

Staff Summary Report



Council Meeting Date: 12/13/07

Agenda Item Number: _____

SUBJECT: This is the second public hearing to amend Chapter 24 of the Tempe City Code relating to Peddlers, Solicitors and Itinerant Merchants by amending Sections 24-16 and 24-17 and repealing Division 4 relating to Sidewalk Cafes.

DOCUMENT NAME: 20071213cacc01 **TCC CH 24 – PEDDLERS, SOLICITORS & ITINERANT MERCH (0503-24)** Ordinance No. 2007.82

SUPPORTING DOCS: No

COMMENTS: It has been determined that the sidewalk café ordinance precludes staff from being administratively flexible in the design of sidewalk cafes. This ordinance will repeal all sidewalk café references and licensing requirements in Chapter 24 of the Tempe City Code. The Development Services Department and Engineering Division will oversee the permitting of these spaces and/or structures, giving staff and the customer more sidewalk café design flexibility. This agenda item must be considered in conjunction with the Zoning and Development Ordinance No. 2007.74.

PREPARED BY: Kay Savard, Specialty Licenses Coordinator (350-8650)

REVIEWED BY: Bruce Smith, License and Collections Supervisor (350-8509)

LEGAL REVIEW BY: Dave Park, Assistant City Attorney (350-8907)

FISCAL NOTE: No negative fiscal impact is anticipated. Annual sidewalk cafe license fee revenue currently collected by the Tax and License Division will now be collected by the Engineering Division.

RECOMMENDATION: Staff recommends adoption of Ordinance No. 2007.82

ADDITIONAL INFO:

ORDINANCE NO. 2007.82

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 24, TEMPE CITY CODE, RELATING TO PEDDLERS, SOLICITORS AND ITINERANT MERCHANTS BY AMENDING SECTIONS 24-16 AND 24-17 AND REPEALING ARTICLE II, DIVISION 4 RELATING TO SIDEWALK CAFES.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 24-16 of the Tempe City Code is hereby amended to read as follows:

ARTICLE II. MOBILE MERCHANTS, ~~AND KIOSKS AND SIDEWALK CAFES~~

Sec. 24-16. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Identification card means the card issued to any individual in accordance with provisions of this article under a permit.

Kiosk vending means permitted vending from a kiosk or self-contained structure of a permanent or semi-permanent nature, which is allowed to encroach into the public right-of-way.

Mobile merchant means any person who sells any type of tangible personal property, including, but not limited to, food and drink, at or adjacent to the vehicle in which such tangible personal property is carried. This definition shall not include any person providing or offering to provide scheduled delivery of food products to the door of any residence within the city at least once every seven (7) consecutive days.

Mobile sales unit means any vehicle used for carrying tangible personal property for sale at or adjacent to the vehicle in which such tangible personal property is carried. This definition shall not include any person providing or offering to provide scheduled delivery of food products to the door of any residence within the city at least once every seven (7) consecutive days.

Mobile sales unit permit means the printed permit to be carried within any mobile sales unit after issuance of a permit to carry on activity as a mobile merchant.

Permit means the written authorization to carry on mobile merchant, ~~OR kiosk vending or sidewalk cafe~~ activities regulated by this article.

~~Sidewalk cafe means a restaurant or bar which is allowed by the city to encroach into the public right-of-way.~~

Vending means engaging in the business of peddling, selling or displaying for sale any items of tangible personal property.

Section 2. That Section 24-17 of the Tempe City Code is hereby amended to read as follows:

Sec. 24-17. Purposes.

The purposes of this article shall be to protect the health, safety and welfare of residents and of those working within the city, by means of reasonable investigation and regulation of mobile merchants; AND kiosk vendors ~~and sidewalk cafes~~, their employees, agents, lessees or independent contractors, and to levy fees for identification cards, mobile sales unit permits and permits required under this article.

Section 3. That Chapter 24, Article II, Division 4 of the Tempe City Code is hereby repealed as follows:

~~DIVISION 4. SIDEWALK CAFES~~

~~Sec. 24-46. Sidewalk cafe required authorization and regulations.~~

~~(a) It shall be unlawful for any person to operate a sidewalk cafe without first obtaining a permit as required herein or other such applicable permits as required by the city authorizing such activity.~~

~~(b) Sidewalk cafes are subject to the following restrictions:~~

- ~~(1) All services to support sidewalk cafes shall be supplied from within the building;~~
- ~~(2) Advertising or signs of any sort the permitted encroachment area shall conform to the requirements of the Zoning and Development Code;~~
- ~~(3) Pedestrian walkways shall not be split. The use area shall extend laterally no further than the building frontage of the business with which it is associated;~~
- ~~(4) The permittee shall demarcate the permitted use area with a permanent barrier, of a size and type compatible with the decor of the surrounding area, which creates a clear and continuous division between the use area and the public portion of the sidewalk;~~
- ~~(5) The permittee shall maintain at all times a clear passage adjacent to the permitted use area, between the public circulation portion of the sidewalk and every public access doorway into adjacent buildings; and~~

~~(6) Permitted sidewalk cafes shall not obstruct sidewalk pedestrian traffic or create public health and safety hazards and shall leave a minimum clear distance of six (6) feet of sidewalk pedestrian area in all places. All walkways within the confines of a sidewalk cafe shall be level with the public sidewalk and accessible for the physically disabled.~~

~~(c) All sidewalk cafes shall obtain design approval and building permits pursuant to this code prior to the issuance of a permit as required herein.~~

~~(d) The occupation of the city right of way shall be by encroachment permit only, issued by the city engineer pursuant to chapter 29 of this code.~~

~~Sec. 24-47. Application procedure; required insurance.~~

~~(a) Any person desiring a permit to operate a sidewalk cafe within the city shall submit application on forms prescribed by the city to the financial services manager or designee. Application for an original sidewalk cafe permit shall be filed at least sixty (60) days prior to the commencement of the proposed licensing period. Required information shall include, but is not limited to, names and residence addresses of all owners, partners, general managers and principal officers, proposed location and hours, products and costs, equipment to be used and signs.~~

~~(b) The applicant shall also provide three (3) character references, a statement of any prior felony conviction and any prior misdemeanor conviction involving moral turpitude, and any other information which the financial services manager or designee deems necessary. The individual applicant shall also provide proof of health clearance from the county health department before issuance of the permit. The applicants and agents shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the financial services manager or designee.~~

~~(c) No sidewalk cafe permit shall be issued until a certification of insurance is received by the City of Tempe with no less than the following limits: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations, insuring the city against any and all liability or expense that may be incurred by reason of any accident to any person, persons or property arising from or in any way growing out of the use of the right of way by the sidewalk cafe. The general aggregate limit shall apply separately or the general aggregate shall be twice the required per occurrence limit.~~

~~(d) It shall be unlawful for any individual to omit required information from any application or to provide false information on any application submitted. Failure to provide required information or falsification of information shall be grounds for disapproval or revocation of any permit.~~

~~Sec. 24-48. Revocation of permits.~~

~~Any sidewalk cafe permit may be revoked by the financial services manager or designee on the basis of information received after issuance concerning criminal record, or on the basis of violations of this article or any applicable law or for reasons of public health, safety or welfare. Revocation shall be effective on the date set by the city.~~

Section 4. That the fees relating to permits for Sidewalk Cafes in the Schedule of Fees and Charges – Appendix A are hereby repealed.

Section 5. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2007.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney