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MEMO

To: Mayor and City Council Members

From: Diane Voss, City Clerk

Date: January 9, 2014

Subject: Item No. 34: Vending Ordinance

For your reference, attached is an excerpt from the December 9, 2014, Council meeting.

“VENDING ORDINANCE: City Manager Schainker stated that, after discussion at the October 28, 2014, City Council meeting, staff prepared five options to address concerns expressed by the Council members. Mr. Schainker advised that, once Council determines which option to proceed with pertaining to 22.20(1)(e), it should direct the City Attorney to prepare the ordinance for consideration on first reading at an upcoming meeting.

Moved by Gartin, seconded by Corrieri, to approve Option 3, i.e., adopt language to prohibit permittees from being granted a Vending Permit if they are listed as a registered sex offender and also prohibit the permitted from hiring employees if they are listed as a registered sex offender.

Council Member Corrieri expressed her opinion that enforcement of Option 3 would be fairly difficult. She asked if there would be a way to limit this to those whom have mobile vending operations. Police Chief Cychosz explained how the process of running background checks could work. Ms. Corrieri asked Chief Cychosz if mobile vending operations represent a greater risk. Chief Cychosz said that residents want to know

who is in their neighborhood; that would probably best be answered by residents.

Council Member Betcher noted that Option 3 could turn into an “enforcement nightmare,” due to the level of turnover of employees. She said she was supportive of Option 5, “which basically maintains the status quo.”

Motion withdrawn.

Moved by Betcher, seconded by Gartin, to direct staff to remove Section 22.20(1)(e), which will allow permittees and their employees convicted of a felony or of a crime of dishonesty to obtain a permit.

Council Member Goodman advised that he would be abstaining from the discussion and voting due to a conflict of interest.

Vote on Motion: 3-2-1. Voting aye: Betcher, Gartin, Orazem. Voting nay: Corrieri, Nelson. Abstaining due to a conflict of interest: Goodman.
Motion declared carried.”

/drv

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING CHAPTER 22, SECTION 22.11 THROUGH 22.24 AND ENACTING A NEW SECTION 22.11 THROUGH 22.28 THEREOF, FOR THE PURPOSE OF SETTING FORTH THE CONDITIONS AND REQUIREMENTS UNDER WHICH A VENDOR, AS DEFINED, MAY BE PERMITTED TO OPERATE WITHIN THE CITY OF AMES PUBLIC RIGHT-OF-WAY; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section as follows:

“22.11. FINDINGS AND PURPOSE. It is found and declared that:

- 1) Vending on the public streets and sidewalks may promote the public interest by contributing to an active and attractive pedestrian environment. The purpose of accommodating vending carts, sidewalk sales, newspaper dispensers, vendor persons and sidewalk dining in pedestrian oriented commercial areas is to add activity, attract pedestrians, extend their visits and enhance overall community quality of life.
- 2) Reasonable regulation of street and sidewalk vending is necessary to protect the public health, safety, welfare and meet the primary purpose as described in Division III. 22.11.

22.12. DEFINITIONS. The following words, terms, and phrases, when used in this Division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Where words and phrases used in this Division are defined by state law, such definitions shall apply to the use of such words and phrases in this Division and are adopted by reference. Those definitions so adopted that are further defined or are reiterated in this Division shall have the meanings set out in this Division.

- 1) Alcoholic beverages - means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer.
- 2) Applicant - a person who applies for a permit as provided in this division.
- 3) Mobile Vending Vehicle - a motorized structure that is used for vending ice cream or similar frozen desserts from public streets.
- 4) Mobile Vending Location - an appropriate area to operate a mobile vending vehicle as approved in writing by the City Manager or designee in writing. Mobile vending vehicles are allowed to operate on public streets. Mobile vending vehicles are prohibited from operating on sidewalks, alleys, walkways, bicycle lane right-of-way or public way, designated for bicycle or pedestrian travel.
- 5) Mobile Vending Vehicle Permit - means a permit issued by the City for operation of a mobile vehicle business that meets all of the requirements of this Division and all other applicable ordinances of the City and all State laws.
- 6) Pedestrian - any person traveling on foot or with an assistive device.
- 7) Person - any person, business association or other business entity including, but not limited to, a corporation, a limited liability company, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assignee of any of the foregoing, or any other legal entity.
- 8) Public Right-of-Way - means any public street, alley, roadway, sidewalk, walkway, highway, bicycle lane right-of-way, or public way designed for vehicular, bicycle, or pedestrian travel that is dedicated to public use and/or publicly owned.

