

ADMINISTRATIVE MEMORANDUM NO. 20-231

TO: Planning and Zoning Board
VIA: David L. Recor, ICMA-CM, Director of Development Services
FROM: Jennifer Gomez, AICP, Assistant Development Services Director *JG*
SUBJECT: HB 1193 Related Amendments – Mobile Vending
September 23, 2020 P&Z Meeting
DATE: September 15, 2020

BACKGROUND

Section 75 of the recently adopted House Bill 1193, provides that licenses and fees to operate mobile food dispensing vehicles, which includes food carts per the definition, are preempted to the State. The City can no longer require a mobile vendor to obtain a license, registration or permit in order to operate in the City. The City also cannot prohibit mobile vendors from operating within the City. Municipalities are not, however, prohibited from *regulating* the operation of mobile food dispensing vehicles.

The mobile vending regulations are included within the Chapter 115 Miscellaneous Businesses. The current code identifies two options for “mobile vendors”: Mobile vendors on private property (i.e. stationary vendors) (115.18 (C)) and Mobile vendors on public streets (115.18 (D)) (e.g. ice cream trucks). Currently mobile vendors on private property are limited to two zoning districts (B-4 & I-1).

The enclosed code amendments represent the minimum revisions to comply with the State Statutes. The amendments remove the requirements to obtain a Business Tax Receipt and pay City fees in order to operate. The text amendments extend the ability to operate on private property to the I-1X Heavy Industrial Zoning District and O-IP district. Staff is also revising Chapter 155 zoning code, to include a reference to this use. While amendments to Chapter 115 would not typically go to the Planning and Zoning Board review, the entire package is submitted for context.

Several other code provisions were reorganize for clarity; therefore, please note, most underlined text is not actually new regulations.

Please note, food truck *or mobile vendors* not covered by this code section can also be approved by a Special Event permit. This process covers most of the food truck events seen throughout the City.

STAFF REQUEST

Planning & Zoning staff have worked with the City Attorney’s Office to develop this text amendment as presented. Staff recommends approval of the proposed code amendments.

CHAPTER 155. ZONING CODE

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ARTICLE 4: USE STANDARDS, PART 3 ACCESSORY USES AND STRUCTURES

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155.4303. STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

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vv. MOVING VENDORS ON PRIVATE PROPERTY

I. Districts Where Permitted

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<u>RS- 1</u>	<u>RS- 2</u>	<u>RS- 3</u>	<u>RS- 4</u>	<u>RS- L</u>	<u>RD- 1</u>	<u>RM- 7</u>	<u>RM- 12</u>	<u>RM- 20</u>	<u>RM- 30</u>	<u>RM- 45</u>	<u>MH- 12</u>	<u>B- 1</u>	<u>B- 2</u>	<u>B- 3</u>	<u>B- 4</u>
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<u>M- 1</u>	<u>CR</u>	<u>I- 1</u>	<u>I- IX</u>	<u>OIP</u>	<u>M- 2</u>	<u>TO</u>	<u>PR</u>	<u>CF</u>	<u>PU</u>	<u>T</u>	<u>BP</u>	<u>RPUD</u>	<u>PCD</u>	<u>PD- TO</u>	<u>LAC</u>	<u>PD- 1</u>
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2. Definition

A person, corporation, company, or business which sells or offers for sale goods, wares, merchandise, beverages, or foodstuffs of any kind or nature whatsoever from a mobile vending vehicle or from his person and not from an enclosed structure. This term does not apply to accessory structures that are approved for use to augment the operation of a permanent restaurant on the same lot.

3. Standards

- A mobile vendor on private property shall comply with the standards provided for in Section 115.18 MOVING VENDOR, ITINERANT MERCHANT, OR PEDDLER.
- A mobile vendor on private property may be permitted in any required yard setback, or in front of the principal structure.

§ 113.39 BUSINESS TAX RECEIPT SCHEDULE.

Business tax receipts shall be issued to cover only one location and only one of the occupations or business classifications hereinafter set out unless permitted hereunder. The amounts assessed as business tax receipts against the various trades, businesses, and professions are hereby fixed as follows.

