

**TAB 6**

**POINT PAPER**  
**REGULATION OF ICE CREAM VENDOR TRUCKS**

**PROBLEM:**

In 2007, the Board of County Commissioners of Manatee County, Florida enacted County Ordinance 07-74, which regulates and licenses the vehicles, and operators utilized in the vending of ice cream. This Ordinance provides for the inspection of proposed vehicles by the Manatee County Sheriff's Office, the licensure of the vendor by Manatee County, and the requirement for certain safety equipment and signage on the vehicles as well as evidence of insurance. Further, the Ordinance provides for a background check on all vendors and disqualifies certain persons from licensure as a vendor.

**BACKGROUND:**

The City of Palmetto has expressed an interest in adopting or "Opting In" to this Ordinance to provide a clear and articulate means by which the Palmetto Police Department as well as Code Enforcement Officers of the City of Palmetto may enforce certain provisions of the Ordinance. The Manatee County Sheriff's Office will continue to inspect vehicles and conduct background investigations on proposed vendors. Adoption of this Ordinance would provide members of the Palmetto Police Department the clear authority to stop and inspect vehicles and operators for compliance with the provisions of the Ordinance.

**ALTERNATIVES:**

1. Adopt or "Opt In" to Manatee County Ordinance 07-74.
2. Do not adopt or "Opt In" to Manatee County Ordinance 07-74.

**RECOMMENDATIONS:**

Adopt Manatee County Ordinance 07-74.

**BUDGET IMPACT:**

None

FILED FOR RECORD  
R. B. SHORE

ORDINANCE NO. 07-74

2007 OCT -8 AM 9: 37

CLERK OF THE CIRCUIT COURT  
MANATEE CO. FLORIDA

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF  
MANATEE COUNTY, FLORIDA, RELATING TO VENDING ON  
PUBLIC ROADS; AMENDING THE MANATEE COUNTY CODE OF  
ORDINANCES; CREATING ARTICLE II OF CHAPTER 2-19  
REGULATING VENDING ACTIVITIES FROM ICE CREAM TRUCKS  
ON ROADWAYS IN THE COUNTY; PROVIDING FOR CODIFICATION  
PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE  
DATE.**

DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

2007 OCT - 1 AM 10: 10

FILED

**WHEREAS**, pursuant to Article VIII, Section 1, Florida Constitution, and Section 125.01, Florida Statutes, the Board of County Commissioners of Manatee County, Florida (the "Board") has the authority to regulate conduct and behavior within Manatee County (the "County"), and to adopt ordinances effecting such regulations; and

**WHEREAS**, in adopting this ordinance, the Board intends to provide for the regulation of activities on and along public roads in the County pursuant to the general police powers of the County, and not to provide for the regulation of traffic in accordance with the authority provided to the County under Chapter 316, Florida Statutes; and

**WHEREAS**, the Board recognizes a compelling governmental interest in providing and promoting a safe and efficient transportation system within the County; and

**WHEREAS**, vending activities occurring on public roads may create a danger to the health, safety, and general welfare of the public by potentially causing distractions to motorists, unsafe pedestrian movement within travel lanes, sudden stoppage or slowdown of traffic, rapid lane changing and other dangerous traffic movement, increased vehicular accidents, public and private property damage, and motorist and pedestrian injuries and fatalities; and

**WHEREAS**, the Board finds that vending activities occurring on public roads where the posted speed limit exceeds thirty (30) miles per hour is incompatible with the normal and safe movement of traffic; and

**WHEREAS**, owners and operators of ice cream trucks intend to attract people, and in particular children, into or near roadways and other places where motor vehicles travel for the purposes of vending; and

**WHEREAS**, two young children died within the last two years in the County following traffic accidents with ice cream trucks vending, or attempting to vend, on public roads within the County; and

**WHEREAS**, the Board believes that these deaths may have been avoided had stricter regulations been in place for ice cream trucks operating in the County; and

**WHEREAS**, the Board desires to regulate ice cream trucks within the County to better provide for and protect the public health, safety, and welfare and with the hope that tragedies may be avoided in the future.

**NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Manatee County, Florida:

**SECTION 1.** Findings. The Board of County Commissioners hereby adopts and incorporates by reference the Recitals set forth above as findings of the Board.

**SECTION 2.** Amendment of the Code of Ordinances. Article II of Chapter 2-19 of the Manatee County Code of Ordinances is created to read as follows:

Chapter 2-19. Licenses and Miscellaneous Business Regulations

Article II. Regulation of ice cream trucks vending on public roads.

