

**CHAPTER 74  
FOOD PEDDLERS**

TABLE

74-1	Vehicular Food Peddlers
74-2	Ice Cream Peddler License
74-3	Peddling of Food by Minors

**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.

**1.5. DEFINITIONS.** In this chapter:

a. "Commissioner" means the commissioner of health.

b. "Food" means all articles used for food, drink or condiment including ice or water used by humans, whether simple, mixed, or compound and articles used or intended for use as ingredients in the composition or preparation thereof.

c. "Food peddler" means any person who sells food in this city from a pushed, pedaled, pulled or motorized vehicle or from a carried container.

d. "Person" means any individual, firm or corporation.

**2. PERMIT REQUIRED.** a. Parked One Hour or Less. No person shall engage in the sale of any food from any vehicle on public streets, without first receiving from the commissioner of health a permit so to do; provided further that any person engaged in the sale of any food from a vehicle shall not remain in any location adjacent to any one block area, which block contains only nonresidential occupancy or use, more than one hour on any one day, except as provided in sub. 2-b. This section, and the permits issued thereunder, 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.

b. Exceptions to One-Hour Limit.

b-1. Whenever any street or portion thereof has been closed to traffic by common council resolution in connection with any civic event, the city clerk may, upon receipt of the required fee, issue a permit to any person holding a permit for the sale of food from a vehicle further permitting such person to park

on such closed streets longer than the one-hour limit provided in par. a. The permit shall specify the dates for which issued and the fee required in ch. 60 shall be charged for each such date. No such permit shall be issued without the approval of the chief of police, unless the common council by resolution shall so direct.

b-2. A motorized food peddler vehicle may be parked in one location on a nonresidential block in excess of the one-hour limit specified in par. a, provided the vehicle is parked in compliance with all posted time limits on parking and with all other applicable parking regulations.

c. Location of Vehicle: Penalty.

c-1. 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 alderman and sponsoring group.

c-2. Any vehicle parking in such a closed traffic section, or parking outside the barricaded street section longer than allowed by existing ordinances, without said permit shall be fined \$100 and vehicle shall be towed away at owner's expense.

d. Exceptions. The common council may, by resolution, designate specific exceptions as to locations, dates and/or individual events, to the provisions of sub. 2-a.

**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.

**2.5. SALES FROM 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 sub. 2-b and the peddler is otherwise in compliance with this section.

**3. PERMIT CATEGORIES.** a. Pushed, Peddled or Pulled Vehicles. A food peddler permit shall be issued by the commissioner of health upon the payment of the fee required in s. 60-29 for each approved pushed, peddled or

## 74-1-4 Food Peddlers

pulled vehicle which does not have a mechanical engine to propel it, and shall be in such form as the commissioner of health may direct.

b. Motorized Vehicle. The food peddler permit fee required in s. 60-29 shall be charged for each approved motorized vehicle and shall be in such form as the commissioner of health may direct.

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

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 food peddler permit without payment of any fee.

e. Night Operation. The commissioner shall provide for issuance of a sub-category of each of the permit types identified in pars. a to c to allow a food peddler to sell food between the hours of 9 p.m. and 3 a.m. in addition to sales between 6 a.m. and 9 p.m., except that a food peddler with a nighttime sales permit may sell food until 3:30 a.m. on Saturday and Sunday and at any time on January 1. The applicant for a permit allowing nighttime sales shall pay the surcharge required by s. 60-31.

4. IDENTIFYING DEVICE (LICENSE PLATE). Together with each permit, the commissioner shall issue an identifying device not less than 4" x 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. 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 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.

4.5. COMPANY NAME. 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.

5. APPLICATION. Each person requiring a permit shall make written application therefor to the commissioner of health on blanks provided therefor and shall personally present this application at a place to be designated by the commissioner of health.

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 commissioner may, following the same procedures set forth in pars. a to c, suspend or revoke only the portion of a permit allowing late-night sales pursuant to sub. 3-e.

e. 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.

f. 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 court.

**7. PERMITS AND IDENTIFYING DEVICES NOT TRANSFERABLE.** Permits and permit identifying devices shall be nontransferable except upon order of the commissioner of health. Any food peddler selling, giving away or exchanging any permit or permit identifying device, or any food peddler obtaining a permit by misrepresentation, or improperly registering their name or address shall be subject to the fines provided for in sub. 10.