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190-000	Mobile	255.27
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190-001	Stationary	255.27
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Foodstuffs: DAGS or DBPR	243.11
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~~For the purpose of this chapter, any business or occupation selling goods, wares, merchandise, beverages, or foodstuffs of any nature or kind whatsoever from a moving vehicle which shall include but not be limited to a motor vehicle, bicycle, cart, or wagon, subject to the provisions of the Pompano Beach Code of Ordinances.~~

§ 115.18 MOVING VENDOR, ITINERANT MERCHANT, OR PEDDLER.

(A) Definitions.

(1) **MOBILE VENDOR.** A person, corporation, company, or business which sells or offers for sale goods, wares, merchandise, beverages, or foodstuffs of any kind or nature whatsoever from a mobile vending vehicle or from his person and not from an enclosed structure. This term does not apply to accessory structures that are approved for use to augment the operation of a permanent restaurant on the same lot. The term **MOBILE VENDOR**, for the purposes of this section, shall include itinerant merchants and/or peddlers.

(2) **MOBILE VENDING VEHICLE.** Any vehicle, cart, bicycle wagon or similar apparatus used for displaying, storing, or transporting articles for sale by a mobile vendor.

(3) **PUBLIC STREET** or **PUBLIC SIDEWALK.** Any street, right-of-way, or sidewalk owned by, dedicated to or an easement granted to the public.

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

(1) The purpose of the public street and sidewalk is for use by vehicles and pedestrian traffic.

(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.

(C) Mobile vendor(s) on private property shall be governed by the following requirements and restrictions. All required documentation related to health inspection, licensing, and insurance must be made available upon request by Law Enforcement, Code Enforcement or other authorized officials.

~~— (1) Applicants for a vending business tax receipt shall provide documentation to the city's Business Tax Receipt Inspector demonstrating the following:~~

~~— (a) Permission (affidavit or notarized statement) from the property owner that the vending vehicle may be located on the property;~~

~~— (b) A diagram or site plan depicting the location of the vending vehicle as it relates to other improvements on the property where it is to be located (other improvements shall include, but not be limited to, structures, accessways, parking areas, and fire lanes or firefighting apparatuses);~~

~~— (c) Proof of public restroom availability if food, beverages, or both are being served; and~~

~~— (1) (d) In order to prevent cars from stacking in the City's right-of-way, there must be Proof of on-site off-street parking availability (parking required by the zoning code for existing uses may not be used by vendor);~~

~~— (e) 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 vehicle to be used in the operation of the vending business along with the name and address of the commissary, if applicable;~~

~~— (f) A description of the type of food, beverage, or merchandise to be sold;~~

~~— (g) A description and photograph of any equipment or mobile vending vehicle(s) to be used in the operation of the business including copies of the license and registration of any mobile vending vehicle used in the operation of the business;~~

~~— (h) Copies of all health certificates, if applicable, issued by the appropriate governmental agencies;~~

~~— (i) Any other documents as may be required by other provisions of this chapter or other chapters of the city code of ordinances; and~~

~~—(j) Mobile vendors that do not set up permanently shall be exempt from the limitations and provisions of § 115.18(C)(1)(a) through (1)(d) provided the mobile vendor stops only to make an immediate sale and remains stationary no longer than necessary to comply with the requirements of this section but in no event shall the mobile vendor remain stationary for more than ten minutes after the last sales transaction.~~

~~—(2) Mobile vendors that are not entitled to the exemption set forth in § 115.18(C)(1)(j) above shall only be permitted in areas zoned B-4 or I-1.~~

~~—(2)-(3) Mobile vendors using private property to vend shall not be permitted to store equipment or apparatus associated with the vending business unless said equipment or apparatus is stored within a totally and permanently enclosed building.~~

~~(3)-(4) Sales shall be limited to individuals located on the private property where the mobile vendor is located.~~

~~—(4) Any other documents as may be required by other provisions of this chapter or other chapters of the city code of ordinances;~~

~~—(5) Written consent from the property owner or lawfully authorized agent is required.~~

~~—(6) Mobile vendors that do not set up permanently shall be exempt from the limitations and provisions of § 115.18(C)(1) & (2) provided the mobile vendor stops only to make an immediate sale and remains stationary no longer than necessary to comply with the requirements of this section but in no event shall the mobile vendor remain stationary for more than ten minutes after the last sales transaction.~~

(D) Mobile vendor(s) on public streets shall be governed by the following requirements and restrictions. All required documentation related to health inspection, licensing, and insurance must be made available upon request by Law Enforcement, Code Enforcement or other authorized officials.

