

ORDINANCE NO. 2018-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 115, "MISCELLANEOUS BUSINESSES," BY AMENDING SECTION 115.18, "MOVING VENDOR, ITINERANT MERCHANT, OR PEDDLER," TO EXCLUDE PIER AREA VENDING AS DEFINED IN SECTION 115.19; BY CREATING SECTION 115.19, "PIER AREA VENDING," TO PROVIDE DEFINITIONS, APPROVALS, PROCEDURES, REGULATIONS AND STANDARDS FOR PIER AREA; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 115.18, "Moving Vendor, Itinerant Merchant, or Peddler," of Chapter 115, "Miscellaneous Businesses," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

§ 115.18 MOVING VENDOR, ITINERANT MERCHANT, OR PEDDLER.

...

(B) Intent. It is found and declared that:

...

(2) The prohibition or restriction of street and sidewalk vending is necessary to protect the public health, safety, and welfare of the traveling public.

(3) The regulations contained in this section do not restrict the pure speech rights of organizations, but merely regulate the activities of organizations which are commercial in nature or which present safety hazards to the general public.

(4) The regulations contained in this section are not applicable to Pier Area Vending Concessionaires approved to operate pursuant to § 115.19, Pier Area Vending.

SECTION 2. That Section 115.19, "Pier Area Vending," of Chapter 115, "Miscellaneous Businesses," of the City of Pompano Beach Code of Ordinances is hereby created to read as follows:

§ 115.19 PIER AREA VENDING.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply to the Pier Area, unless the context clearly indicates or requires a different meaning.

(1) ***PIER AREA VENDING AGREEMENT*** ("***AGREEMENT***"). Concession or use agreement executed between the Pier Developer and a Pier Area Vending Concessionaire to conduct vending activities in a designated Zone within the Pier Area as depicted on the Pier Area Vending Master Plan. The agreement shall set forth the terms and conditions for vending in accordance with City Commission approved policies and procedures. Additionally, the Pier Area Vending Concessionaire shall be required to comply with all applicable laws and ordinances.

(2) ***PIER AREA VENDING CONCESSIONAIRE.*** A person, corporation, company or business qualified and authorized to operate Portable Vending Equipment in the Pier Area for the purpose of vending.

(3) ***PORTABLE VENDING EQUIPMENT.*** A wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Florida Department of Highway Safety and Motor Vehicles, used for displaying, storing, or transporting articles offered for sale by a vending concessionaire. All Portable Vending Equipment shall be set up in and removed from the assigned Zone each day of business.

(4) **PIER AREA VENDING MASTER PLAN or MASTER PLAN.** A plan submitted by the Pier Developer to the City Commission, and subsequently approved by resolution, depicting the general location of each Zone, the maximum number of proposed Portable Vending Equipment in each Zone, a description of the type of food, service or merchandise to be sold, nightly storage plan for Portable Vending Equipment, photograph or pictorial representation of the standard or uniform Portable Vending Equipment, and other information required by the City Commission.

(5) **PIER AREA.** That portion of the beach, right-of-way and other lands generally described as east of North Pompano Beach Blvd., between NE 1st Street and NE 5th Street and including the Pompano Beach Municipal Pier.

(a) **SAND ZONE.** As depicted on the Master Plan, that portion of the Pier Area defined as Sand Zone.

(b) **SIDEWALK ZONE.** As depicted on the Master Plan, that portion of the Pier Area abutting the eastern edge of the sidewalk and defined as the Sidewalk Zone.

(6) **READY-TO-EAT FOODS ONLY.** Completely wrapped or packaged food which has been manufactured, processed, prepared and packaged in individual servings at an approved public food service establishment or prepackaged in a food processing plant and transported and stored in accordance with provisions of Chapter 61C, Florida Administrative Code.

(B) **Mandatory Master Plan Approval.** Prior to implementation of the Master Plan, the Pier Developer shall first submit the proposed Master Plan to the Development Services Department for review and recommendation. Following the Department's review and recommendation, the Master Plan shall be reviewed by the East Community Redevelopment Agency (CRA) Advisory Committee. Following the East CRA Advisory Committee's review and recommendation, the Master Plan shall be submitted to the City Commission for consideration and, if approved, authorized by resolution. Any modifications to the Master Plan following the City Commission's approval shall be reviewed as a new Master Plan requiring approval from the Department, the East CRA Advisory Committee and, lastly, the City Commission. The following documentation shall be submitted and incorporated into the Master Plan and shall comply with applicable standards:

(1) Design schematics of the Portable Vending Equipment to be used within each Zone including information about materials and colors for accessories such as umbrellas.

