

a. A forfeiture of not less than \$250 nor more than \$500 if a person has not committed a previous violation within 24 months of the violation.

b. A forfeiture of not less than \$501 nor more than \$750 if a person has committed one previous violation within 24 months of the violation.

c. A forfeiture of not less than \$751 nor more than \$1000 if a person has committed 2 or more previous violations within 24 months of the violation.

Part 25. Section 115-45 of the code is repealed and recreated to read:

115-45. Selling Articles from Parked Vehicles.

1. PURPOSE. The purpose of this section is to help protect the safety of pedestrians and drivers, to help relieve traffic congestion on certain public highways and sidewalks within the city and to provide for the freer flow of traffic, both vehicular and pedestrian, on such highways and sidewalks.

2. REGULATIONS. It shall be unlawful for any operator to park any vehicle on any public highway or sidewalk enumerated specifically, or by area or classification in this section for the purpose of offering for sale or selling any articles or food of any nature whatsoever in a public manner from such vehicle.

a. **Parking Permit Required.** No motorized food peddler vehicle shall be parked on public streets without the operator first receiving from the commissioner of public works a motorized food peddler vehicle parking permit as required by s. 101-32.5.

b. Parked 2-Hours or Less. Any person engaged in the sale of any articles or food from a motorized vehicle, as defined in s. 74-1-2-f, shall not remain in any location more than 2-hours on any one day, except as follows:

b-1. Whenever any street or portion thereof has been closed to traffic by common council resolution in connection with any civic event, the event permit holder may allow any person holding a valid food peddler permit to park on such closed streets longer than the 2-hour limit provided in this paragraph.

b-2. A motorized food peddler vehicle may be parked in one location in excess of the 2-hour limit specified in this paragraph, separated by a 6-hour period, provided the vehicle is parked in compliance with all posted time limits on parking and with all other applicable parking regulations. In the absence of posted time limits on parking, an operator of a motorized food peddler vehicle shall abide by the regulation set forth in this paragraph.

b-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 council member and sponsoring group.

b-4. A motorized food peddler vehicle may be parked in excess of the 2-hour limit specified in this paragraph provided the operator has been issued a special events permit provided under s. 105-55.5.

b-5. A motorized food peddler vehicle may be parked in excess of the maximum time limit designated for a particular parking meter space as specified in s. 101-32.5.

c. Exceptions. The common council may, by resolution, designate specific exceptions as to locations, dates or individual events, to the provisions of par. b.

3. LOCATIONS WHERE SELLING PROHIBITED. a. Prohibited operation locations of vehicles selling articles or food on streets and sidewalks shall be determined by the commissioner in consultation with the commissioner of health, chief of police and local council member.

b. Near Schools. Selling articles or food within 300 feet of any entrance to any elementary or secondary school, as defined in s. 295-201-519, or combination thereof while such school is open to students shall be prohibited.

c. Specific Streets and Highways Where Selling Prohibited. The public highways, sidewalks and areas to which this section applies may be found in the common council proceedings; the official record on file in the city clerk's office, and the code on file in the legislative reference bureau.

Part 26. Section 115-45-4 of the code is created to read:

4. PENALTY. Any person violating this section shall upon conviction, together with the costs of prosecution, be subject to the following penalties or in default of payment imprisonment as provided by law:

a. A forfeiture of not less than \$250 nor more than \$500 if a person has not committed a previous violation within 24 months of the violation.

b. A forfeiture of not less than \$501 nor more than \$750 if a person has committed one previous violation within 24 months of the violation.

c. A forfeiture of not less than \$751 nor more than \$1000 if a person has committed 2 or more previous violations within 24 months of the violation.

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:_____

Department of Public Works
Health Department
LRB136622-2
Amy E. Hefter
12/6/2012