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MEMORANDUM

Confidential—Attorney/Client Privileged—Attorney Work Product

TO: Gregg Mandsager

FROM: Matt Brick and Erin Clanton

DATE: July 2, 2014

SUBJECT: Panhandling

We have been asked to provide a legal opinion with regard to allowing peddlers, solicitors, and/or transient merchants to solicit charitable donations and/or otherwise conduct business within the City's roadways. As more specifically described below, it is our legal opinion that such solicitations can occur in the right-of-way, but that standing or entering into the traveled roadway not only creates a substantial liability for the City, but is also contrary to the City and State traffic and public safety laws.

As an initial matter, pedestrians are subject to all traffic-control signals. *See* Iowa Code §321.325. Any individual who is not in a vehicle is considered a "pedestrian" for purposes of roadway regulations in the state of Iowa. *See* Iowa Code §321.1(51). Where sidewalks are provided, it is unlawful for any pedestrian to walk along and upon the roadway, and if no sidewalk is available, the pedestrian must walk on the left side of the highway or roadway or its shoulder facing traffic that is approaching from the opposite direction. *See* Iowa Code §321.326 and Muscatine Municipal Code §7-9-7. Muscatine Municipal Code also prohibits persons from "obstruct[ing] any street, sidewalk, highway, or other public way, or the entrance or the exit of any business...." *See* Muscatine Municipal Code §7-17-1. Thus, allowing individuals to walk along and upon the roadway is a clear violation of the Iowa Code and Muscatine Municipal Code §7-9-7.

In addition, allowing persons to solicit contributions, distribute materials or sell merchandise upon City roadways creates a host of liability issues. Specifically, there is concern for the pedestrians as well as distracted motorists, both of whom would look to the City for damages in the event of an accident that was caused by activities "blessed" by the City ordinances. Consequently, we do not recommend allowing peddlers, solicitors, and/or transient merchants to solicit charitable donations and/or otherwise conduct business within the City's roadways. We have drafted proposed ordinance language to effectuate this change.

Please let me know if you have any questions. Thanks!

Title 5 – Business Regulations
Chapter 14 – Peddlers, Solicitor, and Transient Merchants

- 5-14-1 Definitions
- 5-14-2 License Required
- 5-14-3 Application for License
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- 5-14-11 Penalty
- 5-14-12 Rebates
- 5-14-13 License Exemptions
- 5-14-14 Prohibited Activities

5-14-1 Definitions. For use in this chapter the following terms are defined:

1. "Peddler" means any person carrying goods or merchandise who sells or offers for sale for immediate delivery such goods or merchandise from house to house or from street to street.
2. "Solicitor" means any person who solicits or attempts to solicit from house to house, business to business, or from street to street for the purpose of obtaining or attempting to obtain orders for: (1) the sale of goods, wares and merchandise, personal property of any nature whatsoever, for future delivery whether or not such individual has, carries or exposes for sale a sample of the subject of such sale; (2) or for services to be performed in the future whether or not such individual is collecting advance payment on such sales or not; or (3) a request, whether vocalized or not, for a donation or contribution other than in response to an inquiry from another person.
3. "Transient merchant" means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever, or who operates out of a vehicle which is parked anywhere within the City limits. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader, or auctioneer does not exempt any person from being considered a transient merchant.

5-14-2 License Required. Any person engaging in peddling, soliciting or in the business of a transient merchant in the City without first obtaining a license as herein provided is in violation of this chapter.

5-14-3 Application For License. An application in writing shall be filed with the Clerk for a license under this chapter. Such application shall set forth the applicant's name, permanent and local address, and business address if any. The application shall also set forth the applicant's employer, if any, and the employer's address, the nature of the applicant's business, the last three places of such business and the length of time sought to be covered by the license. An application fee in an amount fixed by resolution of the Council and set out in the Schedule of Permits and Fees in

the appendix to this code of ordinances shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

5-14-4 License Fees. The fee required for the issuance of a license issued under this chapter shall be set by resolution of the City Council and is listed in the Schedule of Permits and Fees in the Appendix of this Code of Ordinances.

5-14-5 Insurance Required.

A. Before a license under this chapter is issued to a peddler, solicitor, or transient merchant, an applicant shall provide to the Clerk a certificate of insurance naming the City as an additional named insured. Said certificate of insurance shall be in a minimum amount of \$2,000,000.00 providing coverage against any and all property damage, injuries, including injury resulting in death, or wrongful fraudulent or illegal conduct by reason of, or related to, the licensee's use of public streets, sidewalks, right of ways or other public places to engage in activity pursuant to this ordinance. Said insurance shall be maintained throughout the duration of the license period one (1) year thereafter and failure to do so shall be a violation of this ordinance. All certificates of insurance issued pursuant to this chapter shall contain a clause that 10 days' prior written notice of cancellation or change shall be given to the City Clerk of the City of Muscatine.