~~—(1) Applicants for a mobile vendor business tax receipt shall provide 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.~~

~~—(a) 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 vehicle to be used in the operation of the vending business along with the name and address of the commissary, if applicable;~~

~~—(b) A description of the type of food, beverage, or merchandise to be sold;~~

~~—(c) A description and photograph of any equipment or mobile vending vehicle(s) to be used in the operation of the business including copies of the license and registration of any mobile vending vehicle used in the operation of the business;~~

~~—— (d) Copies of all health certificates, if applicable, issued by the appropriate governmental agencies;~~

~~(1) (e)~~ Proof of an insurance policy issued by an insurance company properly authorized and approved to do business in the state protecting the mobile vendor 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

~~—— (f) Any other documentation as may be required by other provisions of this chapter or other chapters of the city code of ordinances.~~

(2) Mobile vending vehicles shall not be permitted to be stationary and shall stop only to make an immediate sale. A mobile vending vehicle shall be deemed stationary in the event the mobile vendor allows the mobile vending vehicle to remain in any location for more than necessary to comply with the requirements of this section but in no event to remain stationary longer than ten minutes after the last sales transaction.

(3) Mobile vendors ~~Persons holding valid mobile vending vehicle business tax receipts issued by the city~~ may make sales from vehicles on the right-of-way only to occupants of abutting ~~private~~ property but not in roadway areas paved or otherwise designated for vehicular traffic, and shall comply with all other provisions of this section.

(4) This section shall not affect any constitutionally protected First Amendment rights and in no way will prohibit the vending of books, magazines, newspapers, pamphlets, maps, printed matter, and other constitutionally protected material.

(5) No mobile vendor shall be located within 50 feet of any bus stop. The distance restrictions shall be measured from the nearest point of any structure(s) associated with the bus stop or from an area designated as a bus stop, whichever is greater.

(6) No mobile vendor shall be located on a public sidewalk or interfere with the free passage of pedestrian traffic on a public sidewalk.

(7) No mobile vendor shall interfere or restrict the ingress or egress of the abutting property owner or tenant or obstruct access to fire, police, emergency, or sanitation vehicles or personnel.

~~—— (8) No mobile vendor shall operate prior to 7:00 a.m. or after 5:30 p.m. Eastern Standard Time or 8:00 p.m. during Eastern Daylight Savings Time. Mobile vendors may operate during daylight hours or otherwise at dusk or night in areas directly illuminated by street lighting for safety of motorists, pedestrians and vendors.~~

(9) No mobile vendor shall stop, stand, or park a vending vehicle in order to make a sale within 25 feet of any intersection including, but not limited to, private drives, accessways, or intersecting rights-of-way.

(10) No mobile vendor shall stop, stand, or park a vending vehicle at a metered parking space for the purpose of selling or sell on any street under any circumstances during the hours where parking, stopping, or standing has been prohibited by signs or

curb markings or is prohibited by state statute or ordinance when such metered parking spaces, signs, or curb markings have been located on public streets, public property, or private property.

(11) When requested by law enforcement, code enforcement or other authorized personnel, mobile vendors shall provide any other documentation as may be required by other provisions of this section or other applicable provisions of the Code of Ordinances.

(E) In addition to the restrictions and requirements contained in subsections (C) and (D) of this section, no mobile vendor located on public or private property shall:

(1) Vend within 500 feet of any kindergarten, nursery, religious school, elementary, middle, or high school;

~~—(2) Vend within 500 feet of any church, Sunday school, or other religious institution;~~

~~(2)(3)~~ (3) Vend within 500 feet of any public park, public parking facility, or other public institution;

~~—(4) Vend within 500 feet of any lawful existing establishment that sells the same or similar goods, wares, merchandise, beverages, or food stuff during the hours of operation of the establishment;~~

~~(3)(5)~~ (5) Allow any items related to the operation of the vending business to be placed anywhere other than in or on the vending vehicle;

~~(4)(6)~~ (6) Sell food stuff or beverages for immediate consumption without providing a litter receptacle available for patron's use;

