

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT PIERCE, FLORIDA; AMENDING CHAPTER 9, ARTICLE IV, "PEDDLERS, SOLICITORS AND CANVASSERS"; AMENDING DIVISION 1 - MODIFYING DEFINITIONS, ESTABLISHING THE DUTY TO ENFORCE AND RETAIN RECORDS, MODIFYING PROHIBITED ACTS, AND REQUIRING A PERMIT AND; AMENDING DIVISION 2 - ESTABLISHING PERMIT APPLICATION REQUIREMENTS AND REGULATIONS, PERMIT FEES, EXHIBITION OF PERMIT REQUIREMENTS AND PENALTIES, PROVIDING RIGHTS OF APPEAL, REQUESTS FOR VARIANCES AND PERMITTING LIMITED USE OF PUBLIC RIGHT OF WAY AND; AMENDING DIVISION 3 - ESTABLISHING AND MODIFYING REGULATIONS FOR MOBILE VENDORS, ITINERANT RETAIL PRODUCE VENDORS, ICE CREAM VENDORS AND SEASONAL SALES VENDORS AND; REPEALING ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Code of Ordinances of the City of Fort Pierce, Florida regulates the sale of goods and merchandise by persons operating as vendors or solicitors; and

WHEREAS, the City of Fort Pierce, Florida wishes to expand these types of sales to include mobile vending to benefit its residents and visitors; and

WHEREAS, to ensure that these services remain a benefit and do not become a burden on neighboring businesses and residents, the City of Fort Pierce, Florida shall provide such regulations as necessary; and

WHEREAS, certain limited use of public lands and right of ways will be impacted by such mobile vending being permitted at designated locations within the City limits; and

NOW THEREFORE, BE IT ORDAINED by the City Commission of the City of Fort Pierce, Florida:

SECTION 1. Chapter 9, Article IV of the Code of Ordinances of the City of Fort Pierce, Florida, is hereby amended so that the same shall read hereinafter as follows:

Article IV. – ~~Peddlers,~~ Vendors & Solicitors and Canvassers

Division 1. - Generally

Sec. 9-76. Definitions.

As used in this article:

~~Agent is defined to be a person engaged in telephone canvassing or solicitation, or in a house-to-house canvass, demonstrating or taking orders for any goods, wares or merchandise or taking orders from samples where goods are to be delivered later. Goods, wares and merchandise as herein defined shall be held to include, but not restricted to, a photograph and coupons or tickets good in whole or in part for a photograph, magazine, periodical or other merchandise.~~

~~Canvasser, vendor or solicitor is defined as any individual, whether resident of the city or not, soliciting by telephone or traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed at said time or in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided further, that such definitions shall include any person who, for himself or for another person, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment,~~

~~shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.~~

Commissary is a state approved facility that provides support services for specific required functions to any mobile food vendor, including but not limited to a mobile food vehicle or a mobile food cart. Services required of the commissary are based upon the food sold and the mobile food vendor type. A private residence may not be used as a commissary.

~~Itinerant peddler or hawker is defined to be a nonresident of the city who, by telephone sales, or one who goes from house to house, or place to place, exposing for sale and selling goods, wares or merchandise under the conditions and circumstances stated in the following paragraph.~~

Itinerant Retail Produce Vendor shall mean any person going from place to place who engages in a business, by selling or offering for sale to consumers, any fruit, vegetables, or garden produce, which are sold in their whole, natural and unaltered state.

Mobile Food Dispensing Vehicle (MFDV) is classified as a vehicle-mounted public food service establishment, self-propelled or otherwise movable from place to place. Such vehicles must be self-sufficient for utilities (e.g., gas, water, electricity, and liquid waste disposal). Each MFDV is required to have a state approved commissary that they report to at least once a day. MFDVs may also be referred to as Mobile Food Establishments.

- a. Hot dog carts are MFDVs that limit food preparation to hotdogs and sausages only and the sale of limited pre-packaged food.
- b. Mobile food carts are any non-motorized MFDV used to store, prepare, cook and / or serve food and beverages for immediate consumption.
- c. Ice Cream Vendors and MFDVs that limit food sales to pre-packaged individually portioned frozen novelties, soft served or hand dipped frozen dairy products or frozen water based products.
- d. Lunch Trucks are MFDVs that are transient in nature and specifically authorized to cater to customers on private commercial or industrial property for a short period of time not to exceed 60 minutes.
- e. Mobile food vehicles are any motorized MFDV used to store, prepare, cook and / or serve food and beverages for immediate consumption.

