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CODE ENFORCEMENT  
CITY OF FT. PIERCE

*VENDOR ORDINANCE ISSUES*

*A)* it is recommended that the title reference each section being amended, and to briefly note the character of the change sufficiently so as to put a reader of the title on fair notice of the subject of the amendment. For example, consider addition of something like the following as to each modified section: amending Section 9-76; modifying, deleting and adding certain definitions; amending Section 9-77; conferring certain duties on code enforcement officers; ... and so forth.

*B)* it may be helpful to expand on the goals, findings of fact and intent as set forth in the prefatory language. There is much being done in this ordinance beyond simply expanding "those types of sales to include mobile vending". It may be a little misleading to suggest that the only thing being accomplished here is to expand opportunities for vendors and solicitors by allowing for another form of vending. Moreover, while there is a broad, conclusory statement that public lands "will be impacted by such mobile vending", it is felt that this finding of fact will benefit by identifying whatever particular "impacts" are being addressed through the regulations now being enacted.

*C)* in the definition of "itinerant retail produce vendor", it is recommended that the phrase "... in their natural and unaltered state" be deleted. Otherwise the vendor could make minor changes in the produce so that it is no longer "unaltered" and argue that he or she is somehow not covered by the definition?

*D)* as to the "seasonal sales vendor", that is drafted a little ambiguously and it is not suggested that specific holidays be mentioned else the City possibly be dragged into an argument about whether some other holiday is or is not covered under that section. Instead, please consider application to sale of products traditionally associated with seasonal activity or holidays (and leave it at that).

*E)* the basis for amendment of 9-79 is unclear and it is recommended that the addition be taken out. The inference drawn from this addition is that solicitors and canvassers should not breach the peace but it is okay for anyone else to do so? And if specific state statutes are to be singled out or imposition upon canvassers and solicitors, why stop with s. 877.03. Why not, for instance, include s. 877.02 (Solicitation of Legal Services) or s. 877.04 (Tattooing), and so forth.

*F)* the amendment to Section 9-80 eliminates a \$20 permit fee and substitutes in its place a permit fee as set by resolution. But in addition there is elimination of the annual occupational license fee of \$100. Please confirm that the intent in this instance is to eliminate **both** the permit fee and the occupational license fee.

*G)* as to amendment of Section 9-93, now renumbered as 9-91, it is important to realize that any court, if asked to review the ordinance on constitutional grounds, may well find elements of commercial speech here and would thus probably treat the permitting requirement as a form of "prior restraint" For any permit requirement

involving, as here, fundamental freedoms such as speech to be constitutionally valid it must satisfy three (3) requirements: first, it must set out a very specific, short time period within which the permit may be approved or denied; second, there must be a provision that, in the event the application is not timely acted upon by the administrator, that it will then automatically be deemed approved; third, there must be provision for appeal. It is seen that the third element is covered in Section 9-93a.16, but not the first two.

*H)* the numbering system in the draft ordinance does not conform to the City's numbering system in the City's Code of Ordinances. That is, in the Code of Ordinances, after the section number (ex. 9-81. Same-regulation), what follows are little letters in parentheses; subparts under the lettering are designated by numbering in parentheses. Please add parentheses to the parts and subparts under each section for conformity with code formatting.

*I)* again as to Section 9-91 in its current form, referring to the "plan of the proposed vehicle or unit" as imposed on mobile merchants by Section 9-91a.7. It is suggested that the phrase be defined to say what such a plan is and what is needed. The requirement that such "plan" be "to scale" seems to impose a condition that cannot be met by the applicant without involvement by a professional draftsman. Is that in fact the intent?

*J)* as to Section 9-91a.13 deletion is recommended. The type or manner of any prior criminal offense or the punishment or penalty assessed at any point in the past is not seen as being relevant in the permitting process. That is, this is not seen to relate to any factor in the ordinance that would serve as a basis for denial of the permit, in the draft as now proposed.

*K)* regarding draft Paragraph 9-91a.10.iii, wherein there is exemption for "nonprofit and religious organizations", consideration might be given to borrowing language from s. 501.022(1)(b)(5-7), and making the class of exemptions somewhat broader than it is here.