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

a-1. 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 3<sup>rd</sup> and 4<sup>th</sup> 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.

a-2. Block or restrict an individual's access to a business or residential doorway.

a-3. Occupy any sidewalk so as not to permit any pedestrian at any time to have a minimum 5-foot clearance.

a-4. Make any comment, request, suggestion or proposal which is obscene, lewd, lascivious, profane, filthy or indecent.

a-5. 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 41° F or lower by means of mechanical refrigeration.

b-2-c. Heated and maintained at 135° F.

b-3. 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.

b-4. Comply with the noise nuisance regulations of s. 80-65-4 and all other noise regulations of this code.

b-5. Comply with all parking regulations under ss. 105-56 and 115-45.

c. A food peddler with a permit for a pushed, pedaled or pulled vehicle shall not use any type of horn.

**8. SALE OF UNWHOLESOME FOOD PROHIBITED.** No food peddler shall 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 of health.

**8.5 SALE OF SODA WATER.** Soda water shall be sold in single service cups or aluminum cans only.

**9. RULES AND REGULATIONS.** The commissioner of health is authorized to make and adopt the written rules and regulations as may be necessary for the proper enforcement of this section. The commissioner of health shall file a certified copy of all rules and regulations which he may adopt with the city clerk, and a certified copy of such rules and regulations shall also be on file in the office of the commissioner of health. Such rules and regulations shall have the same force and effect as the provisions of this section, and the

## 74-2 Food Peddlers

penalty for violations thereof shall be the same as the penalty for violations of this section as hereinafter provided.

**9.5. PEDDLERS ARE AGENTS OF PERMIT HOLDERS.** Whenever a business, organization or individual holds a food peddler's permit and individual peddlers make sales under the authority of that permit, each such individual peddler is an agent of that business, organization or individual for purposes of those sales. Any violation of this section by an agent shall be imputed to the business, organization or person that holds the food peddler's permit under which the agent's sales are made.

**10. 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, except sub. 7.5, shall be subject to penalty as set forth in s. 61-8.

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

b-1. A forfeiture of not less than \$20 nor more than \$200 for each violation.

b-2. A suspension of the identifying device described under sub. 4 for not less than 10 days nor more than 30 days, or a revocation of the identifying device for the remainder of its term.

b-3. A suspension of the food peddler's license for not less than 10 days nor more than 30 days, or a revocation of the food peddler's license for the remainder of its term.

c. At the discretion of the court, a penalty under par. b may be imposed as follows:

c-1. A penalty may be imposed on an agent.

c-2. Whenever the court finds that the business, organization or person that holds the food peddler's permit under which the agent's sales are made has failed to properly supervise the agent, a penalty may be imposed on the business, organization or person.

c-3. A penalty as described under subds. 1 and 2 may be imposed on both an agent and the business, organization or person that holds the food peddler's permit under which the agent's sales are made.

**74-2. Ice Cream Peddler License. 1. FINDINGS.** The common council finds that individuals involved in the business of ice cream peddling are placed in substantial contact with children. Additionally individuals peddling ice cream from an ice cream vending vehicle are also responsible for driving safely when operating a motor vehicle making frequent stops and dealing with customers congregating near the path of the vehicle. Therefore on that basis, the common council finds it necessary for the safety and welfare of the public to license individuals peddling ice cream.

**2. DEFINITIONS.** For the purposes of this section: a. "Ice cream peddler" means any person who physically operates an ice cream vending vehicle or any person who physically conducts ice cream vending from such a vehicle or from a carried container.

b. "Ice cream vending vehicle" means a vehicle from which the retail sale of ice cream or similar frozen confections for human consumption is conducted. An ice cream vending vehicle may be pushed, peddled, pulled or motorized.

**3. LICENSE REQUIRED.** No person shall operate or act as an ice cream peddler within the city without first having obtained an ice cream peddler license. The ice cream peddler license required by this section shall be in addition to the food peddler permit required in s. 74-1. No ice cream peddler license 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.

**4. APPLICATION.** Application for a new or renewal license shall be filed with the commissioner of health on a form provided therefore. The application shall state:

a. The applicant's name, date of birth, permanent address and telephone number.

b. A driver's license or some other proof of identity as may be reasonably required.

c. Submit with the application form a separate document bearing all 10 fingerprints of each applicant, or if the applicant has less than 10 fingers, the record shall so indicate.

d. Such other reasonable or pertinent information the commissioner of health or the chief of police may from time to time require.