Section 2-19-21. Definitions; territory embraced.

(a) Definitions. As used in this section, the following words, terms, and phrases shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

- (1) "Ice Cream Truck" shall mean every motor vehicle from which ice cream, ice milk, frozen dairy products, ice flavored with syrup, or other confections are sold at retail and shall include all vehicles subject to regulation pursuant to Section 316.253, Florida Statutes, as may be amended.
- (2) "Ice Cream Truck Operator" shall mean the person or persons driving and/or selling products from an ice cream truck.
- (3) "Public Road" shall mean all roads within the County designated as public roads pursuant to Section 335.01, Florida Statutes, as may be amended, which includes all roads open and available for use by the public and dedicated to the public use according to law or by prescription. Such public roads shall include the surface paved or maintained for vehicular travel along with any curb or median associated with such roads.
- (4) "Vending Activities" shall mean the sale of, or the attempt to sell, any product from an ice cream truck.

(b) Territory embraced. This article shall apply throughout the unincorporated area of Manatee County.

Section 2-19-22. Ice Cream Truck Inspections.

Inspection Required. Beginning April 1, 2008, no vending activities shall occur from any ice cream truck unless and until such ice cream truck has been inspected and certified to ensure the vehicle complies with the requirements of this section and other applicable regulations.

(a) Inspection. The required inspection shall be completed by the Sheriff's Office, which shall establish standard procedures by which such inspections are completed.

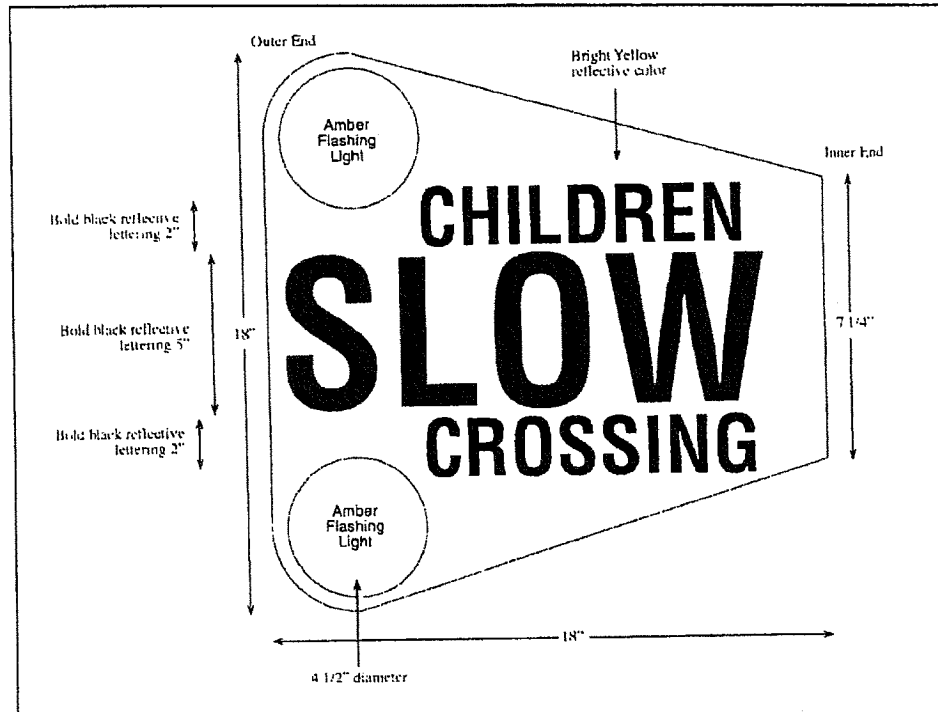
(b) Fee. Any fee for inspections required pursuant to this subsection shall correspond to the costs of inspection, shall be established by resolution of the Board of County Commissioners, and shall be retained by, or an equivalent amount budgeted for, the Sheriff's Office. If no such resolution is enacted, there shall be no fee.

(c) Equipment requirements for ice cream trucks. In addition to all other equipment required by law, every ice cream truck engaged in vending activities in the County shall be equipped with:

- (1) Signal lamps mounted at the same level and as high and as widely spaced laterally as practicable. These lamps shall be at least five (5) inches in diameter and shall display two alternately flashing amber lights visible from a distance at least five hundred (500) feet to the front and rear in normal sunlight upon a straight level highway.
- (2) A signal arm that can be extended horizontally from the left side of the vehicle. This arm shall be yellow with black lettering and contain two alternately flashing amber lights three to five inches in diameter and visible at three hundred (300) feet to the front and rear of the vehicle in normal sunlight upon a straight level highway. The bottom of the signal arm shall be no less than forty-two (42) inches above the highway upon which the vehicle stands. An example of the design, size, and specifications for such a signal arm is shown on Figure 1, below.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

Figure 1. Signal Arm.



