

TAB 4

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

**CITY OF PALMETTO
ORDINANCE 08-975**

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, ADOPTING BY REFERENCE MANATEE COUNTY ORDINANCE 07-74 CONCERNING THE REGULATION OF VENDING FROM ICE CREAM TRUCKS ON PUBLIC RIGHTS OF WAY; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, municipalities of the State of Florida are authorized pursuant to Article VIII, Section 2(b), Florida Constitution, to exercise such powers as necessary to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, the Florida Legislature has further implemented the constitutional provisions by adopting the Municipal Home Rule Powers Act, Chapter 166, Part I, F.S., which confirms that municipalities have the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and,

WHEREAS, within the above-referenced grant of powers, the City of Palmetto (“City”) has the authority to generally establish appropriate procedures and policies relating to protection of the public health, safety and welfare; and,

WHEREAS, in adopting this ordinance, the City intends to provide for the regulation of activities in and along the public rights of way pursuant to general police powers, and not to provide for the regulation of traffic in accordance with the authority provided to the City in Chapter 316, Florida Statutes; and

WHEREAS, the City Commission recognizes a compelling government interest in promoting safe roadways and protecting adults and children from potential hazards in those roadways; and

WHEREAS, the City Commission finds that unregulated vending activities taking place on or along the public rights of ways may create a danger to the public by causing distractions to motorists, unsafe pedestrian movement within travel lanes, irregular stopping, starting, slowing and movement of vehicles, increased vehicular traffic accidents, and other dangers to motorists and pedestrians; and

WHEREAS, the City Commission finds that vending activities occurring on public rights of way where the posted speed limit exceeds 30 miles per hour is incompatible with the safe and efficient movement of traffic and pedestrians; and

WHEREAS, owners and operators of ice cream trucks attract adults and children into or near public rights of way and other places where vehicular traffic is present; and

WHEREAS, the City Commission is cognizant of the fact that there have been at least two fatal traffic accidents in Manatee County that involved an ice cream truck vending or attempting to vend in a public right of way, and that similar accidents may be avoided by regulating ice cream trucks ; and

WHEREAS, the Manatee County Commission has adopted Ordinance No. 07-74, which regulates vending from ice cream trucks on the public rights of way within unincorporated Manatee County; and

WHEREAS, the City desires to enforce the provisions of Manatee County Ordinance 07-74 within the boundaries of the City; and,

WHEREAS, the City Commission finds that regulation and control of vending from ice cream trucks on the public rights of way as set forth in Manatee County Ordinance 07-74 protects the public health, safety and welfare, of the City of Palmetto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, IN SESSION DULY ASSEMBLED THAT:

Section 1. **Findings of Fact.** The above “WHEREAS” clauses are adopted herein as findings of fact.

Section 2. **New language.** The City of Palmetto Code of Ordinances is hereby amended by adding Chapter 19, by adding a section 19-1, which section shall read in its entirety as follows:

Sec. 19-1. Ice Cream truck; applicability and enforcement of county ordinance.

The City of Palmetto hereby incorporates by reference Manatee County Ordinance 07-74, as amended from time to time, as if fully rewritten herein. The City of Palmetto shall have the authority to enforce the provisions of said county ordinance within the City of Palmetto by citation, code enforcement board proceedings, or in any other manner provided for in this Code of Ordinances.

Section 3. **Repeal of Ordinance.** This Ordinance hereby repeals all ordinances and parts of ordinances in conflict herewith to the extent of such conflict.

Section 4. **Severability.** It is the intent of this Ordinance to comply with all applicable law and constitutional requirements. If any provision, paragraph or section of this Ordinance or the standards and codes adopted hereby, shall be determined by a court of competent jurisdiction to be inapplicable, illegal, unenforceable or unconstitutional, then to that extent such provisions or portions shall be deemed null and void, but the remaining provisions of this Ordinance shall be in full force and effect as applicable.

Section 5. Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14 upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Council and passing of the Ordinance by at least four (4) votes.

APPROVED AND ADOPTED, in open session with a quorum present and voting, this 22nd day of September, 2008.

First Reading:	August 18, 2008
Publication:	September 5, 2008
Second Reading and Public Hearing:	September 22, 2008

CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY COMMISSION
OF THE CITY OF PALMETTO

By: _____
LAWRENCE E. BUSTLE, JR., MAYOR

ATTEST: James R. Freeman
City Clerk

By: _____
City Clerk