(2) One Site Plan for each Pier Area Vending Concessionaire depicting the following:

- (a) Boundary of the designated zone;
- (b) Method of daily setup and removal of the Portable Vending Equipment;
- (c) Storage of the Portable Vending Equipment, if any equipment will be located on-site;
- (d) Hours of operations for the concessionaire;
- (e) Identification of the location of all disposal, recycling and waste related receptacles for the Zone;
- (f) Dimensions of the concession equipment;
- (g) The general location and maximum number of all proposed Portable Vending Equipment for the Zone;
- (h) Loading and Unloading plan including times for loading and unloading and overnight storage of Portable Vending Equipment (unless Concessionaire or Pier Developer demonstrates that storage is not required);
- (i) Provision for Pier Area Vending Concessionaire's equipment to maintain a clear path for ADA Accessibility;
- (j) Dimensions of all signage allowed per portable vending equipment; and
- (k) Any other information as may be required.

(3) Proof of an insurance policy issued by an insurance company properly authorized and approved to do business in the state protecting the business tax receipt holder and the city from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the subsection; such insurance shall be at least the amount of \$300,000 for each occurrence and \$100,000 per person.

(4) Rules/Guidelines for conduct of the concessionaires, to include such standards for where to situate cart when conducting transactions, providing adequate room on the sidewalk to maintain clear passage for pedestrians, and standards for spacing out carts throughout the zone.

(C) *Portable vending equipment standards.*

(1) *Use standards.* Vendor sales shall be limited to primarily eating and drinking establishments, including ready-to-eat foods, beverages and confections. Ancillary retail sales may be permitted.

(2) The dimensional standards for the Portable Vending Equipment are shown in Table 115.19 (C)(2). However the maximum dimensional standards shall not be construed as to allow Portable Vending Equipment and/or any permitted accessory equipment to be located within a prohibited location as listed in 115.19 (C) (4).

TABLE 115.19 (C)(2): Portable Vending Equipment Dimensional Standards			
Zone	Maximum Length (in feet)	Maximum Width (in feet)	Maximum Height (in feet)
Sand Zone	4' 0"	4' 0"	4' 0"
Sidewalk Zone	4' 0"	4' 0"	4' 0"

(3) *Design and construction.* Portable Vending Equipment shall be constructed and designed in compliance with the following standards:

(a) The Portable Vending Equipment shall be designed to be mobile, which may include equipment on wheels, equipment designed to be carried, or other similar equipment.

(b) The Portable Vending Equipment shall be constructed of durable material. No unfinished or pressure treated wood shall be visible.

(c) The Portable Vending Equipment shall have no features which would be a nuisance or hazardous to public safety.

(d) All materials must be in accordance with all applicable local, state and federal rules and regulations.

(e) All signage must be securely attached to the Portable Vending Equipment.

(f) The maximum height provided in Table 115.19 (C)(2) shall not include an umbrella or shade structure affixed to the equipment.

(g) Food preparation for Portable Vending Equipment is strictly limited to ready-to-eat foods only and shall be in accordance with this section and state regulations.

(h) *Energy supply.* All Portable Vending Equipment must be entirely self-sufficient in regard to gas, water and telecommunications and comply with the following standards:

1. Portable Vending Equipment must provide their own safe power sources, if any are required.
2. Portable Vending Equipment may be propelled by an electric motor or similar mechanical device.
3. Connection to electric outlets or power sources owned by the city or on private property is prohibited.
4. Internal combustion engines or other similar mechanical devices are prohibited.
5. Extension cords are prohibited.
6. Generators, car, truck, motorcycle or boat batteries or any other power sources deemed hazardous to the public health, safety or welfare by a police or code officer are prohibited.

(i) *Waste receptacles.* All Portable Vending Equipment must be within a Zone containing a waste receptacle. Pier Area Vending Concessionaires shall comply with the following standards:

1. Pier Area Vending Concessionaires permitted to sell food and/or beverages shall also provide some form of a waste receptacle available for patron's use on their Portable Vending Equipment.
2. Pier Area Vending Concessionaires must not empty any waste receptacles into city-owned trash receptacles, except the compactor in the City Pier Parking garage. A fee for Solid Waste disposal may be charged to the Concessionaire by the City in its discretion.
3. Pier Area Vending Concessionaires shall not allow any fluids to be discharged from the Portable Concession equipment or any accessory equipment.
4. No liquid waste or grease shall be disposed in tree pits, storm drains, or onto the sidewalks, streets, or other public space or property.
5. The Pier Area Vending Concessionaire is responsible for the removal of grease from sidewalk and street surfaces resulting

from the daily operation, unloading, and loading of the Portable Vending Equipment and any accessory equipment.