Mobile merchant sales shall include any vendor selling non-food products.

Mobile merchant vehicle shall be any vehicle mounted establishment, which is self-propelled or otherwise movable from place to place utilized for mobile merchant sales.

~~Peddler is defined to be a person who solicits by telephone or who brings goods, wares or merchandise from outside the city or state or where the goods, wares or merchandise is manufactured in the city for sale at retail, and is in this state at the time that all negotiations prior to and at the sale thereof are had, and the goods, wares or merchandise is not sold in original packages in interstate commerce but at retail, in small quantities, by means of telephone solicitation or house to house, or place to place, canvass. Goods ordered, or in transit, that were so ordered without reference to particular sales, shall be deemed to be in the state.~~

Place of business shall include any commercial zoned off-street location, lot, or premises where any truck, wagon, automobile, trailer, cart, or vehicle is parked, with written permission from the property owner, wherein there shall be kept for sale, or to be offered for sale, any prepared food, beverages, fruit, vegetable, or garden produce.

Seasonal sales vendor shall mean outside vendors of products traditionally associated with seasonal sales or holidays.

(Code 1960, § 14-30(a—d))

Sec. 9-77. Duty ~~of police~~ to enforce.

It shall be the duty of any police officer or code enforcement officer of the city to ~~require any person seen soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his solicitor's or canvasser's license and to~~ enforce the provisions of this article against any person found to be violating the same.

(Code 1960, § 14-36)

Cross reference— Police department, Ch. 14.

Sec. 9-78. Records.

~~The chief of police shall~~ All violations of this article shall be reported to the ~~city clerk~~ code enforcement department, who all convictions for violation of this article and the city clerk shall maintain a record for each license permit issued and record the reports of violations therein.

(Code 1960, § 14-37)

Sec. 9-79. Prohibited acts.

- (a) It shall be unlawful for any person to enter upon any private premises without permission or invitation from the occupant or homeowner.
- (b) It shall be unlawful for any solicitor, canvasser or peddler vendor to refuse or fail to leave any private premises in the city upon being requested by the owner, occupant or person in charge thereof.
- (c) No solicitor, canvasser or peddler vendor shall enter in or upon any house, building or other structure or upon any land or property, without the prior consent of the owner or occupant thereof, where there is placed or posted on the premises in a conspicuous position at or near the usual means of ingress, a sign or other form of notice stating or indicating that the owner or occupant thereof forbids or otherwise does not desire persons engaged in such or similar activity to enter upon the premises.
- (d) No solicitor, canvasser or vendor shall conduct themselves or their business in an unlawful manner or in such manner as to constitute a breach of peace, offensive to public decency or menace to the health, safety or general welfare of the public in violation of § 877.03 Florida Statutes.

(Code 1960, § 14-30)

State law reference— Burglary and trespass, F.S. Ch. 810.

Sec. 9-80. ~~Street vendors~~—Permit.

- (a) It shall be unlawful for any person to sell or attempt to sell any commodity by means of vending such commodity upon any street, sidewalk, public right of way or private property in the city, without first securing a permit and paying ~~a fee of twenty dollars (\$20.00) therefor and an annual occupational license fee of one hundred dollars (\$100.00).~~ the annual permit fee, such fee to be set by resolution of the City Commission.
- (b) Violations of this section shall be a Class III violation.

(Code 1960, § 14-61)

~~Sec. 9-81. Same—Regulation.~~

- ~~a.—General. The rules in this section shall be complied with by each person using a vehicle for street vending.~~

~~b.—*Prohibited sales.* It shall be unlawful for any street vendor to sell or attempt to sell any commodity:~~

~~1.—By means of any outcry, sound, speaker or amplifier, or any instrument or device which can be heard for a distance greater than three hundred (300) feet, or when passing a hospital, church or other place of worship during the hours when services are being held.~~

~~2.—Within five hundred (500) feet of any school during the school year.~~

~~e.—*Noise—Vehicle stopped.* It shall be unlawful for any such vendor to use, play or employ the use of any sound, outcry, amplifier, loudspeaker, radio, phonograph with a loudspeaker or amplifier or any other instrument or device when the vehicle such vendor is using is stopped for the purpose of making a sale.~~

~~d.—*Same—Hours.* The use by the vendor of any such noise, instrument or device which emits a loud sound shall be prohibited before the hours of 9:00 a.m. on weekdays and 1:00 p.m. on Sundays, or after 7:00 p.m. on any day.~~

~~e.—*Traffic.* It shall be unlawful for any vendor to:~~

~~1.—Exceed a speed of twelve (12) miles an hour when cruising neighborhoods seeking sales or when attempting to make a sale.~~

~~2.—Stop anywhere within twenty five (25) feet of an intersection when making a sale or attempting to make a sale.~~

~~3.—Double park, or park in any manner contrary to any ordinance relating to parking, when attempting a sale or when making a sale.~~

~~4.—Make a U turn on any block.~~

~~5.—Drive his vehicle backwards to make or attempt to make a sale.~~

~~6.—Sell to any person who is standing in the street.~~

~~7.—Permit any person to hang on the vehicle or permit any person to ride in or on the vehicle except a bona fide assistant or assistants.~~

~~8.—Remain standing or stopped at any place for a period of time exceeding five (5) minutes.~~

~~9.—Sell or attempt to sell along any particular route more than one time during a twenty four hour period.~~

(Code 1960, § 14-62)

~~Sec. 9-82. Seasonal vendors; permit.~~

~~It shall be unlawful for any person to sell or attempt to sell on private property any seasonal commodity without first securing a permit. Seasonal commodities include, but are not necessarily limited to, Christmas trees, flowers, and pumpkins. A permit may not be issued unless the applicant has written permission of the property owner or agent to conduct the seasonal sale for which application is made.~~

(Ord. No. K-09, § 1, 4-17-00; Ord. No. K-142, 3-18-02)

~~Secs. 9-831—9-90. Reserved.~~

Division 2. – License Permit Generally

~~Sec. 9-91. Required.~~

~~It shall be unlawful for any solicitor, canvasser, peddler, hawker, itinerant merchant, transient vendor of merchandise or agent as defined in section 9-76 to engage in such businesses within the corporate limits of the city without first obtaining a permit and license therefor in compliance with the provisions of this article, excepting therefrom persons engaged solely in interstate commerce, who shall be exempt from license fees only.~~

~~(Code 1960, § 14-29)~~

~~Sec. 9-92. Appeal.~~

~~Any person aggrieved by the action of the chief of police or the city clerk in the denial of a permit or license as provided in section 9-94, or the revocation by the city manager in the assessing of the fee as provided in section 9-95(c) shall have the right of appeal to the city commission. Such appeal shall be taken by filing with the city commission, within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The commission shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in section 9-98 for notice of hearing on revocation. The decision and order of the city commission on such appeal shall be final and conclusive.~~

~~(Code 1960, § 14-39)~~

~~Sec. 9-93~~1. Application.

- (a) Applicants for permit ~~and license~~ under this article must file with the city clerk a sworn application in writing ~~in duplicate~~ which shall give the following information:
- (1) Name ~~and description~~ of the applicant.
 - (2) Permanent home address and ~~full local address~~ valid telephone number of the applicant.
 - (3) A brief description of the nature of the business and the goods, food or beverages to be sold.
 - (4) ~~If employed, the name and address of the employer, together with credentials establishing the exact relationship.~~ E-mail address of the applicant.
 - (5) ~~The length of time for which the right to do business is desired.~~ The address of the planned vending site, including the property owner's name and telephone number.
 - (6) ~~The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery.~~ For Mobile Food Dispensing Vehicles:
 - (i) Copy of current license from the State of Florida / Department of Business & Professional Regulations or Department of Agriculture; and
 - (ii) Copy of the vehicle or unit plans as submitted to the State of Florida / Department of Business & Professional Regulations or Department of Agriculture.
 - (iii) Copy of the notarized Commissary Agreement and submitted to the State of Florida / Department of Business & Professional Regulations or Department of Agriculture.
 - (7) ~~A photograph of the applicant, taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner.~~ For Mobile Merchant Sales:
 - (i) Submit a plan of the proposed vehicle or unit.
 - a) The plan does not need to be drawn by a professional, but must be to scale and clear for review.
 - b) The plan should show both a top view and front view of the vehicle or unit.
 - c) The plan should include, but is not limited to, all equipment, shelving, windows, wheels, umbrellas, or awnings.
 - (8) ~~The fingerprints of the applicant and the names of at least two (2) reliable property owners of the county who will certify as to the applicant's good character and business responsibility or, in lieu of the names of the references, such other available evidence as to the good character and business responsibility of the applicant as will~~

- ~~enable an investigator to properly evaluate such character and business responsibility. Copy of a valid vehicle registration for any motorized unit.~~
- (9) ~~A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor. For use of any private commercial property, a limited site plan must be submitted.~~
- (i) ~~The plan does not need to be drawn by a professional, but must be to scale and clear for review. A general survey or sketch will be acceptable. For large properties, only a drawing of the immediate area is required.~~
 - (ii) ~~The plan must show all existing structures or significant features.~~
 - (iii) ~~Diagram of all available parking, identifying both required parking and additional parking spaces and proposed location of unit.~~
 - (iv) ~~Identify appropriate set-backs for accessory structures.~~
 - (v) ~~A notarized affidavit of permission to vend from the property owner, if different from the applicant.~~
- (10) ~~For door-to-door solicitors or vendors:~~
- (i) ~~If employed, the name and address of the employer, together with credentials establishing the exact relationship.~~
 - (ii) ~~The length of time for which the right to do business is desired.~~
 - (iii) ~~Minors conducting home solicitation sales under the supervision of an adult, or solicitors, salespersons, or agents making calls or soliciting orders on behalf of a religious, charitable, scientific, educational, or veterans' institution or other non-profit organization are exempt from this section.~~
- (11) ~~A statement by a reputable physician of the city, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of contagious, infectious or communicable disease. A photograph of the applicant, taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two-inches by two-inches showing the head and shoulders of the applicant in a clear and distinguishing manner.~~
- (12) ~~At the time an applicant requests permission to solicit within the city a fee of twenty dollars (\$20.00) for each applicant shall be paid to the city clerk to cover the cost of investigation of the facts stated in the application, but in no event shall the application be refunded. Photographs of the vehicle or unit, showing front, side and back views.~~
- (13) ~~A sworn affidavit as to whether or not the applicant has been convicted of any felony or misdemeanor, the nature of the offense and the punishment or penalty assessed.~~
- (14) ~~Proof of general liability insurance, such proof in a form acceptable to the City, issued by an insurance company that is licensed to do business in the State of Florida, protecting the applicant from all claims for damages to property or bodily injury, including death, which may arise from operations under or in connection with mobile vending. If applying to use public property or right-of-way, City of Fort Pierce is to be named as an additional insured.~~
- (15) ~~For all motorized mobile vending units, proof of auto liability insurance, such proof in a form acceptable to the City, issued by an insurance company that is licensed to do business in the State of Florida, protecting the applicant from all claims for damages to property or bodily injury, which may arise from the use of a motor vehicle in connection with mobile vending and shall be in an amount no less than \$500,000 per occurrence.~~
- (16) ~~Any permit application and / or review fee that may be assessed by resolution of the City Commission.~~

Sec. 9-94. Investigation; issuance.

- ~~a.—Upon receipt of the completed applications by the city clerk, the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good. At least ten (10) days shall be allowed for such investigation.~~
- ~~b.—If as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the chief of police shall endorse on such application his disapproval and his reasons for the same, and return the said application to the city clerk, who shall notify the applicant that his application is disapproved and that no permit and license will be issued.~~
- ~~c.—If as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the chief of police shall endorse on the application his approval. Such application, signed by the chief of police or his designated subordinate, along with a permit (identification card) shall be returned by the police department to the city clerk who shall, upon payment of the prescribed license fee, if any, deliver to the applicant his permit (identification card) and prescribed license. The said permit (identification card) shall contain the following:~~
- ~~1.—Photograph of applicant.~~
 - ~~2.—Fingerprint of applicant.~~
 - ~~3.—Date of issuance and date of expiration.~~
 - ~~4.—Name and address of applicant, and the business applicant is representing.~~
 - ~~5.—That said permit may be revoked at the discretion of the city commission.~~
 - ~~6.—That the permit is not transferable.~~
 - ~~7.—That the permit must be carried on the person and shown on request.~~
 - ~~8.—Solicitors must not go to back or rear doors.~~
 - ~~9.—Statement that the issuance of said permit is not an endorsement of the bearer or the merchandise or service offered, nor the business methods used in selling the same.~~
 - ~~10.—Signature of the city clerk.~~

(Code 1960, § 14-32)

Sec. 9-92. Issuance

- (a) The City Clerk may revoke, suspend, or deny the issuance of any vendor's license if it is determined that an applicant has:
- (1) Been convicted of, or entered a plea of guilty or nolo contendere to, a crime against the laws of this state or any other state or the United States, involving moral turpitude, fraudulent or dishonest dealing, or the illegal use or sale of a controlled substance.
 - (2) Has obtained a permit by fraud, false statement, misrepresentation, or failure to truthfully answer any question in the required permit application.
 - (3) Has failed to obtain required approvals from the state or obtain a city business tax receipt.
 - (4) Has failed in any material respect to comply with the provision of Sec. 9-91.
- (b) Not later than 30 days after the filing of a completed application for a vendor's license, the applicant shall be notified by the city clerk's office of the decision on the issuance or denial of the license. If the issuance of the license is approved, the city clerk shall issue the license. If the license is denied, the applicant shall be provided with a statement of the reasons therefor, which reasons shall be entered in writing on the application. Failure of the city clerk to place notification of said decision in the mail or personally notify the applicant with acknowledgment shall require immediate issuance of the requested license to the applicant.

Sec. 9-953. Fees.

- (a) ~~The fee which shall be charged by the city for a license under this article shall be one hundred dollars (\$100.00). All fees required for permit application review and the annual permit fee shall be established by resolution by the City Commission.~~
- (b) ~~Permit fees collected under this Article are fees paid for the purpose of defraying the cost of administration of this Article and are declared to be regulatory fees in addition to and not in lieu of the business tax receipt imposed by Sec. 9-16 of this Chapter. The payment of a permit fee under this Article shall not relieve any person of liability for and the responsibility of paying a business tax where it is required by Sec. 9-16 of this Chapter and for doing such acts and providing such information as may be required by this Chapter. None of the license fees provided for by this article shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, he may apply to the city manager for an adjustment of the fee so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the city manager may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The city manager shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make finding of fact from which he shall determine whether the fee fixed by this article is unfair, unreasonable or discriminatory as to applicant's business and shall fix as the license fee for the applicant an amount that is fair, reasonable and nondiscriminatory, or if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the city manager shall have the power to base the fee upon a percentage of gross sales, or any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fees as prescribed by subsection (a). Should the city manager determine the gross sales measure of the fee to be the fair basis, he may require the applicant to submit, either at the time of termination of applicant's business in the city or at the end of each three month period, a sworn statement of the gross sales and pay the amount of fee therefor, provided that no additional fee during any one calendar year shall be required after the licensee shall have paid an amount equal to the annual license as prescribed in subsection (a).~~
- (c) ~~Every applicant not a resident of the city, or who being a resident of the city represents a firm whose principal place of business is located outside the state, shall file with the city clerk a surety bond, running to the city in the amount of one thousand dollars (\$1,000.00) with surety acceptable to and approved by the city attorney, conditioned that the applicant shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business of solicitor, and guaranteeing to any citizen of the city that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor, and further guaranteeing to any citizen of the city doing business with said solicitor, that the property purchased will be delivered according to the representations of said solicitor. Action on such bond may be brought in the name of the city for the use or benefit of the aggrieved person.~~

(Code 1960, § 14-33)

Sec. 9-96. Badges.

The city clerk may issue to each licensee under this article at the time of delivery of his license a badge which shall contain the words "licensed solicitor," the period for which the license is issued and the number of the license, in letters and figures easily discernible from a distance of ten (10) feet. Such badge shall, during the time such licensee is engaging in soliciting, be worn constantly by the licensee on the front of his outer garment in such a way as to be conspicuous.

(Code 1960, § 14-34)

Sec. 9-974. Exhibition of license permit.

~~Solicitors, canvassers, agents or peddlers, hawkers, itinerant merchants or transient~~ Approved vendors of food or merchandise are required to exhibit their licenses at the request of any police officer or any person being solicited permits at all times in a prominent location, no lower than 40" and no higher than 65" above the ground. Approved canvassers or solicitors must show their permit upon the request of any person being solicited or by any representative of the City.

(Code 1960, § 14-35)

Sec. 9-985. Revocation Penalties.

(a) Unless otherwise stated, violations of this article are Class II violations as defined in Section 2-260 and shall be addressed as provided for in Chapter 2, Article XIII.5 of the City Code.

~~(a)~~ (b) Permits and licenses issued under the provisions of this article may be revoked by the city clerk after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license permit;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on or conduct of a business as solicitor, canvasser, agent, peddler, hawker, itinerant merchant or transient vendor or activities for which the city has issued a permit under this article;
- (3) Any Two or more violations of this article;
- (4) Conviction of any crime or misdemeanor involving moral turpitude Operating outside vending locations approved under the permit issued; or
- (5) Conducting the business of soliciting, canvassing or peddling vending in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- (6) Failure to comply with any conditions included in the permit.

Sec. 9-96. Appeal

~~(b)~~ Any person aggrieved by the denial or revocation of a permit as provided in this article shall have the right to appeal to the city manager. Such appeal shall be taken by filing with the city manager's office, within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the ground of the appeal. Complaint The city manager shall set a date and the time and place of hearing of such appeal. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for hearing. The decision and order of the city manager on such appeal shall be final and conclusive.

Sec. 9-97. Request for Variance.

Any person who wishes to obtain a mobile vending permit that does not comply with Sec. 9-111 (b) of this article must petition the city commission for a variance. Variance requests will not be accepted for mobile vending permits issued for public property use.

- (a) Application for a variance shall be made by the owner of the property where the variance is requested by filing an application on a form prescribed by the city and submitted to the city clerk's office.
- (b) The applicant is responsible for submitting the variance request fee, which shall be set by resolution as well as all advertising costs.
- (c) The city commission shall hold a public hearing prior to acting on the variance request.

- (d) In permitting a variance, the city commission may impose, in addition to those standards and requirements expressly specified in this chapter, any condition which it finds to be necessary to protect the best interest of the surrounding property of the city.

Sec. 9-98. Use of City Property.

- (a) The City will maintain a map of approved vending locations that utilize public property or right of way, which will be maintained in the City Clerk's office.
- (b) Approved city vending locations will be assigned by lottery, which shall be drawn annually at the first Commission meeting in September.
- a. "Notice of Vending Opportunities for the South Beach and Downtown Areas" shall be publicly advertised in a newspaper of general circulation fifteen (15) days prior to the drawing and shall indicate the pending availability of exclusive vending sites, the terms of such availability, including the date, place and time of the lottery.
 - b. Vendors who wish to participate in the annual lottery must provide a completed application and all required documents as required in Sec. 9-91 of this chapter.
 - c. All qualified vendors shall have their names placed into containers for a public drawing by the city clerk.
 - d. The rights to use public property assigned by the lottery shall be for a term of 12 months, beginning on October 1st and expiring on September 30th of the following year.
 - e. The City Commission may call for a special lottery to be held for vending sites that become available during the standard license period due to vacancy, abandonment, or enforcement action. The city clerk shall specify the date, time and place for the holding of a special lottery for such designated vending site(s) and shall publicly advertise said information as for a posted notice lottery.
- (c) No other use of city property or right of way is permitted without a special event permit, a valid sidewalk café permit or approval of the City Commission, as provided by this section.

(Code 1960, § 14-38)

Secs. 9-99—9-110. Reserved.

DIVISION 3. ~~ITINERANT PRODUCE VENDOR'S LICENSE~~ MOBILE VENDING

~~Sec. 9-111. Definitions.~~

~~For the purposes of this division:~~

~~*Itinerant retail produce merchant* shall mean any person who engages within the limits of the city in a seasonable business during certain seasons of the year only, by selling or offering for sale at retail to consumers, any fruit, meat, meat products, vegetables, garden produce, flowers or shrubs.~~

~~*Place of business* shall include any commercial zoned off street location, lot, or premises where any truck, wagon, automobile, trailer, or other vehicle is parked, with written permission from the property owner, wherein there shall be kept for sale, or to be offered for sale, any fruit, meat, meat products, vegetables, garden produce, flowers, or shrubs. It shall be unlawful for any person to place or cause to be placed at such place of business any box, crate, stand, counter, or shelving independent from said truck, wagon, automobile, trailer, or other vehicle used in and about the conduct of such business.~~

Sec. 9-111. General Regulations.

- (a) The telephone number included on the permit application must remain valid and active at all times. The vendor is responsible for notifying the city of any changes to their contact information.

- (b) Mobile vending units must comply with the following minimum distance requirements, which shall be measured from the approved vending location to the nearest point of an established property line:
 - (1) 500 ft. from a similar type business
 - (2) 300 ft. from a school or church
 - (3) 1000 ft. from an approved special event
- (c) May not block the ingress / egress to any property, sidewalk or street.
- (d) May not block or impede pedestrian or vehicular traffic.
- (e) Mobile vending units operating on the sidewalk or City right-of way must allow for five (5) foot clear pedestrian clearance.
- (f) May only operate at the approved location, clearly identified on the permit.
- (g) May have one (1) advertisement sign with a maximum size of sixteen (16) square feet. Such sign may not be free standing, illuminating, moving, flashing or utilizing neon color typically reserved for emergency services. Such restriction to be separate from any business name, decal or logo professionally installed on any motorized MFDV.
- (h) May have one (1) menu sign with a maximum size of nine (9) square feet.
- (i) No amplified sounds, music or other loud noises, except as provided for in Sec 9-113 – Ice Cream Vendors.
- (j) A trash receptacle must be provided and must be removed by the operator daily. Trash may not be placed within public street side trash receptacles.
- (k) Mobile vendors are responsible for picking up all litter and waste within twenty-five (25) feet of their unit.
- (l) No wastewater leakage or any other leakage is allowed.
- (m) A single umbrella is permitted provided it is maintained in good condition and does not impede traffic or block clear vision areas.
- (n) It shall be unlawful to place any chair, table, box, crate, stand, counter or shelving independent from the approved mobile vending unit.
- (o) No mobile vending unit is to be left unattended at any time and must be removed from the location when not in operation.

(Code 1960, § 11-27; Ord. No. I-123, § 7, 8-5-85)

Sec. 9-112. ~~Required~~ Itinerant Retail Produce Vendor.

- (a) Every person who engages in the business of an itinerant retail produce ~~merchant~~vendor within the corporate limits of the city, before engaging in such business, shall apply for and obtain a ~~license~~ mobile vending permit ~~therefor~~ from the city ~~clerk to do so~~ pursuant to this division.
- (b) ~~No occupational license fee shall be required for the sale by any farmer of any fruits, vegetable or garden produce raised by such farmer, exhibiting a valid Florida grower's permit.~~ A business tax receipt is not required for itinerant retail produce vendors.
- (c) All products and produce offered for sale under this division must be clean, wholesome and in good sanitary condition and their state and condition shall comply with the pure food laws of the state.
- (d) Itinerant retail produce vendors are permitted to vend from any truck, wagon, automobile, trailer or other vehicle provided that the vehicle is properly registered with the State of Florida. A copy of such registration shall be submitted with the permit application.
- (e) All other regulations as outlined in section 9-111 of this chapter shall apply.

(Code 1960, § 11-28; Ord. No. I-123, § 8, 8-5-85)

~~Sec. 9-113. Approval of health department required.~~

~~An applicant for a license under this division shall receive approval of the county health department as to the location and vehicle or vehicles to be used in the conduct of the business.~~

Sec. 9-113. Ice Cream Vendors.

- (a) General. The rules in this section shall apply to each person lawfully permitted as an ice cream vendor.
- (b) Prohibited sales. It shall be unlawful for any ice cream vendor to sell or attempt to sell any commodity:
 - (1) By means of any outcry, sound, speaker or amplifier, or any instrument or device which can be heard for a distance greater than three hundred (300) feet, or when passing a hospital, church or other place of worship during the hours when services are being held.
 - (2) Within five hundred (500) feet of any school during the school year.
- (c) Noise—Vehicle stopped. It shall be unlawful for any such vendor to use, play or employ the use of any sound, outcry, amplifier, loudspeaker, radio, phonograph with a loudspeaker or amplifier or any other instrument or device when the vehicle such vendor is using is stopped for the purpose of making a sale.
- (d) Same—Hours. The use by the vendor of any such noise, instrument or device which emits a loud sound shall be prohibited before the hours of 9:00 a.m. on weekdays and 1:00 p.m. on Sundays, or after 7:00 p.m. on any day.
- (e) Traffic. It shall be unlawful for any vendor to:
 - (1) Exceed a speed of fifteen (15) miles an hour when cruising neighborhoods seeking sales or when attempting to make a sale.
 - (2) Stop anywhere within twenty-five (25) feet of an intersection when making a sale or attempting to make a sale.
 - (3) Double-park, or park in any manner contrary to any ordinance relating to parking, when attempting a sale or when making a sale.
 - (4) Make a U-turn on any block in a residential zone.
 - (5) Drive his/her vehicle backwards to make or attempt to make a sale.
 - (6) Sell to any person who is standing in the street.
 - (7) Permit any person to hang on the vehicle or permit any person to ride in or on the vehicle except a bona fide assistant or assistants.
 - (8) Remain standing or stopped at any place for a period of time exceeding five (5) minutes.
 - (9) Sell or attempt to sell along any particular route more than one time during a twenty-four-hour period.

(Code 1960, § 11-29)

Cross reference— Health, § 2-261 et seq.

~~Sec. 9-114. Screens on vehicle windows.~~

~~All windows and other openings of the truck, wagon, automobile, trailer or other vehicle, or compartments where fruits, vegetables or garden produce for human consumption are stored or handled, shall be closed by metal screens having a mesh not coarser than sixteen (16) wires to the inch as will as far as possible keep out all flies and other sources of contamination.~~

Sec. 9-114. Seasonal Sale Vendors.

The rules of this section shall apply to each person lawfully permitted as a Seasonal Sales Vendor.

- (a) Every person who engages in the business of seasonal sales within the corporate limits of the city, before engaging in such business, shall apply for and obtain a mobile vending permit from the city pursuant to Division 2 of this Article.
- (b) Tents or canopies larger than 12' x 12' are prohibited unless a supplemental tent permit is obtained. Application for such permit shall be made with the Building Department. A sketch of the property showing the location of the tent or canopy on the property and a certificate of flame resistance shall be required to be submitted with the application.
- (c) Seasonal sales permits will be issued no sooner than thirty (30) days prior to the associated holiday and shall expire seven (7) days following the holiday.

(Code 1960, § 11-30)

~~Sec. 9-115. Condition of products; compliance with state law.~~

~~All products and produce offered for sale under this division must be clean, wholesome and in good sanitary condition and their state and condition shall comply with the pure food laws of the state.~~

~~*(Code 1960, § 11-31)*~~

~~*State law reference—Food generally, F.S. Ch. 500.*~~

~~Sec. 9-116. Condemnation authority given to health officers.~~

~~It shall be lawful for the county health officer or his designated representative to condemn, take and destroy, or cause to be condemned, taken and destroyed, any fruit, vegetables or garden produce which, in his opinion, is unwholesome or unfit for human consumption by reason of unsoundness, contamination, adulteration or sophistication.~~

~~*(Code 1960, § 11-32)*~~

~~Sec. 9-117. Manner of transporting produce; standards for vehicles, receptacles.~~

~~All fruits, vegetables, garden produce, flowers and shrubs under this division shall be so carried and conveyed that they shall not tend to injure or annoy the public health or comfort, and only in vehicles or receptacles which are neat and clean and do not leak.~~

~~*(Code 1960, § 11-33)*~~

~~Sec. 9-118. Assistant allowed, limitation.~~

~~Upon a truck, wagon, automobile, trailer or other vehicle licensed under the provisions of this division, there shall be permitted only one helper or assistant to the driver or operator of such vehicle.~~

~~*(Code 1960, § 11-34)*~~

~~Sec. 9-119. Itinerant vending of foods, flowers, etc., on city streets.~~

~~It shall be unlawful for any person to engage in or manage the business of vending, hawking, peddling, selling or offering for sale at retail to consumers upon any public street, alley, public place or highway within the city from any truck, wagon, automobile, trailer or other vehicle driven by power or otherwise, any fruit, meat, meat products, vegetables, garden produce, flowers, shrubs, nuts, popcorn, sandwiches, pastries, candy or carbonated drinks.~~

~~*(Code 1960, § 11-26)*~~

~~*Cross reference—Streets and sidewalks, Ch. 17.*~~

Secs. 9-12015—9-130. Reserved.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are and the same shall be repealed and shall be of no further force or effect whatsoever.

SECTION 4. This Ordinance is and the same shall become effective immediately upon final passage hereof.

Linda Hudson, Mayor

ATTEST:

Linda W. Cox
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Robert V. Schwerer, Esquire
City Attorney