- (3) Exterior mirrors. Each ice cream truck shall be equipped with a system of exterior mirrors meeting the following requirements:
- A front-view mirror system providing the driver, while seated in the driver's seat, with indirect vision of the blind spot otherwise obscured by the hood and fenders of the vehicle. The front-view mirror system shall allow the driver of an ice cream truck to see any persons or objects across the entire width of the vehicle from ground level up and from the front wheels forward to the point where the driver can see by direct vision.
  - A rear view mirror system providing the driver, while seated in the driver's seat, with indirect vision of the area directly behind the vehicle. The rear-view mirror system shall allow the driver to see any persons or objects across the entire width of the vehicle from ground level up to a height of thirty-six (36) inches and from the rear wheels back to a point at least thirty-six (36) inches directly behind the center of the vehicle.
  - A side-view mirror system providing the driver, while seated in the driver's seat, with indirect vision of the right and left sides of the vehicle. The side-view mirror system shall allow the driver to see any persons or objects along the entire side of the vehicle from ground level up and to a distance at least two hundred (200) feet to

the rear of the vehicle. The side-view mirror system shall cover the entire area from that covered by the front-view mirror system to that covered by the rear-view mirror system, and together with the front- and rear-view mirror systems, the side-view mirror system shall allow the driver to view the areas around the right and left front and rear corners of the vehicle from ground level up to a height of thirty-six (36) inches or to the point where the driver can see by direct vision, whichever is lower.

d. Alternatively, to the above described mirror(s), video camera(s) that allow the driver, while seated in the driver's seat, to view the identical spaces and areas required to be visible in the respective mirror(s) described above, which video camera(s) shall have a display area of adequate size, not less than 3" by 3", to allow a child within the field of vision to be easily discernible to the driver.

- (4) Signs or decals on both the front and the rear of the vehicle containing the words "ICE CREAM TRUCK" and "SLOW CHILDREN CROSSING" in lettering at least six (6) inches in height and visible from a distance at least three hundred (300) feet to the front and rear in normal sunlight upon a straight level highway.
- (5) A sign or decal on each the driver and passenger sides of the vehicle containing the name, business address, and telephone number of the owner of the ice cream truck in contrasting lettering at least two (2) inches in height.
- (6) A sign or decal on each the driver and passenger sides of the vehicle containing the words "PARENTS: PLEASE WATCH YOUR CHILDREN AND KEEP THEM SAFE" in contrasting lettering at least six (6) inches in height.
- (7) An exhaust system which complies with Section 316.272, Florida Statutes, as amended.
- (8) An audible reverse warning device that automatically emits a beeping sound when the vehicle's transmission is in "Reverse".
- (9) A minimum five (5) pound "ABC" type fire extinguisher with a current inspection certificate.

(d) Insurance required. In addition to complying with any other insurance requirements imposed by law, the owner of an ice cream truck to be operated in the County shall procure and maintain a liability insurance policy for the vehicle issued by an insurance company authorized to do business in the State of Florida and providing for at least fifty thousand dollars (\$50,000) per occurrence in combined bodily injury liability insurance and property damage liability insurance.

- (1) Such insurance shall be maintained at all times while the ice cream truck is being used for vending activities within the County.

- (2) Proof of insurance shall be kept in the ice cream truck for which it was issued while any vending activities are occurring and shall be produced upon demand of any law enforcement officer or code enforcement officer.
  
- (e) Cleanliness of vehicle. The interior and exterior of an ice cream truck, including all equipment therein, shall be kept clean and sanitary and maintained in good repair at all times. The vehicle must have a trash receptacle to dispose of all litter that is generated from products sold from the ice cream truck.
  
- (f) Expiration and re-inspections. A certificate issued pursuant to this subsection shall expire one (1) year from the date of issuance. Re-inspections shall be handled in the same manner as initial inspections.
  
- (g) Inspection certificate automatically voided. An inspection certificate shall be automatically deemed void should the vehicle owner fail to maintain the standards for approval at any time prior to the certificate's expiration.
  
