

TAB 6



City of Palmetto Agenda Item

Meeting Date

10/01/12

Presenter: Jim Freeman

Department: City Clerk

Title: Mobile Push Carts

In May of 2012, the Commission passed an ordinance that placed a moratorium on all mobile food cart vendors within the City of Palmetto. The moratorium expires in December of 2012. One of the purposes of passing the ordinance was to provide time for the Commission to evaluate the current rules and restrictions associated with allowing these types of vendors to operate within the City. The attached ordinance is a template that was derived for looking at other jurisdiction's ordinances. Staff would like to receive feedback from Commission regarding the proposed ordinance.

Budgeted Amount:	NA	Budget Page No(s):		Available Amount:	NA	Expenditure Amount:	
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Additional Budgetary Information:

Funding Source(s):		Sufficient Funds Available:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Budget Amendment Required:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Source:	
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City Attorney Reviewed:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Advisory Board Recommendation:	<input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> N/A	Consistent With:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
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Potential Motion/Direction Requested: No motion at this time. Commission comments/discussion only.

Staff Contact: Jim Freeman

Attachments: Ordinance 2012-08 and Ordinance 2012-14

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; provided, however, this moratorium shall not apply to Temporary or Portable Food Vendors approve as part of a City approved Special Function Permit. 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 7th day of May, 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

ORDINANCE 2012-14

AN ORDINANCE OF THE CITY COMMISSION FOR THE CITY OF PALMETTO, FLORIDA, AMENDING CODE OF ORDINANCES, ZONING CODE, TO REGULATE THE USE AND OPERATION OF PUSHCARTS AND MOBILE FOOD VENDORS ON CITY RIGHTS-OF-WAY AND PRIVATE PROPERTY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR 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

Sec. 6.24 – Pushcarts and Mobile Food Vendors

- (a) *Generally.* This section governs the sale of products from pushcarts on private property and on public rights-of-way within the City. It shall be a violation to sell any product from a pushcart at any location except in compliance with the requirements of this section. The City Clerk shall establish such additional rules and procedures as are reasonable and necessary for the regulation, control and enforcement of pushcarts within the City. The City Commission may establish such fees as it determines to be reasonable and appropriate to administer this section.
- (b) *Private Property.* Retail sales of flowers, plants, fruits, vegetables, beverages, hot dogs, and other pre-cooked and pre-packaged foods including hamburgers, sandwiches, ice cream and snack-type edibles from pushcarts or mobile food vendors shall be a permitted accessory use on property in all commercial zoning districts. Pushcarts and mobile food vendors shall be prohibited on vacant property and undeveloped property. Pushcarts and mobile food vendors shall have the written permission of the property owner or current tenant closest to the pushcart or mobile food vendor and shall not be placed on any location that impedes the ingress or egress of other businesses, building entrances or

emergency exits. Pushcarts and mobile food vendors shall be located at least 100 feet from a previously permitted restaurant which is not located on the same lot or property. Pushcarts and mobile food vendors on private property shall be attended at all times and may operate only during the business hours of the adjacent business.

- (c) *Right-of-way.* The City Clerk is authorized to issue business licenses for the retail sale of flowers, plants, fruits, vegetables, beverages, hot dogs, and other pre-cooked and pre-packaged foods including hamburgers, sandwiches, ice cream and snack type edibles, from pushcarts and mobile food vendors on rights-of-way on 8th Avenue West lying between Riverside Drive and 17th Street West, and on 10th Street between 8th Avenue West to the eastern city limits, including both sides of the rights-of-way. Vendors shall comply with state, county and municipal health laws and ordinances. Cooking of raw food shall not be allowed on pushcarts or mobile food vendors, however, the heating of pre-cooked foods shall be allowed. Alcoholic beverages shall not be sold from pushcarts or mobile food vendors. A sale to any person in or on a vehicle is prohibited.
- (d) *Pushcart design.* A pushcart shall be designed for retail sales and mounted on at least two wheels that have a diameter of not less than eight inches. A pushcart shall be no larger than 5½ feet in width, ten feet in length and eight feet in overall height; shall not be propelled by an internal combustion engine, electric motor or other similar mechanical device; and when fully loaded with merchandise, shall be movable by one person. Any canopy or umbrella shall not overhang the pushcart by more than two feet. Pushcarts may include a cooking apparatus or grill top for the heating of pre-cooked foods only, in accordance with this section and state regulations. The pushcart shall be required to have three-inch-wide reflective tape on all sides for higher visibility. Pushcarts shall have no features which would be a nuisance or hazardous to public safety.
- (e) *Hours of operation for right-of-way locations.* Pushcart and mobile food vendor vending is prohibited before 7:00 a.m. and after 10:00 p.m. and shall take place only at approved locations. Such vehicles may not be placed at their approved location prior to 7:00 a.m. and must be removed at the close of business each day. Such vehicles shall be attended at all times.
- (f) *Location.* A license for pushcart or mobile food vendor vending shall be subject to the following restrictions:
 - 1. Pushcart or mobile food vendor vending locations on rights-of-way shall be at least 100 feet from any restaurant on the same block face (measured from the closest wall of the restaurant).
 - 2. Pushcart and mobile food vendor vending locations shall be at least 100 feet apart.

