

**APPEAL OF VENDING PERMIT DENIAL**

December 22, 2015

**BACKGROUND:**

Chad Watkins was issued a license to operate a food cart on the City sidewalk on Welch Avenue for the period of October 30, 2014, until October 30, 2015, pursuant to the vending code revision which became effective in February 2015. Mr. Watkins forgot to renew his permit, and therefore, it has expired.

After becoming aware of this fact, Mr. Watkins sought to apply for a new license at the same site. However, under the ordinance's administrative policies governing vending carts (See Section II. 7 attached) that were approved by the City Council in February of 2015, an application for a vending cart permit must include a letter of support from the adjacent property owners and management of the business located in those properties. The City Clerk received the attached email from Patti Boon who represents the owner of the adjacent building, the Randall Corporation indicating that they do not support the placement of Mr. Watkins' cart at this location since it conflicts with their tenant's business. Given the absence of a letter of support, the City Clerk denied the issuance of the permit.

Section XI of the attached administrative policies governing vending carts provides that an aggrieved party who has been denied a permit has right to appeal this decision at a hearing before the City Council. At the conclusion of the hearing, the City Council can then reverse, affirm, or modify the decision made by City staff.

**STAFF COMMENTS:**

It should be noted that while the City Council cannot waive the requirements of an ordinance, the Council can waive a requirement reflected in an administrative policy, which in this case is the requirement for a letter of support from the adjacent property owner. This would be similar to a request to waive certain requirements of the Council approved Purchasing Policy.

Mr. Watkins has provided the City Council the attached letter presenting his justification for approving the application. The Administrative Policy is not clear regarding whether the letter of support must be obtained only for brand new applications, or whether it was also meant to be a requirement for renewals, too. Staff believes that this issue should be clarified at some point. This is not a renewal, however, since Mr. Watkins' permit had expired. If he had not let the previous application expire, the recent letter from the Randall Corporation would not necessarily have disqualified him from receiving a renewal of his permit until the next renewal cycle. Unfortunately, the application did

expire, so that a letter of support is now required for this new application unless the Council would choose, after a hearing, to waive it.

- a) 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.
- b) Permits may be temporarily suspended for a special event or celebration that compasses the permit location.
- c) The sale, transfer, or assignment of a permit is prohibited.

**VII. 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.

#### **VIII. 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 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 permittee is operating a vending operation in violation of the terms of the Permit.
  - f) The permittee's insurance has been canceled.
  - g) 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.

#### **IX. TEMPORARY SUSPENSION**

- 1) A permit may be temporarily suspended, if it is determined by the Chief of Police or Fire Chief 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, 9.
- 2) As stated elsewhere, a temporary suspension may be issued due to a special event or celebration on public right-of-way.

#### **X. 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.

**XI. 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 twenty (20) 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.

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

### III. SELECTION CRITERIA

Criteria for the selection of vendors shall include, but not be limited to, the following:

There are limited sites available for vendor carts in the **Downtown Service Center, Campustown Service Center, and Village Zoning Districts** and therefore there will be a limited number of available spaces for this type of permits. All Permits are granted on a first come first serve basis. If the applicant is not a natural person (for example, a partnership, an LLC, or a corporation) and if the applicant has had a vendor permit previously, the applicant will not retain its seniority if there has been a substantial change, as determined by the City, in the stock ownership, membership interest, or partnership distribution.

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.

### IV. FEES AND CHARGES

Fees for all permits are established by resolution of the City Council and must be paid promptly and prior to the deadlines specified. No permit holder shall be allowed to operate until the appropriate fee has been paid to the City.

Any vendor who operates his/her vending business before all required fees and charges have been received by the City, or who operates while under order from the City to cease operation for lack of payment or any other valid reason, shall have his/her permit revoked for the remainder of the current vending season and will not be considered for a permit for the following year's vending season.