B. An applicant shall also submit an executed agreement to indemnify and hold harmless the City of Muscatine and its officers, employees, agents and assigns from any and all claims, actions, injuries and damages of every kind and description which may accrue to or be suffered by any person by reason of or related to the vending of merchandise by said applicant or the granting of a license to do so.

C. Failure to comply with the requirements of this section shall be cause for denial or revocation of the license.

5-14-6 License Issued. If the Clerk finds the application is completed in conformance with the requirements of this chapter, the facts stated therein are found to be correct, and the license fee paid, a license shall be issued immediately.

5-14-7 Display Of License. Each solicitor or peddler shall keep such license in possession at all times while doing business in the City and shall, upon the request of prospective customers, exhibit the license as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant's license in the merchant's place of business.

5-14-8 License Not Transferable. Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

5-14-9 Time Restriction. All peddler's and solicitor's licenses shall provide that said licenses are in force and effect only between the hours of 8:00 a.m. and 8:00 p.m.

5-14-10 Suspension or Revocation of License.

A. Grounds; Notice:

1. The City Clerk may suspend any license issued under this Chapter, pending the outcome of an administrative hearing, for any of the following reasons:

- a. The licensee has made fraudulent statements in his/her application for the license or in the conduct of his/her business.
- b. The licensee has violated this Chapter or any other Chapter of this Code or has otherwise conducted his/her business in an unlawful manner.
- c. The licensee has conducted his/her business in such manner as to endanger the public welfare, safety, order, or morals.
- d. The City Clerk has received and investigated multiple written complaints during the licensed period from residents of the City who are dissatisfied with the manner in which the licensee is conducting business.

2. The City Clerk shall have immediately serve notice to the licensee served with notice either in person or by regular mail to the licensee's local address of the license suspension, the specific reason(s) for such action, and date and time of hearing with the City Clerk to review the particulars of the suspension.

B. Hearing: A hearing shall be conducted by the City Clerk not more than five (5) business days after he/she has suspended a license. The licensee and any complainants may be present to determine the truth of the alleged violation of this Chapter. Should the licensee or his/her authorized representative fail to appear without good cause, the City Clerk may proceed with the hearing and make his/her findings to a conclusion.

C. Revocation: After the City Clerk has reviewed the facts, he/she shall revoke a license if he/she finds by the preponderance of the evidence that a violation of this chapter has occurred. The revocation shall be effective immediately.

D. Appeal: If the City Clerk revokes or refuses to issue a license, the licensee or the applicant shall have a right to a hearing before the municipal appeal code hearing officer as provided in Section 4-4-9 of this Code. The municipal appeal code hearing officer may reverse, modify, or affirm the decision of the City Clerk.

E. Effect of Revocation: Revocation or denial of any license shall bar the licensee or applicant from being eligible for any license under this Chapter for a period of one (1) year from the date of the revocation or denial. There shall be no refund of any fees for any revocation.

5-14-11 Penalty. Anyone violating any of the provisions of this Ordinance shall, upon conviction, be subject to imprisonment not exceeding thirty (30) days, or a fine not exceeding one hundred dollars (\$100.00). Each day that a violation continues to exist shall constitute a separate offense.

5-14-12 Rebates. No licensee shall be entitled to a rebate of part of the fee paid if the license is surrendered before it expires.

5-14-13 License Exemptions. The following are excluded from the application of this chapter.

1. Newspapers. Persons delivering, collecting for, or selling subscriptions to newspapers.
2. Club Members. Members of local civic and service clubs, Boy Scout, Girl Scout, 4-H Clubs, Future Farmers of America, and similar organizations.
3. Local Residents and Farmers. Local residents and farmers who offer for sale their own products.
4. Students. Students representing area schools or school districts conducting projects sponsored by organizations recognized by the school.
5. Route Sales. Route delivery persons who only incidentally solicit additional business or make special sales.
6. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.
7. Authorized representatives of charitable or nonprofit organizations operating under the provisions of Chapter 504 of the Code of Iowa. All such organizations seeking to act as a peddler, solicitor and/or transient merchant are required to submit in writing to the Clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and whether any commissions, fees or wages are to be charged by the solicitor and the amount thereof. If the Clerk finds that the organization is a bona fide charity or nonprofit organization, the Clerk shall issue, free of charge, a license containing the above information to the applicant. In the event the Clerk denies the exemption, the authorized representatives of the organization may appeal the decision to the Council, as provided in Section 5-10-14 of this chapter.