- (h) General terms applicable to all inspected ice cream trucks.
  - (1) Issuance of an inspection certificate for an ice cream truck shall not relieve any ice cream truck operator of meeting the operator permit requirement.
  - (2) An inspection certificate shall be vehicle-specific and nontransferable.
  - (3) The original inspection certificate shall be kept in the ice cream truck for which it was issued while any vending activities are occurring and shall be produced upon demand of any law enforcement officer or code enforcement officer. In addition to the original inspection certificate, the Sheriff may issue a decal to be affixed to the vehicle evidencing its successful inspection and indicating the month and year by which the vehicle must be reinspected.
  - (4) Copies of all inspection certificates shall be retained by the County Administrator or his or her designee and by the Sheriff's Office.
  - (5) The requirements of this subsection are in addition to any and all legal requirements imposed by the federal, state, and/or local government for motor vehicles, and particularly for ice cream trucks.

#### Section 2-19-23. Ice Cream Truck Operator Permits.

Operator permit required. Beginning April 1, 2008, no ice cream truck operator shall undertake any vending activities unless and until such ice cream truck operator has obtained an operator permit pursuant to this section.

- (a) Application. The applicant shall submit a complete application to the County Administrator or his or her designee. The application shall contain the



following information: (i) the legal name of the individual applying for the permit along with any aliases; (ii) the applicant's Social Security number; (iii) the applicant's date of birth; (iv) the applicant's current driver's license numbers and the state of issuance for each; (v) the applicant's street and mailing addresses; (vi) a list of all jurisdictions in which the applicant has held or currently holds a driver's license; (vii) a list of the applicant's convictions, if any, for felony offenses or misdemeanor driving offenses, including the date of adjudication and the jurisdiction where the conviction occurred; and (viii) the signature or other appropriate mark of the applicant. The signature or mark provided shall certify that all information provided is true and accurate and that the applicant agrees to defend, indemnify, and hold harmless the County and its respective officers, agents, and employees from any suits, actions, and claims arising out of or in any way connected with the activities permitted under an operator permit. No incomplete applications shall be processed. If an application is deemed incomplete for any reason, the County Administrator or his or her designee, not later than ten (10) days following receipt of the application, shall inform the applicant in writing of the reason(s) for such determination. The time period for approval or denial of an application shall not commence until a complete application form is received.

(b) Fee. Any fee for applying for a permit pursuant to this subsection shall correspond to the administrative costs of review and issuance and shall be established by resolution of the Board of County Commissioners. If no such resolution is enacted, there shall be no fee to obtain a permit.

(c) Processing. Within thirty (30) days following receipt of the complete application, the County Administrator or his or her designee shall either deny or approve the operator permit application in writing. If an application is denied, the County Administrator or his or her designee shall state the reasons for denial. If no final decision is made to approve or deny a permit within such thirty (30) days, the application shall be deemed to be approved on a temporary basis until a final determination is made.

(d) Standards for approval. An operator permit shall be approved only upon verification that:

- (1) The applicant (i) is not required by any governmental jurisdiction to register as a sexual offender, sexual predator, or such other similar classification as may exist in the state or territory of conviction; (ii) has no convictions within the preceding three (3) years in any governmental jurisdiction for reckless driving, driving under the influence, or such similar offenses as may exist in the jurisdiction of conviction; and (iii) has no more than three (3) total convictions during his or her lifetime in any governmental jurisdiction for reckless driving, driving under the influence, or such similar offenses as may exist in the jurisdiction of

conviction. A criminal background check shall be completed to verify this.

- (2) The applicant possesses a valid driver's license and is not a habitual traffic offender under the definition of Section 322.264, Florida Statutes. A review of the applicant's permanent driving record for Florida and all other jurisdictions where the applicant holds or has held a driver's license shall be completed to verify this.

(e) Expiration and renewals. An operator permit issued pursuant to this subsection shall expire three (3) years from the date of issuance. Renewals shall be handled in the same manner as new applications.

(f) Permit automatically voided. An operator permit issued in error shall automatically be rendered void if the County finds that the application for that permit contained any false or misleading information or failed to disclose any material information requested by the application. An operator permit shall be automatically void should the permit holder fail to maintain the standards for approval pursuant to Section 2-19-23(d) at any time prior to the permit's expiration.

(g) Reporting requirement; interim review. An operator permit holder shall be responsible for notifying the County of any changes to the information required to be provided on an application while the permit application is under review and/or before the expiration of an issued permit. Upon such notification, or at any other time prior to expiration of a permit, the County may review a permit holder's criminal and/or driving records to ensure the standards for approval continue to be met. Should the County find upon review that a permit holder's status has changed such that he or she is no longer eligible to obtain or hold a permit, the County shall immediately notify the permit holder at his or her address of record that the permit is void pursuant to this Section 2-19-23(g), and that vending activities in the County must have ceased as of the date on which the permit was automatically voided.