### V. OPERATING POLICIES ON PUBLIC RIGHTS OF WAY FOR VENDING

#### 1) Operating vending carts on public rights of way

- a. Vending cart operations must be contained to the assigned area and utilizing no more than a one hundred (100) square foot area. No storage of vending items is allowed on public benches, planters, or other fixtures.
- b. Power cords must be in good condition, be kept dry and not create a tripping hazard.
- c. Any cords/wiring must be securely fastened to the ground and covered by a cord protector.
- d. LP gas cylinders shall be limited to those required for the cooking device and one spare. Maximum cylinder size is 100 pounds.
- e. All compressed gas cylinders are required to be nested or restrained to prevent tip over.
- f. LP cylinders must be kept 15' from building openings. Stored cylinders need kept in a ventilated area.
- g. Open flame cooking operations, including charcoal grills, must be kept 10 ft. away from combustible construction.
- h. All cooking operations are required to have multipurpose ABC extinguisher with a minimum rating of 2A 10BC.
- i. Cooking operations that deep fry using oil are required to have a class K extinguisher.
- j. All extinguishers are required to be readily accessible to the operator, and have a current annual service tag.
- k. Refueling of gasoline powered equipment, such as generators is prohibited.
- l. Permittees must take proper care to ensure that no grease or other substances are spilled or allowed to drip on the ground; and, if this accidentally occurs, ensure prompt and complete clean-up.
- m. Operators must privately dispose of all wastepaper and other waste materials in a lawful manner. All vendors must supply a waste receptacle for patrons, in addition to their own waste.
- n. All vending carts must be attended at all times and removed during hours of non-operation. Driving or backing onto the sidewalks are prohibited.
- o. A specific location has been designated for the vending permit. The permit is required to be displayed at all times in visible and plain sight.

### VI. VENDING PERMIT TERM:

- 1) A vending cart permit may be used for up to one year.

- 9) Cart vendor may sell any type of food or non-alcoholic beverage or merchandise.
- 10) Noise making devices are prohibit, except music playing devices, which are limited to no more than 65 decibels from 7 a.m. to midnight and 55 decibels from midnight to 7 a.m. Non-task specific illumination is prohibited. 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.
- 11) The appearance of the vending cart or vehicle will be taken into consideration. If an applicant has previously operated such a cart or vehicle, the history of maintenance of its appearance will be taken into account. Cart or vehicle must maintain the same appearance for the entire vending season as that submitted at the time of application. If enhancements to the cart or vehicle are to be made, the enhancements must comply with this Division and must be approved by the City Manager or designee prior to the enhancements being made.
- 12) Business entities that are required to register with the Iowa Secretary of State must be registered and in good standing with the Iowa Secretary of State and must maintain their registration in good standing while the vending permit is active.
- 13) Has not had any financial interest in vending or consumer service business permit, that was revoked during the past two years. Has 'financial standing' and 'good reputation' to indicate that the applicant will comply with all laws and rules governing the permit. **Note:** *In evaluating the applicant's 'financial standing,' the City of Ames may consider verified sources of financial support and adequate operating capital for the permittee's business, record of prompt payment of state and local taxes, fees and charges for municipal utilities and municipal services, etc. In evaluating the applicant's 'good reputation,' the City of Ames may consider pattern and practice of disregard for the law including convictions for prohibited sales practices, zoning violations, or other similar disregard for municipal or state regulations. All applicants and their employees are expected to fully comply with sales tax collection and reporting requirements.*
- 14) All requirements apply to all officers, directors and shareholders of a corporation, all general partners in a partnership, or the individual owner if the business is operated as a sole proprietorship.
- 15) The applicant has signed the Vending Permit Application and agreed to the Indemnification Agreement.
- 16) Each Vendor shall provide the City of Ames with an original certificate of insurance, lawfully transacted, which sets forth the following information:
  - a) That the City of Ames is made an additional insured.
  - b) The dates of inception and expiration of the insurance. Applicant agrees to provide the certificate of insurance to the City by the last working day prior to the first day of vending operation.
  - c) The named insured must be either the Vendor to whom the space is issued, or if the named insured is a company, the Vendor must also be listed as an additional insured.
  - d) The amounts of liability coverage of not less than \$500,000 per occurrence/\$1,000,000 general aggregate annually (where an aggregate limit is applicable to the policy), for all hazards (including contractual liability and completed operations), for all damages caused by personal injury, bodily injury, and property damage.
  - e) A statement by the insurance company that it will not cancel said policy or policies without giving thirty (30) days prior notice to the insured and to the City of Ames.
  - f) When a permitted motor vehicle of any type is utilized to move equipment used by the Vendor for purposes of conducting the activities for which the Permit is issued, the Vendor shall, in addition to Commercial General Liability, shall provide evidence of Automobile Liability Insurance with minimum limits of \$500,000 Combined Single Limit (CSL) Bodily Injury and Property Damage.
  - g) THE CITY OF AMES, AT ITS SOLE DISCRETION, MAY REQUIRE HIGHER LIMITS AND/OR ADDITIONAL COVERAGE FOR SUCH ACTIVITIES OR PRODUCTS AS IT MAY DEEM NECESSARY.
- 17) The applicant is responsible for keeping the information provided in the Application for Vending Permit current with the City of Ames.
- 18) The application contains no material falsehood or misrepresentation.
- 19) The applicant and or employee(s) must comply with lawful requests made by City staff, including the Ames Police Department.
- 20) The applicant has not damaged city property, and if the applicant has, the damage has been paid in full, and the applicant has paid all other outstanding and unpaid debts to the City.
- 21) The use or activity intended by the applicant is not prohibited by law.
- 22) All applicable fees have been paid to the City of Ames.
- 23) The application is fully completed and executed.