(4) *Prohibited locations.* No portion of Portable Vending Equipment and/or any permitted accessory equipment shall be located as follows:

- (a) Outside of the assigned Zone;
- (b) Leaning against, chained to or hanging from any building, structure, tree or other plant;
- (c) On the sidewalk;
- (d) Blocking the following:
 - 1. Pedestrian flow or vehicular traffic (a minimum of five feet must be maintained at all times);
 - 2. Access to an entrance to a building;
 - 3. Access to the playground or pavilions;
 - 4. Access to a bicycle rack;
 - 5. Access to a trash receptacle; and
 - 6. A sprinkler inlet or standpipe inlet (both wet and dry).

(D) *Operational standards.*

(1) Pier Area Vending Concessionaires shall be assigned a specific Zone within the Pier Area as depicted on the Master Plan.

(a) During the hours of operation, the Portable Vending Equipment must remain within the boundaries of the assigned Zone

(b) No more than the maximum total of Portable Vending Equipment for each Zone as depicted on the Master Plan shall be located in one Portable Vending Zone.

(c) Applicants for a Pier Area Vending Concessionaire business tax receipt (BTR) shall provide, at a minimum, the following information on forms made available in the city's Business Tax Receipt Division. Such information shall be sworn to or affirmed and filed with the city's Business Tax Receipt Division.

1. The name, home and business address of the applicant and the name, home and business address of the owner, if other than the applicant of the vending business or mobile vending equipment to be used in the operation of the vending business along with the name and address of the commissary, if applicable;

2. A description of the type of food, beverage, or merchandise to be sold;

3. A description and photograph of any equipment or vehicle(s) to be used in the operation of the business including copies of the license and registration of any vehicle used in the operation of the business;

4. Copies of all health certificates, if applicable, issued by the appropriate governmental agencies;

5. Proof of an insurance policy issued by an insurance company properly authorized and approved to do business in the state protecting the business tax receipt holder and the city from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the subsection; such insurance shall be at least the amount of \$300,000 for each occurrence and \$100,000 per person; and

6. Any other documentation as may be required by other provisions of this chapter or other chapters of the city code of ordinances.

(2) *Prohibited merchandise.* Portable Vending Concessionaires shall be prohibited from selling any of the following:

(a) Alcoholic beverages, including beer, wine, and liquor;

(b) Cigarettes and all tobacco products and/or smoking apparatus;

(c) Chewing gum; and

(d) Operating as any use that is prohibited in the Atlantic Boulevard Overlay District, per Zoning Code Section 155.3703 C. 2.

(3) *Maintenance standards.* In addition to the Maintenance Standards included in the Pier Developer's Agreement, the Pier Developer and Portable Vending Concessionaires shall comply with the following:

(a) The Pier Developer and Pier Area Vending Concessionaires shall maintain their designated Zone in a clean, hazard-free condition and free of trash and debris;

(b) The Pier Developer and Pier Area Vending Concessionaires shall ensure that each Portable Vending Equipment is maintained, on a daily basis, in a clean and sanitary condition and is free of trash and debris;

(c) The Pier Area Vending Concessionaires shall not leave any location without first picking up, removing and properly disposing of all trash, materials, or refuse remaining from any sales, transactions, or the conduct of the operation; and

(d) Any damage caused by the Pier Area Vending Concessionaire to city property including, but not limited to, the sidewalk, notice shall be provided by the Pier Developer and/or Pier Area Vending Concessionaire within 24 hours of the damage to the City Manager, or designee. Any such damage reported will either be repaired by the Pier Developer and/or Pier Area Vending Concessionaire within a reasonable timeframe at their own expense, or the city will take the necessary steps to complete the work and charge the Pier Developer and/or Pier Area Vending Concessionaire for the restoration costs.

(4) *Noise standards.*

(a) Pier Area Vending Concessionaires shall not cause or permit any sound to exceed the sound limits set forth in § 97.20 (A).

(b) Pier Area Vending Concessionaires are not eligible for the Noise Control Exemption as listed in § 97.40.

(5) *Hurricane warning.*

(a) The City Manager or designee may cause the immediate removal or relocation of all or parts of the Portable Vending Equipment in emergency situations or for safety considerations.