~~(5)(7)~~ (7) 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;

~~(6)(8)~~ (8) Allow any fluids to be discharged from the vending vehicle;

~~(7)(9)~~ (9) Set up, erect, maintain, or permit the use of any chair(s), table(s), crate(s), carton(s), rack(s), or other device(s) to increase the selling or display capacity of the vending vehicle or to be used in any other way by the vendor or the vendor's patrons;

~~(8)(10)~~ (10) Set up, erect, maintain, or permit any signs or advertising devices except the posting of prices or to identify the name of the product or the name and address of the vendor provided the sign(s) is/are attached to the mobile vending vehicle;

(9) Maintain a clear distance of at least five feet from any alley, crosswalk, fire hydrant, or similar public or emergency access feature in or near the sidewalk. A greater clear distance may be required where necessary to ensure use of the public or emergency access feature. Mobile vending shall comply with all applicable fire, life safety, and ADA Requirements and cannot create a hazardous condition.

~~—(11) Sell anything other than which the vendor maintains a valid business tax receipt to vend unless such activity is constitutionally protected;~~

~~—(12) A separate business tax receipt will be required for each mobile vending vehicle;~~

~~—(13) All business tax receipts and certifications issued or required under this section shall be displayed at all times during the operation of the vending business in a place where the document(s) is/are visible at all times;~~

~~—(10) (14)~~ The provisions of this section shall not apply to those vendors which obtain a business tax receipt under the provisions of § [113.40](#), temporary holiday sales vendors; and

~~(11) (15)~~ In addition to the provisions contained in this section, all mobile vendors must adhere to all traffic laws or other applicable laws.

~~—(F) Issuance; denial. A decision shall be rendered not later than ten days after the filing of a completed application for a vendor's business tax receipt. The applicant shall contact the business tax receipt inspector to determine what decision was made regarding the issuance or denial of the business tax receipt. If the issuance of the business tax receipt is approved, the business tax receipt inspector shall issue the license. If the business tax receipt is denied, the applicant shall be provided with a statement of the reasons therefor, which reasons shall be entered in writing on the application. The applicant shall be entitled to an informal hearing with the City Manager or his or her designee, if so requested by the applicant within five days of his receipt of the written denial from the business tax receipt inspector. A business tax receipt issued pursuant to this section is valid for a period of one year from October 1 to September 30.~~

~~—(G) Display of business tax receipt. All business tax receipts issued under this subsection shall be displayed at all times during the operation of the vending business in a place where the business tax receipt is visible at all times.~~

(F) Violations. Any person in violation of this section shall first receive a warning to immediately cease the conduct which is in violation from law enforcement, code enforcement or other authorized personnel. Persons who fail to comply with the lawful request to cease the unlawful conduct, or who repeat the same violation at the same or at any other location in the City, may then be charged with violation of that specific unlawful conduct pursuant to §10.99 of this Code.

(Ord. 89-14, passed 11-29-88; Am. Ord. 95-17, passed 11-8-94; Am. Ord. 2007-57, passed 7-10-07; Am. Ord. 2018-74, passed 7-24-18) [Penalty, see § 10.99](#)

115.19 PIER AREA VENDING

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(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 only vendors permitted adjacent to the pier and in any areas under lawful control of the City's Pier Developer shall be those designated and contracted by the Pier Developer following mandatory approval of the Master Plan by the City.

The following documentation shall be submitted and incorporated into the Master Plan and shall comply with applicable standards:

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(3) Proof of an insurance policy issued by an insurance company properly authorized and approved to do business in the state protecting the vendor 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.

(D) *Operational standards.*

(1) Pier Area vending concessionaires shall be assigned a specific zone within the Pier Area as depicted on the Master Plan.

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(c) Concessionaries shall have the following available for inspection: 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;~~

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

2. 5. Proof of an insurance policy issued by an insurance company properly authorized and approved to do business in the state protecting the vendor ~~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

3. -6. Any other documentation as may be required by other provisions of this chapter or other chapters of the City Code of Ordinances-

APPENDIX A: CONSOLIDATED USE TABLE

t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT

✓ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT

I = INTERIM USE ALLOWED WITH AN INTERIM USE PERMIT

BLANK CELL = PROHIBITED USE

[illegible]