5. DEPOSIT OF FEE. At the time of application, each applicant shall deposit with the health department the full amount of the fee required in s. 60-48. It shall be the duty of the health department to accept the deposit, issue a receipt therefore, and cause a record to be kept thereof.

6. INVESTIGATION. a. An application received by the commissioner of health shall be forwarded to the chief of police for review and criminal check.

b. Upon review and report of the chief of police and subject to the requirements of s. 111.335, Wis. Stats., the license shall be granted to an applicant who has not been required to register as a sex offender pursuant to s. 301.45, Wis. Stats.; or who has not been convicted of violating s. 940.22(2), 940.225(1), (2) or (3), 944.06, 948.02(1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.095, 948.11(2)(a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31, Wis. Stats., if the victim was a minor; or who has not been convicted of operating a vehicle under the influence of an intoxicant or other drug pursuant to s. 346.63, Wis. Stats., in the past 3 years. These provisions shall also apply to the granting of this license to any applicant who has been convicted pursuant to similar statutes in foreign jurisdictions.

c. In the event an application for a new or renewal license is denied, the applicant may appeal the denial to the administrative review appeals board.

7. REVOCATION. a. Any license issued under this section may be revoked by the health department upon conviction of a licensee for violation of any provision specified in sub. 6-b.

b. Any license revoked by the health department under this section may be appealed to the administrative review appeals board. If the commissioner of health has cause to seek revocation of a license under this section he or she shall give notice to the licensee of the intent to revoke with an opportunity to appeal the revocation to the administrative review appeals board.

8. PENALTY. a. Any person who violates sub. 3 shall be liable upon conviction to a Class I penalty under s. 61-15.

b. Any person licensed under s. 74-1, who employs a person required to obtain a license under sub. 3 and who is not licensed, shall be liable upon conviction to a Class I penalty under s. 61-15.

### 74-3. Peddling of Food by Minors.

1. PURPOSE. The common council finds that minors under 18 years of age are susceptible to injury and other harm when engaged in street trades, and particularly when engaged in activities involving the sale or distribution of food and beverages including water on highways, streets and alleys of the city. The common council further finds that state policy, which defines street trades in setting child labor standards at s. 103.21(6) Wis. Stats., to include the selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles or goods on any street or public place. Section 103.23(1), Wis. Stats., further provides that a minor under 12 years of age shall not be employed or permitted to work at any time in any street trade. This section has for its purpose, among other objects, to secure the health, safety and welfare of minors engaged in activities on the city highways, and to promote the responsible and lawful care, supervision and control of younger children by older youth and adults who are in a position to direct, supervise or otherwise control the activities of children engaged in peddling food or beverages.

2. DEFINITIONS. In this section: a. "Minor" means any person under 18 years of age.

b. "Responsible older youth or adult" means any person having actual or legal care, custody or control of a minor, including any person who enlists, directs, or otherwise engages a minor in activities commonly associated with street trade, except for older youth under 18 years of age and less than 2 years older than the minor engaged in activities commonly associated with street trade.

c. "Food" has the meaning ascribed at s. 74-1-1.5-b, and includes canned or bottled soda, water, and all other beverages.

d. "Minor food peddler" means any minor who sells, offers for sale, solicits for sale, collects for sale, displays, or distributes any food on any street or other public place, or from house to house whether or not from a vehicle or carried container.

### 74-3-3 Food Peddlers

**3. REGULATION; PROHIBITED ACTIVITIES.** a. No minor under 12 years of age may engage in or participate in the activities of a minor food peddler

b. No responsible older youth or adult shall engage a minor less than 12 years of age in the activities of a minor food peddler.

c. No minor shall engage in, nor be permitted to engage in, the activities of a minor food peddler except in accordance with applicable permit and other requirements of state law and this code.

d. No minor food peddler shall sell, distribute or offer for sale any food or beverage, including water, while on a roadway median or safety island, and no minor food peddler may be directed, instructed or permitted to sell, offer for sale, or distribute any food or beverage, including water, by any responsible older youth or adult while the minor is on a roadway median or safety island.

e. No person, whether a responsible older youth or adult or a minor food peddler, shall enter on foot into any street or roadway, including any alley in which there is vehicular traffic and no responsible older youth or adult shall encourage or permit a minor food peddler to enter on foot into any street or roadway, including any alley in which there is vehicular traffic, while engaged in activities related to the activities of a minor food peddler, except while proceeding across designated pedestrian crosswalks and crossing areas.