9) Public Sidewalk - means the improved portion of the public right-of-way lying between the traveled portion of the street and the private property line or building line that is intended primarily for pedestrian use.

10) Sidewalk Cafe - an outdoor area located on a public right-of-way, contiguous to a building wherein a restaurant is located and where food and beverages are taken for consumption by persons sitting or standing at tables in that area. Permitted sidewalk cafes must abide by the requirements and limitations as determined by the City.

11) Sidewalk Cafe Elements - means all tables, chairs, fencing, planters and plants, and any other privately owned property comprising the sidewalk cafe, which is approved for use in a sidewalk cafe by this division or in a sidewalk cafe permit.

12) Sidewalk Cafe Permit - means a permit issued by the City for operation of a sidewalk cafe which meets all of the requirements of this division and all other applicable ordinances of the city and all state laws.

13) Vendor - means any person engaged in selling, or offering for sale, of food, beverages, or other merchandise from a stand, motor vehicle or from the vendors person, on the public streets, alleys, parking lots, sidewalks, thoroughfares, and public rights-of-way.

14) Vending Cart - is defined as a non-motorized wheeled carrier that is pushed or pulled into place on the sidewalk. A vending cart is not designed for human enclosure or occupancy. And is used for outdoor display and vending of food and non-alcoholic beverages, unless it is for a special event as designated by the City Council, it may also include merchandise. Vending carts may include light cooking and final preparation of food products. Any components associated with the vending cart operation must be either integrated into the cart, or able to be stored on the cart for mobility. Separate counters or appliances that cannot be folded and easily stored on the vending cart are not allowed. The vending cart and its components cannot be more than one hundred (100) square feet in size. Vending carts must be removed and stored in a non-public location when not in use. Vending carts are intended to be used by walk-by patrons and may not include sit-down dining.

15) Vending Cart Location - the area assigned on the Vending Permit as determined by the City Manager, or designee, in writing for the operation of vending carts.

16) Vending Cart Permit - that a permit issued by the City for operation of a vending cart business which meets all of the requirements of this Division and all other applicable ordinances of the City and all state laws. Each vending permit shall carry with it the authorization to operate at one designated location during valid dates of operation as stated on the permit.

17) Vendor Person - any person operating a vending business that does not require a vending cart or is not attached to an adjacent business to conduct a sidewalk sale.

18) Vendor Person Permit - means a permit issued by the City for operation of a vendor person business which meets all of the requirements of this Division and all other applicable ordinances of the City and all State laws.

22.13. USE OF PUBLIC SIDEWALKS RESTRICTED: Use of public sidewalks for any commercial purpose, including sidewalk cafes and all forms of vending, shall be unlawful except as specifically provided herein or as specifically authorized by this Division.

22.14. VENDING PERMIT REQUIRED: It shall be unlawful to sell, or offer for sale, any food, beverage, merchandise, or service on any street, sidewalk, alley, City parking lot or other thoroughfare or public right-of-way without first obtaining the applicable vending permit for the following:

- 1) Vending Cart
- 2) Vendor Person
- 3) Sidewalk Sales
- 4) Mobile Vending Vehicle-Ice Cream Truck
- 5) Newspaper Dispenser
- 6) Sidewalk Cafe
- 7) or other private uses of the public right-of-way

22.15. VENDING ON PUBLIC RIGHT-OF-WAY

1) Where Permissible. The Downtown Service Center, Campustown Service Center and Village-Town Center Zoning Districts are allowed for the operation of vending on public right-of-way. Mobile Vending Vehicle-ice cream is allowed on public streets, except the Hospital-Medical zoning district.

2) Vending in City Parks is regulated by the Parks and Recreation Commission and the City of Ames Park System Vending Policy.

22.16. FILING APPLICATION:

1) Applications for all Permits in Division III, Sec. 4 will be available in the Office of the City Clerk.