# ADMINISTRATIVE POLICY GOVERNING VENDING CARTS (12-2014)

Section 22 of the Code of Ordinances of the City of Ames provides that the City Manager may establish an administrative policy for vending. Reference to the "City" in the following administrative policy shall mean the City Manager or his/her appointed designee.

## I. APPLICATION

Applications for Vending Permits must be submitted on the form provided by the City that can be obtained from the Office of the City Clerk or on the City website at [www.cityofames.org](http://www.cityofames.org). Applications for vending permits must be submitted to the office of the City Clerk. The City will notify each applicant as soon as possible whether the application has been approved. The City will limit the number of vendor permits for carts in the Downtown Service Center and Campustown Service Center and Village Zoning Districts based on ability to meet the requirements for pedestrian and vehicular traffic flow as well as any other factors deemed necessary as delineated in these Administrative Policy Governing Vendors. Additionally, the City has the right to deny permits for all types of vending permits that do not meet the requirements for pedestrian and vehicular traffic flow.

Applicants must contact the Iowa Department of Inspections and Appeals prior to submission of the City application to review health code compliance requirements, related to sale of food and beverages. Visit <http://dia.iowa.gov/> for information and contact numbers for the department.

## II. REQUIREMENTS

The City Manager or designee shall issue a permit if the following conditions have been met:

Application for a Vending Cart Permit shall include at a minimum:

- 1) The applicant's name, business information, date of birth, address, email address, home and business address, and phone numbers
- 2) A description of the vending cart and description of the type of food, non-alcoholic beverage or merchandise to be sold. A photo or rendering of proposed vending cart must be provided at time of application.
- 3) A copy of the applicant's government issued photo identification and or drivers license, if driving is required for the operation.
- 4) A list of any and all vehicles to be used, including license plate numbers. Registration must be current.
- 5) A copy of the Iowa Sales Tax Permit to be used for this business.
- 6) A description of the proposed location and hours of operations of the vending cart for consideration, including a cart site plan.
- 7) A letter of support from adjacent property owners and management of businesses located in those properties.
- 8) A copy of food license issued by the Iowa Department of Inspections and Appeals.
- 9) A signed indemnification agreement and certificate of insurance as requirement.
- 10) A drawing of the area to be used.

Administrative Rules shall be established by the City Manager to effectively carry out this Division of the City Code, including:

- 1) A vending location is available which will not interfere with free movement within the emergency/service lane.
- 2) The vending location will not interfere with an existing outdoor service area.
- 3) The vending shall be placed so as not to obstruct visibility at street intersections or to obstruct driveway entrances or to unreasonably obstruct the view of merchandising displays of other businesses abutting the sidewalk.
- 4) The applicant's proposed mode of operation will not impede the free flow of pedestrian traffic along the public right of way or in or out of adjacent properties. It must meet a minimum four foot clearance (4') to the sides and front of the vendor area and provide safe flow of movement for pedestrians.
- 5) The applicant agrees to operate the applicant's business only at the assigned vending location or on the routes as stated in the application. The applicant also agrees to only operate during assigned hours.
- 6) Vending items should only be those stated in the application.
- 7) No tobacco or alcoholic beverages shall be offered for sale.
- 8) All vending from motor vehicles shall be conducted in such a way as not to restrict or interfere with the ingress or egress of the abutting property, create a public nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life, property, or be an obstruction to adequate access to fire, police or sanitation vehicles.