3. No more than two pushcart locations shall be permitted on each side of a block bounded by intervening streets or avenues.
4. Pushcarts with a valid license for a specific location which was issued prior to the issuance of a certificate of occupancy for a restaurant shall be grandfathered at that location for so long as the license is continuously renewed and does not expire or is not revoked.
5. Pushcarts shall not be located within five feet of any crosswalk or fire hydrant, and shall not block any ingress or egress from a building entrance or emergency exit.

(g) *Right-of-way location.* A license issued for vending on the right-of-way shall be issued for a specific location not on sidewalk in the right-of-way subject to the following conditions:

1. Pushcarts shall not be allowed in medians.
2. Pushcarts shall be located a minimum of 18 inches from the back of the curb and shall leave an unobstructed space not less than six feet wide for pedestrian passage.
3. The licensed pushcart vending location shall not exceed five and one-half feet in width and ten feet in length. Accessory equipment, such as coolers and storage crates, shall be located within the permitted area and shall be kept in a neat and orderly fashion.
4. Pushcarts and their attendants shall not cause damage to any vegetation on the right-of-way. Damaged vegetation shall be immediately replaced by the pushcart licensee upon demand by the City Clerk or his designee.

(h) *Business Licenses.* Each pushcart shall be required to obtain the appropriate business tax receipt which identifies the permitted locations for the pushcart.

1. Licenses issued for pushcarts or mobile food vendors shall be limited to one year but may be renewed annually if the vendor has complied with all of the provisions of this code.
2. Applicants for pushcart or mobile food vendor vending licenses may obtain a license for not more than two locations for each vehicle that they own. A separate license is issued for each location. Licenses are not transferable to another person.

(i) *Liability and insurance.*

1. By applying for a pushcart or mobile food vendor license, any person or entity owning or operating such use agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees from any and all claims, liability, lawsuits, damages and causes of action which may rise out of such activity. The owner or operator shall enter into a written agreement with the City to evidence this indemnification. Such agreement must have the written approval of the City Attorney prior to operating such use.
2. The owner or operator shall acquire and keep in full force and effect, at its own expense, insurance in the following amounts and types:
 - a. Commercial general liability in the amount of at least \$500,000.00 per occurrence for bodily injury and property damage. The City shall be named as an additional insured on the policy and an endorsement shall be issued as part of the policy evidencing compliance with this requirement.
 - b. Workers' compensation and employers' liability as required by the State.
 - c. The City shall receive at least 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.
 - d. Any person or entity operating a pushcart or mobile food vendor shall provide and must have approved by the City's Clerk, an original certificate of insurance as evidence that the above requirements have been met prior to the initiation of the pushcart or mobile food vendor operation. Failure to comply with all these requirements shall cause a suspension or revocation of all pushcart activities.
 - e. The insurance policy shall be in effect from October 1 until September 30 of the following calendar year.
3. A business license shall be required for pushcart or mobile food vendor vending.
4. An push cart or mobile food vendor application shall include the following information as part of the application:
 1. A certificate of insurance showing the required insurance;

2. Two photographs of the pushcart or mobile food vendor and a line drawing showing dimensions;
3. A copy of all state or county health department license/permits for the vehicle;
5. *Scope of approval.* A pushcart or mobile food vendor vending license authorizes the applicant to engage in vending of approved items at the location specified in the license.

Licenses issued for locations on the right-of-way pursuant to this section shall not be valid during any City event or activity or any event subject to a special function permit approved by the City Commission.

6. A pushcart or mobile food vendor vending business license shall expire on September 30 but may be renewed on an annual basis for one year periods. A copy of any requested state license shall be submitted to the City. If a copy of the renewed state license is not submitted to the City by February 1, such business license shall become null and void.
7. *Suspension or revocation.* A license issued under this section may be suspended or revoked by the City Clerk for any of the following reasons:
 - a. Any required business or health permit or business tax receipt for the vehicle has expired or been suspended, revoked or canceled;
 - b. The licensee does not have insurance in effect which complies with the minimum amounts and requirements described in this section;
 - c. Conviction of any crime or misdemeanor involving moral turpitude;
 - d. Conducting business as a licensee under this section in an unlawful manner or in such a manner as to constitute a breach of the peace or to interfere with the normal use of the right-of-way or to constitute a menace to the health, safety or general welfare of the public; or
 - e. Failure to comply with this Code.
- (j). *Record keeping.* Each vehicle shall display the appropriate business tax receipt and state or county health certificates, which identifies the permitted locations for the pushcart.