2) An application for a Permit shall be filed with the City Manager or designee by any person or group of persons desiring to use the public right-of-way as provided in this Division. Applications shall be made on forms prepared by the City Manager or designee.

3) The City will not issue a permit any earlier than three business days from receipt of the application.

22.17. CONSIDERATION OF APPLICATIONS FOR VENDING:

1) All permits are granted on a first come, first served basis.

2) In the event that two or more applications are received for the same location, the earliest application, if approved, shall be awarded the location if otherwise qualified and acceptable.

22.18. VENDING PERMIT TERM:

1) A vending cart, sidewalk cafe, newspaper dispensers, and mobile vending vehicle - ice cream permits may be used for up to one year.

2) A vendor person and sidewalk sales permits no more than five business days.

3) A permit for vending during a special event or celebration shall be limited to no longer than the stated duration of such event or celebration. Sidewalk cafe and newspaper dispenser permits will remain valid during special events or celebrations.

4) Permits may be temporally suspended for a special event or celebration that compasses the permit location.

5) The sale, transfer, or assignment of a permit is prohibited.

22.19. RENEWAL. All permits are valid for the entire period as stated in the application, as approved, unless revoked or suspended prior to expiration. Permittees may renew their permit to maintain a location based on the following stipulations:

1) An application for vending cart permit may be renewed no earlier than 60 days before the expiration date.

2) Vending cart applicants must file for renewal more than 30 days before the expiration date in order to maintain seniority.

22.20. REVOCATION OR DENIAL OF A PERMIT

1) The City Manager or designee may revoke or deny a Vending Permit if:

a. It is determined by the Chief of Police or Fire Chief and/or their designees that public safety requires such revocation or denial.

b. The application is incomplete;

c. The application is determined to be fraudulent, to include a misrepresentation, or to contain a false statement;

d. The applicant has had a permit revoked by the City for any reason within the preceding two (2) years;

- e. The applicant or permittee has an outstanding arrest warrant in this or any other jurisdiction, or is a fugitive from this or from any other jurisdiction.
- f. The permittee is operating a vending operation in violation of the terms of the Permit.
- g. The permittee's insurance has been canceled.
- h. The permittee violates any Requirements or Operating Policies of the Vendor Permit Administrative Policies.

2) A Vending Permit may be revoked by the City Manager, or designee, at any time, without advanced notice, for any violation of this ordinance, other City of Ames ordinances, or State or federal laws or to evaluate or ensure the safety of the community.

22.21. TEMPORARY SUSPENSION

1) A permit may be temporarily suspended, if it is determined by the Chief of Police or Fire Chief and/or their designees that, by reason of disaster, public calamity, riot, or other emergency, the public safety requires such suspension. A temporary suspension may also be issued due to any of the items noted in Division III, 22.20

2) As stated elsewhere, a temporary suspension may be issued due to a special event or celebration on public right-of-way.

22.22. CONSTRUCTION RELATED TO THE PUBLIC RIGHT-OF-WAY

1) Permittees may be required to accommodate construction on or adjacent to the public right-of-way, including construction on private property that requires use of the public right-of-way. Construction on public right-of-way might also require suspension or revocation of the permit.

22.23. APPEAL PROCESS: Any party aggrieved by the City Manager's or designee's decision to deny, revoke, or issue a permit may appeal the determination to the City Council if, within ten (10) working days after the decision, the party files a written notice of appeal with the City Clerk. In such event, a hearing shall be held by the City Council no later than its next regularly scheduled meeting, assuming the appeal is filed in time to allow notice of said appeal in accordance with Chapter 21 of the Iowa Code. Upon such hearing, the City Council may, based upon the standards enumerated herein, reverse, affirm or modify in any regard the City Manager's or designee's decision. The City Council's decision is the final decision.

22.24. ADMINISTRATIVE RULES AND REGULATIONS: Separate administrative rules and regulations not inconsistent with any ordinance will be established by the City Council. A copy of said rules and regulations shall be on file with the City Clerk.

22.25. DISPLAY OF PERMIT. All permits shall be displayed at all times during the operation of the vending business.

22.26. FEE. A fee for the permit and inspection shall be charged based upon the direct and indirect costs of administration, inspection, and enforcement as set by resolution of the City Council.

22.27. BLANKET VENDING PERMITS AND OTHER EXCEPTIONS TO VENDING ON PUBLIC RIGHTS OF WAY.

1) Organized business districts' are allowed to apply for a vending permit for the entire district. Blanket Vending Permits can only be issued in the Downtown Service Center, Campustown Service Center, Village Town Center Zoning Districts, and any farmers market located in these three organized business districts.

22.28. HEALTH AND SANITATION REQUIREMENTS FOR FOOD AND BEVERAGE VENDING. Vendors of food and beverages shall comply with the inspection provisions and standards as stated by the Iowa

Department of Inspections and Appeals and all other applicable State of Iowa requirements for health and sanitation.”

Section Two. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

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

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor

Staff Report

Proposed Vending Ordinance Revisions

December 9, 2014

BACKGROUND:

After receiving several complaints regarding vending carts along Main Street and difficulty administering the current ordinance language on vending, City staff has completed its review and revisions to Chapter 22, Division III of the City Code that pertains to vending on public rights-of-way. Staff has worked with the Main Street Cultural District and the Campustown Action Association to obtain input from the districts as well as with vendors over the last year. Additionally, City staff from the City Clerk's Office, Fire Department-Inspections Division, Police Department, Planning and Housing as well as Public Works were requested to provide comprehensive input to ensure clear information is provided to those wanting to vend on public rights-of-way. The input from all parties was used to create the draft ordinance changes and draft application and administrative policies. Examples of these changes are attached.

As a final follow up prior to coming back to City Council on October 28, 2014, vending cart owners were invited to discuss the draft ordinance and administrative policies with staff on Thursday, September 18, 2014. Only two of the 14 vendors came to the meeting. The two in attendance were very satisfied with the revisions and appreciated that the application contained a copy of the administrative policies and pertinent ordinance language for them to refer to when necessary. They recommended staff consider adding a decibel limit to music being played by vending carts that would allow for conversations with patrons. Staff has addressed this concern and added a decibel limit for vending carts as part of the revisions to the code. The vendor recommendation on decibels also addresses a concern submitted to the City Council about noise emitted by vending carts where there are residents living in buildings above businesses.

Staff has rewritten the code and provided specific language and administrative policies for each of the six uses laid out in this section of the code: Vending Carts, Vendor Persons, Mobile Vending Vehicle (Ice Cream Trucks), Sidewalk Cafes, Newspaper Dispensers, and Sidewalk Sales. Staff feels that the current regulations in Chapter 22, Division III for these very different vending functions do not work well for either the City or the vendors. **The present code only provides definitions for Stand and Vendor.** The new code provides a comprehensive set of definitions and regulations to allow for equitable implementation of the code.

Proposed major changes to the ordinance that covers all types of vending:

- limits vending to Downtown Service Center, Campustown Service Center and Village Zoning Districts, except for mobile vending vehicles
- requires display of vending permit at all times
- requires background checks; ~~those with a felony in the last five years are not eligible for a permit~~ (SEE STAFF COMMENTS)
- provides the City Manager, Police, and Fire the ability to suspend a permit for public safety reasons
- revises insurance requirements per the recommendations of the City's Risk Manager
- allows the City Manager to change the location of a permit temporarily or to permanently suspend the permit to accommodate construction in public rights-of-way
- requires private waste disposal
- prohibits the sale, transfer, or assignment of the permit to another party
- provides specific appeals process
- requires specific information if the business is a partnership, LLC, or corporation be submitted, not just a contact name of an individual
- requires a four foot clearance for pedestrian flow

The following is a listing of changes to a particular type of vending:

Vending Cart (formerly vending stand) requirements

- a photo or picture of proposed cart
- allows for 24 hour a day operations, no restrictions
- cart site plan
- restricted to 100 square feet of space for operations
- noise making devices are prohibited, except music, which is limited based to reflect the residential noise control levels in Chapter 16 of the Ames Municipal Code
- non-task specific illumination is prohibited
- ~~signage is restricted to name of business and menu~~ Signage is restricted to the cart and should pertain to the business.
- permits are issued for a year on a first come first serve basis and allow for annual renewal