5-14-14 Prohibited Activities. No peddler, solicitor, transient merchant, or other person engaged in other similar activities shall conduct business in any of the following manner:

- A. Calling attention to his or her business, the items to be sold or the donations being solicited by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.
- B. Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way.
- C. Standing in a street, including any roadway medians, curbs, traffic islands, shoulders or crosswalks, for the purpose of soliciting contributions, donations, distributing materials or selling merchandise.
- D. Acting in a way as to create a threat to the health, safety, and welfare of any specific individual or the general public.
- E. Failing to provide proof of license, or registration, and identification when requested.
- F. Using the license or registration of another person.
- G. Conducting his/her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant.
- H. Alleging false or misleading statements about the products or services being sold, including untrue statements of endorsement. No peddler, solicitor, or

transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.

I. Remaining on the property of another when requested to leave.

J. Otherwise operating their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.

CITY OF MUSCATINE

TITLE 3, CHAPTER 14

License # _____
Wallet # _____
Sticker # _____
Receipt # _____
Issued _____
Expires _____

APPLICATION FOR USE OF ANY STREET, SIDEWALK, ROADWAY, ALLEY,
PARK, PUBLIC WAY, PROPERTY OR FACILITY

1. Name of applicant and sponsoring organization, if any:

Mr. Mike Rehwaldt on behalf of Muscatine Association of Firefighters

Address: 312 East 5th St Muscatine Ia 52761

Telephone number: 563-263-9233

E-mail address: _____

2. Type of event that is planned:

MDA Fill the Boot

3. Proposed location:

8th + Cedar St, Muscatine IA

Cleveland + 2nd Avenue, Muscatine IA

4. Date(s)/Time(s): Aug 27, 28, 29, 2014 (Rain dates TBD) 10:00 - 1:00 pm
4:00 - 7:00 pm

5. Expected length of use: 6 hours daily; 3 days

6. Expected size of group: 8-10 members,

Also possible Wal-Mart parking lot, any other city employees / family volunteers

7. Names of any person or persons in charge of the proposed use at the specified location: are welcome here.

Tom Summitt, Chairman, Vice-President

Joe Vogel, Co-Chairman

Darren Brooke, President

Address(es): Intersections: 8th + Cedar; Cleveland + 2nd Ave., Muscatine

Telephone Number(s): 563-506-0103

E-mail address(es): tsummitt@muscatine.iowa.gov

jvogel@muscatine.iowa.gov

dbrooke@muscatine.iowa.gov

8. Names and addresses of any persons to be featured as entertainers or speakers:

None

9. List mechanical or electronic equipment to be used:

None

10. Number and type of any motor vehicles or other forms of transportation to be used, including bicycles, boats, carriages and golf carts:

None

11. Number and types of animals to be used:

None

12. A description of any sound amplification to be used:

None

13. Proposed monitoring of the group and/or activity including the number of people who will direct traffic, set up, clean up and maintain order, if necessary:

Tom Summitt, Joe Vogel, Darren Brooke

14. All plans for the provision of security:

No security is needed.

15. Beer or wine consumption? Yes _____ No X

16. Describe any items to be sold or distributed:

Nothing sold. If a donation is made, a MDA sticker will be offered to the person(s) making the donation.

17. Is water connection requested? Yes _____ No X

18. Is electricity requested? Yes _____ No X

19. Have you provided a layout site plan for your proposed activity or event? Yes _____ No X

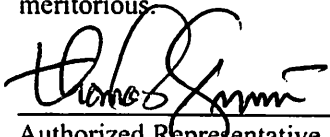
If yes, please attach.

If no, please explain:

Members of the Muscatine Fir Dept (off-duty) will be at the intersections to receive donations, as we have in the past. We will post signs 1/2-1 block before drivers enter the intersection to give them warning as to the boot drive ahead.

20. Do you understand that you will be financially responsible for all site restoration needed to restore the site to pre-event status? Yes X No _____

The applicant agrees to indemnify, defend and save harmless the City of Muscatine, together with its agents, officers and employees, from any and all claims, lawsuits, damages, losses and expenses, of whatever nature, which may result from or arise from the activity or event covered by the permit, including but not limited to the use of public ways, irrespective of whether said claims are frivolous or meritorious.


Authorized Representative
Thomas C. Summitt

4/30/2014
Date

TO BE COMPLETED BY CITY DEPARTMENTS:

I have reviewed the attached application with the following recommendations:

Recommend
Approval

☒
YES

☐
NO

[Signature] 7-10-14
Parks & Recreation Date

Comments:

OK

☒
YES

☐
NO

[Signature] 7/9/14
Building & Zoning Date

SUBJECT TO APPROVAL
BY CITY COUNCIL

Conditional

☒
YES

☐
NO

[Signature] 7/9/14
Public Works Date

Council Action
Required

☐
YES

☐
NO

Police Chief Date

note: ☒
YES

☐
NO

[Signature] 7/9/14
Fire Chief Date

subject to council
Approval.

FINAL APPROVAL:

☐
YES

☐
NO

City Administrator Date