*L)* please note that there was probably omitted the original language of 9-92, which should be shown with strikeout language through it. Only new language should be underlined.

*M)* unless this is overlooked, there are not seen to be any criteria governing the City Clerk's discretion in whether to grant a permit or not? Reference may wish to be made to s. 501.022(4) as a potential aid to drafting in this regard.

*N)* as to 9-53(b, c), there is seen to be extensive removal of language relating generally to the fees to be imposed for licensure activities under Article IV. If it is simply being transferred to another location, the transfer point is regrettably overlooked and clarification of the current whereabouts of the language will be appreciated. But if,

as appears on superficial inspection, there was indeed blanket removal of all language in Section 9-53(b, c), an explanation of the rationale for that will be appreciated.

*O*) regarding renumbered Section 9-95 (Penalties), it is seen that the CEB/SM is given jurisdiction over revocation of permits where there is fraudulent activity or some other specified reason. Revision is recommended. It is not apparent that Florida law grants jurisdiction to take such action. See s. 162.09 (Providing that Enforcement Board may impose administrative fines). Instead, it may be helpful to consider borrowing language from s. 501(4) and providing a provision for the City Clerk which parallels what is provided regarding the Clerk of the Circuit Court by that statute. Appeal would then be to the City Manager as provided in draft Section 9-92.

*P*) it is not recommended that new draft Section 9-96 be included in its present form. There are no criteria therein for grant of a variance and no substantive justification. The vagueness inhering in this provision permits arbitrary, capricious application and it is simply not sustainable in any constitutional sense. Moreover, if there is to be a process for variance, it is not recommended that there simply be adopted thru reference what is provided in Chapter 22. The provisions there are uniquely shaped to address land use and other zoning issues in that Chapter. Finally, if a variance procedure were to be provided for at all, one wonders why that should not be done for most every other code requirement as well?

*Q*) use of public property for private purposes is ordinarily not permitted. An exception is created for special events and that subject is closely regulated in Chapter 12, Article III. The new Section 9-97 (Use of City property) appears to now carve out vendors and solicitors as a privileged group who are henceforth permitted to use public property and right of way for private purposes, so long as these privileged parties are fortunate enough to “win” in an annual lottery selection. It is believed that creation of such a privileged class may create an issue on equal protection grounds. Moreover, there is a potential issue which arises in conferring special competitive advantage to one class of commercial proprietors, but not to others, under the Sherman Anti-Trust Act. Enactment of Section 9-97 in its present form is not recommended.

*R*) as to new Section 9-112, it is not clear whether there is intended to be a difference between “itinerant retail produce merchants”, as identified there and “itinerant retail produce vendors as referenced in Section 9-76? Please clarify the apparent distinction made between a “merchant” and “vendor”. If there is in fact no such distinction, then, in that event, it is recommended that the title of Section 9-112 track with the term defined in Section 9-79.

*S*) as to Section 9-112(e) which requires application of all regulations set out in Section 9-111, please consider more general language referring to all other requirements of the Code of Ordinances.

*T*) the subject of noise referred to in Section 9-113 (Ice Cream Vendors) is a topic regulated in the City's Noise Ordinance. It is recommended, alternatively, that consideration be given to amendment of Code Section 11-48 (Music or Loud Noises; Hours, Area) and that such section be referenced in Section 9-113. That way all regulations referring to the same subject are kept under one roof and not scattered unnecessarily through the code, thereby presenting potential for confusion and omission.

*U*) as to Section 9-114 (Seasonal Sale Vendors) it appears that the vendors covered by that section are somehow exempt from permitting requirements applying to other vendors. That is, Section 9-114 states that seasonal sale vendors must apply for and obtain a "mobile vending permit pursuant to this division", which is Division 3. But the other general application provisions are found in Division 2. Is the intent to remove seasonal vendors from requirements applying to other kinds of vendors being read correctly?

*V*) as a matter of protocol, it is requested that there be opportunity to review the comments, if any, of other departments, the involvement of which is implicated in this draft ordinance, including the City Clerk, Planning Department and the Police Department.