(h) Safety test. The Board may by resolution adopt a standard safety test as a requirement of issuance of an operator permit. If so adopted, the test must be completed before an applied-for permit is issued or a previously issued permit is renewed. Such test requirement may include the viewing of a street vending safety film.

(i) General terms applicable to all operator permits.

- (1) Issuance of an operator permit shall not relieve any person of the annual inspection requirement for any ice cream truck he or she may operate.
- (2) An operator permit shall be nontransferable.
- (3) An operator's original permit shall be kept in the ice cream truck while that operator is engaged in any vending activities and shall be produced

upon demand of any law enforcement officer or code enforcement officer.

- (4) A copy of each issued operator permit shall be retained by the County Administrator or his or her designee, and a copy forwarded to the Sheriff's Office.

#### Section 2-19-24. Operating Restrictions.

Beginning April 1, 2008, an ice cream truck shall not be operated in violation of the following restrictions:

- (a) An ice cream truck operator shall:
  - (1) Not vend before 10:00 a.m. or after sunset;
  - (2) Not vend on public roads where the speed limit exceeds thirty (30) miles per hour;
  - (3) Vend only at locations where the view of the roadway is clear and unobstructed for at least two hundred (200) feet both ahead of and behind the vehicle;
  - (4) Not vend within five hundred (500) feet of any property used as a school from one (1) hour before the start of the regular school day to one (1) hour after the end of the regular school day; except on days when school is not attended by children or when such vending occurs on school property pursuant to the written approval of the school's principal or other chief administrator;
  - (5) Vend only when the ice cream truck is lawfully parked or stopped pursuant to this section and all other applicable laws;
  - (6) Vend only from the side of the truck away from moving traffic and as near as possible to the curb or edge of the public road;
  - (7) Not vend to a person standing in the roadway; and
  - (8) Not stop on the left side of any public road to vend or attempt to vend.
- (b) The operator of an ice cream truck that is stopped on a public road for the purpose of vending shall actuate the signal lamps and extend the "Slow Children Crossing" signal arm required by Section 2-19-22(c)(1) and (2). Such lights and signal arm shall not be used when the truck is in motion nor at any time the truck is stopped for a purpose other than vending.
- (c) An ice cream truck operator shall not back the truck during or immediately following any vending activities or when there is a child within fifty (50) feet behind the vehicle.
- (d) Sound amplification, if used, shall be restricted to the playing of non-vocal music, shall not be used while the vehicle is stopped or parked, shall not be audible at a distance exceeding five hundred (500) feet, and shall not be used

within five hundred (500) feet of hospitals, schools, or churches or other houses of worship.

**Section 2-19-25. Enforcement; violations.**

The Sheriff and other law enforcement agencies are authorized to enforce this Article. Any violation of any provision of this Article shall be prosecuted as provided in Section 125.69, Florida Statutes, and shall be punishable upon conviction by a fine not to exceed \$500 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment. Each violation of this Article shall constitute a separate offense. In addition to the criminal penalties provided herein, the county may institute any appropriate civil action or proceeding, including suit for injunctive relief, as may be necessary in order to prevent or abate violations of this section.

**SECTION 3. Codification.** The publisher of the County's Code of Laws, the Municipal Code Corporation, is directed to incorporate the amendments included in Section 2 of this Ordinance into the Code of Ordinances.

**SECTION 4. Severability.** If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or other provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

**SECTION 5. Effective Date.** This Ordinance shall become effective immediately upon filing in the Office of the Secretary of State in Tallahassee, Florida.

**[SIGNATURE PAGE FOLLOWS]**

**PASSED AND DULY ADOPTED**, with a quorum present and voting, by the Board of County Commissioners of Manatee County, Florida, this the 25th day of September, 2007.

**BOARD OF COUNTY COMMISSIONERS OF  
MANATEE COUNTY, FLORIDA**

By: *Amy Stein*  
Amy Stein, Chairman



ATTEST: **R.B. SHORE**  
Clerk of the Circuit Court

By: *Susan B. Romine*  
Deputy Clerk



STATE OF FLORIDA, COUNTY OF MANATEE  
This is to certify that the foregoing is a true and correct copy of the documents on file in my office.

Witness my hand and official seal this 26<sup>th</sup> day of

September, 2007

R.B. SHORE  
Clerk of Circuit Court

By: *Maggie Hamilton*, D.C.