Vendor Person

- no noise making devices or illumination
- allows for 24 hour a day operations, no restrictions
- cannot stand in one location and never move
- must be able to carry all items at one time that are for sale or distribution
- permit issued for up to seven days at a time, unless for a special event as approved by City Council

Mobile Vending Vehicle

- only allows ice cream trucks to be a mobile vending vehicle
- operation restricted to daylight hours
- restricts where they can stop, prohibits stops on arterials and major collector streets

- cannot park in one spot and not move
- prohibits operating in parks, city parking lots, by CyRide bus stops and other areas that would endanger pedestrians
- annual permit

Sidewalk Sales

- requires that sales do not impede pedestrian movement and allow for 4 foot of clearance for pedestrians
- only allowed during assigned hours, business hours, unless there is a special reason for exception
- no noise making devices or illumination
- seven day permit for individual business
- multiple options for business district permits

Blanket Vending

- allows business districts to apply for a permit to cover special events that could include all other forms of vending.

STAFF COMMENTS:

The changes that are detailed above comprehensively address in a balanced way the concerns that have been presented to staff by all stakeholders. They also provide much improved guidance to vendors for use of the City's right-of-way. **Based on direction received at the October 28, 2014 City Council meeting, staff has made the following changes:**

- set the appeal period for denial or revocation of the license at *20 days* in the draft ordinance.
- vending cart signage should be restricted to the name of the business, menu, and business-related information. New language in Administrative Policies will state:

Signage can only be affixed to the vending cart stating the name of the business, menu options with pricing, and other business-related information. No other signage is allowed. It is mandatory to display of the City vending permit.

At this meeting, the City Council also requested that staff provide options for the Council to consider for the Revocation and Denial of a Permit pertaining to criminal convictions 22.20(1)(e).

Option 1 - Adopt the language provided below in the draft ordinance that was originally presented to the City Council on October 28, 2014.

22.20. REVOCATION OR DENIAL OF A PERMIT

- 1) *The City Manager or designee may revoke or deny a Vending Permit if:

 - a. *It is determined by the Chief of Police or Fire Chief and/or their designees that public safety requires such revocation or denial.*
 - b. *The application is incomplete;*
 - c. *The application is determined to be fraudulent, to include a misrepresentation, or to contain a false statement;**

d. The applicant has had a permit revoked by the City for any reason within the preceding two (2) years;

e. The applicant or permittee has been convicted, under the laws of the State of Iowa or of any other jurisdiction, of a felony or of a crime involving dishonesty within the preceding five (5) years; or

f. The applicant or permittee has an outstanding arrest warrant in this or any other jurisdiction, or is a fugitive from this or from any other jurisdiction.

g. The permittee is operating a vending operation in violation of the terms of the Permit.

h. The permittee's insurance has been canceled.

The permittee violates any Requirements or Operating Policies of the Vendor Permit

This language is consistent with the requirements of licensees under the Iowa Alcoholic Beverage control act.

Option 2 - Adopt the language below that only limits permittees, not employees, based on the sex offender registry:

The applicant or permittee is a person who is required to register or is registered on the Sex Offender Registry. This subsection shall apply to the applicant, permittee, each of the officers, directors, and partners of the applicant or permittee.

This option does not address employees of the permittee and it only addresses sex offenders.

Option 3 - Adopt the language below to prohibit permittees from being granted a vending permit if they are listed as a registered sex offender. It would also prohibit the permittee from hiring employees if they are listed as a registered sex offender:

The applicant or permittee is a person who is required to register or is registered on the Sex Offender Registry. This subsection shall apply to the applicant, permittee, each of the officers, directors, and partners of the applicant or permittee, and all persons who are employed by or who work in direct contact with the public at the vending cart.

This option addresses both the permittee and the employees and only addresses sex offenders.

Option 4 - Direct staff to prepare other options that address concerns pertaining to other types of felonies or crimes of dishonesty.

Option 5 - Remove Section 22.20(1)(e) which will allow permittees and their employees convicted of a felony or of a crime of dishonesty to obtain a permit. Additionally, Council may direct staff to remove any language in the Administrative Policies that require a background check.

Once Council determines which option to proceed with pertaining to 22.20(1)(e), then Council should direct the City Attorney to prepare the ordinance for consideration on first reading at an upcoming meeting.