(b) Upon the issuance of a hurricane warning by the county, the Pier Area Vending Concessionaires shall forthwith cease operation and remove all Portable Vending Equipment. The issuance of such a hurricane warning shall constitute an emergency situation. As additional means of enforcement, the city may remove any Portable Vending Equipment and/or merchandise found on public property two hours after the issuance of a hurricane warning. Any and all costs incurred by the city for removal and/or storage of Portable Vending Equipment and/or merchandise shall be the responsibility of the Pier Area Vending Concessionaires. The city is not responsible for any damages or loss of Portable Vending Equipment or merchandise which is lawfully confiscated.

(c) If the Zone assigned for a Pier Area Vending Concessionaire through a permit is needed for a special event, municipal repairs or other city business, or relocation or suspension is otherwise in the best interest of the public, the City Manager or designee may temporarily or permanently relocate the Pier Area Vending Concessionaire to a different zone or location, or temporarily suspend (if no alternative is available) the Pier Area Vending Concessionaire's operation.

(6) *Hours of operation.*

(a) Hours of operation shall be limited to 9:00 a.m. until 9:00 p.m.

(b) During city-sponsored special events, where the special event's hours exceed those listed in this section, the Pier Area Vending Concessionaire may operate according to the special events hours of operation as determined by the City Manager.

(7) *Prohibited Accessory Equipment.* The following Accessory Equipment is prohibited:

- (a) Tables;
- (b) Fences;
- (c) Chairs;
- (d) Other site furniture; and
- (e) Mobile display racks and stands.

E. *Denial, revocation or suspension of permit; removal and storage fees; emergencies.*

(1) The City Manager may deny, revoke, or suspend a BTR for any Pier Area Vending Concessionaire in a Zone authorized in the city if it is found that:

- (a) Any necessary business or health permit has been suspended, revoked, or cancelled.
- (b) The Concessionaire does not have insurance which is correct and effective in the minimum amount described in this section.

(c) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the Zone or the Portable Vending Equipment. Such decision shall be based upon findings of the City Manager that the minimum five-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrians or vehicular traffic.

(d) The Concessionaire has failed to correct violations of this article or conditions of his operations within three days of receipt of the City Manager's notice of same delivered in writing to the Concessionaire.

(e) The Concessionaire has failed to take positive actions to prohibit violations from recurring.

(f) The Concessionaire has failed to make modifications within three days of receipt of the City Manager's notice of same delivered in writing to the Concessionaire.

(g) Portable Vending Equipment may be removed by the city and a reasonable fee charged for labor, transportation, and storage should the Concessionaire fail to remove the items within 36 hours of receipt of the City Manager's final notice to do so for any reason provided for under this article. If the action is taken based on this subsection (1) (b) or (c), the action shall become effective upon the receipt of such notice and the Concessionaire shall have four hours to remove the items.

(2) Upon denial or revocation, the City Manager shall give notice of such action to the applicant or the Concessionaire in writing stating the action which has been taken and the reason thereof. If the action of the City Manager is based on this subsection (1) (b) or (c) above, the action shall be effective upon giving such notice to Concessionaire. Otherwise, such action shall become effective within ten days unless appealed to the City Commission.

F. *Appeals.*

(1) Appeals shall be initiated within ten days of a Concessionaire's denial or revocation by filing a written notice of appeal with the City Manager, and a copy of same delivered the same day to the City Commission. Any revocation effective immediately may also be appealed to the City Commission by such filing within ten days.

(2) The City Manager shall place the appeal on the first City Commission agenda for which reasonable notice can be given and shall notify the Pier Developer thereof. At the hearing upon appeal, the City Commission shall hear and determine the appeal, and the decision of the City Commission shall be final and effective immediately.

(3) The filing of a notice of appeal by a Concessionaire shall not stay an order by the City Manager to remove Portable Vending Equipment or parts thereof. Vestiges of the Portable Vending Equipment shall be removed immediately, as set out in subsection E. (1) (g) above, pending disposition of the appeal and final decision of the City Commission.

(4) A Concessionaire that has been suspended or revoked pursuant to subsection E. (1) (a), (b) or (d) above may be reinstated by the City Manager at such time as the Concessionaire has demonstrated that the violation has been corrected to the satisfaction of the City Manager.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2018.

PASSED SECOND READING this _____ day of _____, 2018.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

JES:jrm
5/3/18
L:ordch115/2018-195