food truck permits  
Randall Corporation

to:

Voss, Diane

12/10/2015 02:46 PM

Hide Details

From: "Randall Corporation" <patti@randallcorp.com>

To: "Voss, Diane" <dvoss@city.ames.ia.us>

We recently were informed of a Food Truck Vendor that is parking in front of Jimmy Johns, 131 Welch Avenue in CampusTown. We did not give permission as property owners to Smiles & Gyros. We would like for them to be moved to another location. We feel a conflict of interest for Jimmy Johns. Thank you. Patti Boon, Randall Corporation.

*\*northwest intersection  
of Welch/Chamberlain*

**APPEAL RIGHTS**

Any party aggrieved by the City Manager's or designee's decision to grant or deny a permit under Chapter 22, Division III may appeal the determination to the City Council if, within twenty (20) 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 the 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.

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**FOR CITY USE ONLY:**

**NOTICE OF DECISION GRANTING OR DENYING THE APPLICATION**

The application is approved. \_\_\_\_\_

The application is denied because Application is incomplete, under Section 22.20(1)(b) of Ames Municipal Code and Administrative Policy

Deanne R. Voss  
City Manager or Designee: City Clerk

12-18-2015  
Date



19. ARE YOU USING A CHARCOAL GRILL?

YES \_\_\_\_\_ NO X

20. INDEMNIFICATION AGREEMENT

The applicant agrees to:

Each Vendor assumes full responsibility for any injury to persons or property resulting from the display, sale, exchange or use of Vendor's food, drink, merchandise, vehicles, equipment, or other property; or of the assigned ground space occupied by Vendor and/or Vendor's employees or agents. Vendor further agrees to indemnify the City of Ames from all liabilities, claims, and damages, and to hold them free and harmless and to defend them at Vendor's sole expense, against all such liabilities, claims and damages.

- 21. Provide along with this application a certificate of insurance as required by the Administrative Policy Governing Vendors.
- 22. Applicant acknowledges that it must compile with all applicable Federal and State laws and City ordinances, including reporting of sales taxes.
- 23. If the applicant is not an individual, the person signing this application acknowledges that he or she has the authority to act on behalf of the group that is requesting the permit.

Applicant: Return completed application to:  
City Clerk's Office  
City of Ames  
515 Clark Street  
Ames, Iowa 50010

Any questions can be directed to the City Clerk's Office at 515-239-5105.

Clad Wuthos  
Signature of Applicant

12/18/15  
Date

# APPLICATION FOR VENDING CART PERMIT

If the applicant is not a natural person (for example, a partnership, an LLC, or a corporation, or represents another), please complete the addendum.

1. APPLICANT'S NAME: Chad Watkins  
FIRST LAST

2. DATE OF BIRTH: 11/07/1983  
MONTH DAY YEAR

3. ADDRESSES (Permanent Address, provide local address if permanent address is outside of the State of Iowa. Business mailing address):

1421 Douglas Ave. Ames IA 50010  
PERMANENT STREET APT# CITY State ZIP CODE

P.O. Box 1336 Ames IA 50014  
BUSINESS STREET APT# CITY State ZIP CODE

4. EMAIL ADDRESS: gm@smilesandgyros.com

5. PHONE NUMBER(S): 309-370-1187

6. Attach a brief description of the activity to be permitted, including the nature of the applicant's business and the goods or services to be offered.

7. Attach copy of applicant's government issued photo identification and or driver license. If driving is required for operating under this permit, then a valid driver's license will be required.

8. Attach a typed description of any and all vehicles, including license plate numbers to be used.

9. DESCRIPTION OF VENDING CART: Attach a photo of your cart as it appears today, or a picture of the proposed cart. Please provide dimensions of cart (length, width, height of counter, height of entire cart including any awnings or umbrellas) in addition to materials to be used. Details of proposed signage must also be submitted.

