

TAB 16



City of Palmetto Agenda Item

Meeting Date

05-07-12

Presenter: **Mark P. Barnebey**

Department: **City Attorney**

Title: **Temporary or Portable Food Vendors Moratorium 2012-08**

ISSUES:

The City has had an increasing number of operating or temporary or portable food and drink vendors throughout the City. The City would like time to examine issues related to these types of uses as to ensure that issues related to traffic flow, parking needs, noise, lighting, and other health, safety and welfare issues before additional facilities have begun operation. Permanent food vendor establishments must comply with the City land development regulations including appropriate site plan.

DISCUSSION:

This emergency ordinance would be in effect until December 31, 2012 with the possibility of a six (6) month extension. During the moratorium, the City will need to proceed with an evaluation of the need for and type of regulation necessary to promote the public health, safety and welfare and adoption of appropriate regulation or franchise agreements.

Budgeted Amount: Budget Page No(s): Available Amount: Expenditure Amount:

Additional Budgetary Information:

Funding Source(s): Sufficient Funds Available: Yes No Budget Amendment Required: Yes No Source:

City Attorney Reviewed: Yes No N/A Advisory Board Recommendation: For Against N/A Consistent With: Yes No N/A

Potential Motion/Direction Requested:

Staff Contact:

Attachments:

ORDINANCE NUMBER 2012-08

AN EMERGENCY ORDINANCE OF THE CITY COMMISSION FOR THE CITY OF PALMETTO, FLORIDA DECLARING A MORATORIUM AS TO THE FILING AND/OR APPLICATION FOR LICENSES THE ESTABLISHMENT OF BUSINESSES KNOWN AS TEMPORARY OR PORTABLE FOOD VENDORS AS DEFINED HEREIN; PROVIDING SUSPENSION OF ANY SUCH ZONING, PERMITTING AND LICENSING; PROVIDING A TERMINATION DATE FOR THE MORATORIUM; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR BOUNDARIES SUBJECT TO THE MORATORIUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," reinforces the authority granted under the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, there is presently in the City of Palmetto an increasing proliferation of temporary or portable food vendors; and

WHEREAS, permanent food vendors on a particular site are reviewed and approved pursuant to a site plan for the site which allows for the ability to review traffic patterns, parking needs, compatibility, noise, lighting and other health, safety, and welfare concerns; and

WHEREAS, the review of temporary or portable food vendors has not been historically reviewed by the City as to impacts to traffic patterns, parking needs, compatibility, noise, lighting, and other health, safety and welfare concerns; and

WHEREAS, the City Commission for the City of Palmetto, Florida, desiring to protect individual rights, while at the same time promoting the health, safety, and welfare of the people, finds that the City of Palmetto has a compelling interest in protecting its citizens from certain activities and influences which can result in irreparable harm, including the uncontrolled growth of temporary and portable food vendors; and

WHEREAS, in order to ensure the uniform enforcement of existing laws, and preserve the public peace and good order, and to safeguard the health, safety, morals, and welfare of the community and citizens thereof, it is necessary and advisable to enact a temporary moratorium on the permitting of temporary or portable food vendors within the City; and

WHEREAS, the City Commission for the City of Palmetto, Florida finds it necessary for the promotion of the public safety and welfare that this ordinance be enacted; and

WHEREAS, implementation of this Ordinance is in the best interest of the citizens of the City of Palmetto.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS OF CITY OF PALMETTO, FLORIDA, THAT:

SECTION 1: FINDINGS AND INTENT

The aforementioned recitations are incorporated herein by reference as findings and intent regarding the adoption of the ordinance.

SECTION 2: TITLE

This Ordinance shall be known and may be cited as the “Emergency Temporary or Portable Food Vendors Moratorium Ordinance”

SECTION 3: DEFINITIONS

(a) **Person:** means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director, executive, officer, manager, or employee of an association, partnership, joint venture, corporation, or other organization.

(b) **Temporary or Portable Food Vendors:** means any person that provides or sells food or drink from portable vehicles, including mobile food cart, or temporary facilities.

SECTION 4: BOUNDARIES SUBJECT TO THE MORATORIUM

This ordinance shall be applicable to all properties located within the boundaries of the City of Palmetto.

SECTION 5: TEMPORARY MORATORIUM

The City Commission finds that the proliferation of Temporary or Portable Food Vendors requires additional regulation and control within the City. The interest of the citizens of the City of Palmetto will be better served if such regulation is provided by the

City. In an effort to limit the expansion of such business activity until issues related to this type of use have been addressed, a temporary moratorium is established for the licensing, permitting or use of any new Temporary or Portable Food Vendors which have not paid a business receipt tax or otherwise are not established and conducting business as of the effective date of this Ordinance. This temporary moratorium shall be in place from the effective date of this Ordinance through December 31, 2012. The City Commission may extend this moratorium for periods of up to six months by resolution.

SECTION 6: ENFORCEMENT, PENALTIES, AND INJUNCTIVE RELIEF

The City's code enforcement officers, law enforcement, or any other person authorized to enforce county ordinances in the City of Palmetto may enforce the provisions of this ordinance. Any enforcement action or legal remedy available under controlling state law including, but not limited to, prosecution as a misdemeanor with a fine not exceeding Five-Hundred Dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty.

SECTION 7: REPEAL OF LAWS IN CONFLICT

All Ordinances or parts of Ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 8: SEVERABILITY

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such

holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 9: 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 Commission and passing of the Ordinance by at least four (4) votes.

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this _____ day of _____, 2012.

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

By: _____
SHIRLEY GROOVER BRYANT
MAYOR

ATTEST:

By: _____
James R. Freeman, City Clerk