**4. EXCEPTION.** The provisions of sub. 3-d shall not apply when the roadway, street or alley has been closed to traffic under s. 74-1-2-b 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.

**5. PENALTIES.** a. Any person violating the provisions of sub. 3-b shall be subject to a Class D penalty, as provided in s. 61-10.

b. Any person violating sub. 3-c shall be subject to the fine for a Class A penalty, as provided in s. 61-7.

c. Any person violating sub. 3-d and e shall be subject to a Class F penalty, as provided in s. 61-12.

d. Any person violating any provision of this section who is subject to sanction as a juvenile, shall not be subjected to a forfeiture or other penalty greater than that permitted by state law.

**LEGISLATIVE HISTORY  
CHAPTER 74**

Abbreviations:

am = amended  
cr = created

ra = renumbered and amended  
rc = repealed and recreated

rn = renumbered  
rp = repealed

<u>Section</u>	<u>Action</u>	<u>File</u>	<u>Passed</u>	<u>Effective</u>
74-1-1	cr	971622	2/10/98	2/27/98
74-1-1-a	rn to 74-1-1.5-b	971622	2/10/98	2/27/98
74-1-1-b	rn to 74-1-1.5-c	971622	2/10/98	2/27/98
74-1-1-c	rn to 74-1-1.5-d	971622	2/10/98	2/27/98
74-1-1.5-a	cr	971622	2/10/98	2/27/98
74-1-1.5-c	am	971622	2/10/98	2/27/98
74-1-2-a	am	881465	11/18/88	12/9/88
74-1-2-a	am	930209	7/6/93	7/23/93
74-1-2-b	am	881803	1/24/89	2/11/89
74-1-2-b	rc	050208	7/6/2005	7/23/2005
74-1-2.2	cr	971622	2/10/98	2/27/98
74-1-2.5	cr	960171	6/25/96	7/13/96
74-1-3-a	am	881803	1/24/89	2/11/89
74-1-3-a	am	951346	1/23/96	2/9/96
74-1-3-b	am	881803	1/24/89	2/11/89
74-1-3-b	am	951346	1/23/96	2/9/96
74-1-3-c	am	881803	1/24/89	2/11/89
74-1-3-c	am	971622	2/10/98	2/27/98
74-1-3-e	cr	050208	7/6/2005	7/23/2005
74-1-4	am	971622	2/10/98	2/27/98
74-1-4.5	cr	960499	7/12/96	7/31/96
74-1-4.5	am	050735	10/18/2005	11/4/2005
74-1-6	rc	971622	2/10/98	2/27/98
74-1-6-d	rn to 74-1-6-e	050208	7/6/2005	7/23/2005
74-1-6-d	cr	050208	7/6/2005	7/23/2005
74-1-6-e	rn to 74-1-6-f	050208	7/6/2005	7/23/2005
74-1-7.5	cr	950423	11/6/95	11/14/95
74-1-7.5	rc	971622	2/10/98	2/27/98
74-1-7.5-a-1	rn to 74-1-7.5-a-2	000799	11/28/2000	12/15/2000
74-1-7.5-a-1	cr	000799	11/28/2000	12/15/2000
74-1-7.5-a-1	am	050208	7/6/2005	7/23/2005
74-1-7.5-a-2	rn to 74-1-7.5-a-3	000799	11/28/2000	12/15/2000
74-1-7.5-a-3	rn to 74-1-7.5-a-4	000799	11/28/2000	12/15/2000
74-1-7.5-a-3	rc	061340	4/17/2007	5/4/2007
74-1-7.5-a-4	rn to 74-1-7.5-a-5	000799	11/28/2000	12/15/2000
74-1-7.5-b-2-b	am	050735	10/18/2005	11/4/2005
74-1-7.5-b-2-c	am	050735	10/18/2005	11/4/2005
74-1-7.5-b-4	cr	041613	6/14/2005	6/21/2005
74-1-7.5-c	rn to 74-1-7.5-b-5	041613	6/14/2005	6/21/2005
74-1-7.5-c	cr	041613	6/14/2005	6/21/2005
74-1-8.5	cr	901095	11/6/90	11/23/90
74-1-9.5	cr	950423	11/6/95	11/14/95
74-1-10	am	950423	11/6/95	11/14/95
74-2	cr	050505	9/27/2005	10/14/2005
74-2-3	am	070026	5/8/2007	5/25/2007
74-3	cr	070557	7/31/2007	8/17/2007

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