10. IOWA SALES TAX NO. (Required if approved, prior to issuance of permit): 185\*021807

11. HAVE YOU HELD A VENDING CART PERMIT BEFORE? YES  NO

12. LOCATION AND HOURS, IF HELD PRIOR: NW Corner Welch & Chamberlain M-Sa 8pm-4am

13. IF YES, NAME OF CART Smiles & Gyros NUMBER OF YEARS 23

WAS IT OPERATED IN 2014 FOR THE FULL SEASON? YES  NO

14. REQUESTED LOCATION(S) OF OPERATION AND HOURS (Please complete addendum Cart Site Plan): 30-50 feet North of NW corner of Welch & Chamberlain. Halfway between Intersitec & Chicka Shack M-Sa 8pm-4am

15. Provide attached a letter(s) of support from adjacent property owner(s) and management of businesses located in those properties.

16. If I am selling food or drinks, I acknowledge that I have contacted the Iowa Department of Inspections and Appeals and met all other applicable State of Iowa requirements.

17. ELECTRICAL APPLIANCE(S) TO BE USED (Please note where you will get power from for these appliances):  
N/A

18. WILL FUEL BE USED TO POWER EQUIPMENT? YES  NO

What type of fuel will be used? (See regulations for use in Administrative Policy Governing Vending Carts)  
Propane

Chad Watkins  
PO Box 1336  
Ames, IA 50014

December 17<sup>th</sup>, 2016

Dear Honorable Mayor and Ames City Council:

My name is Chad Watkins. In the last year I purchased Smiles & Gyros and Superdog, 2 of the most beloved vending carts in the Campustown latenight area. Smiles & Gyros recently had its 23rd anniversary while Superdog is 13 years old. This new venture has been exciting and challenging, but I am enjoying it a great deal.

Recently I became aware of a very serious oversight on my part. We renewed our food licenses with the State of Iowa Department of Inspections and Appeals (we have 4 licenses, 2 for the businesses mentioned, one for a downtown cart which sells both products and one for our commercial commissary located on the 3<sup>rd</sup> floor of Legacy Tower in Campustown). We also renewed our liability insurance and submitted copies of those certificates to the City of Ames. However, we neglected to renew our City of Ames vending permits. City Staff discovered this oversight this week, after they received a letter from Randall Corporation, which alerted us to it, and we immediately moved to renew these licenses. I want to personally apologize for this oversight. No matter the reason, the responsibility for these renewals is mine, and I should have ensured they were renewed with my other annual renewals. I can assure you it will not happen again.

The City Staff has been very helpful in working with us to remedy this situation. However, due to a change in policy last year in conjunction with my failure to renew the vending permit before October 31<sup>st</sup>, we are being considered a new applicant. As a new applicant, we are required under the new policy, to obtain approval from the adjacent property owner. We will continue to work with Randall Corporation, but as of the time of

this letter, we have not been able to secure such a letter of support. While the policy and code are written to ensure predictability for our business, our oversight has done exactly the opposite.

Currently we are entering our slow season. During winter break, we make hours available to our staff at a loss to our business. These amazing people work hard all football season for us, and we run the business at a loss over break and early into the spring semester so that they still have income. Our error puts these young hardworking individuals' financial predictability at risk as well. I am asking for your help not just for us, but for them as well.

I am asking that the Ames City Council, approve our permit application through the appeal process allowed under section 22.23 of the Ames Municipal Code. Given the recent transitions and changes regarding vending policy, we would ask that the City kindly consider our error in renewing our license an oversight, rather than an intentional non-renewal. We would like to continue doing the work we have done for the past 20 years for many, many more years to come. We have served the members of Ames and especially the Iowa State University student community for decades, and we would appreciate your support in our being able to continue to do so.

Thank you so much for the work you do. Please feel free to call or email me with any questions. Thank you for your service to our community.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Watkins", with a long, sweeping underline that extends to the right.

Chad Watkins  
President Chad Watkins LLC  
DBA-Smiles & Gyros  
DBA-Superdog  
[chdwtkns24@gmail.com](mailto:chdwtkns24@gmail.com)  
(309) 370-1187