

Requested by: City Manager
Prepared by: City Manager, City Attorney and City Clerk

ORDINANCE NO. 2016-05

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 62, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, BY ADDING ARTICLE VI, MOBILE VENDING; ESTABLISHING REGULATIONS FOR MOBILE VENDING; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the provision of standards for safe placement, movement and presence of vehicles and pedestrians on Venice public roadways, public corridors and other public space is an essential responsibility of the city; and

WHEREAS, the establishment of rules for the movement, placement and operation of mobile vendors on public space is within the regulatory authority of the city; and

WHEREAS, the operation of mobile vending businesses in public right-of-way may create public safety risks to vehicle operators, mobile vendor patrons and pedestrians; and

WHEREAS, in support of the operation of mobile vendors, the city intends to minimize the risk of accident and injury associated with mobile vendors by designation of a specific location reserved for mobile vending operations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA as follows:

SECTION 1. The above whereas clauses are ratified and confirmed as true and correct.

SECTION 2. There is hereby created a new Article VI, Chapter 62, Streets, Sidewalks and Other Public Places, of the City of Venice Code of Ordinances, entitled "Mobile Vending."

SECTION 3. Chapter 62, Streets, Sidewalks and Other Public Places, Article VI, Mobile Vending is hereby added to read as follows:

Chapter 62
STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
Article VI. Mobile Vending on Public Property

Sec. 62-140 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a

different meaning.

Mobile vending. To sell by dispensing, peddling, hawking or offering for sale by soliciting or displaying any foodstuffs, beverages, goods or services from other than a structure which is permanently erected or constructed with a fixed location on or in the ground. Mobile vending shall not include the use of public property or public right-of-way by any person pursuant to a franchise granted by the city on a special events permit.

Approved park vendor. A person who has a written permit with the city to engage in mobile vending within a municipal park which has been designated pursuant to Section 62-147 for vending purposes.

Person. An individual, group of individuals, any partnership, limited partnership, trust, association, corporation, firm, association or business entity, by whatever name identified, owning or responsible for the placing, maintaining or controlling of any mobile vending activity which is regulated by this article. The use of the singular shall include the plural.

Vendor. Any person who engages in a mobile vending activity.

Public property. Any real property owned or controlled by the city or any other governmental entity.

Sec. 62-141. Mobile vending on public property.

Except for approved park vendors in a designated location, no person shall engage in the activity of mobile vending on public property within the city.

Sec. 62-142. Mobile vending permits.

The city manager, or his designee, may issue permits upon application submitted in accordance with the following requirements:

- (1) Applications for a permit shall be submitted on forms prescribed by the city manager.
- (2) Any person regulated, as to sanitary practices, by the department of health and rehabilitative services of the state, shall submit with the application proof of compliance with applicable regulations of said department and the county health department as a condition precedent to the issuance of any permit pursuant to this section. Any person required to maintain commissary facilities shall identify, on the application, the business address of that facility and shall produce proof of compliance with applicable regulations of the department of health and

rehabilitative services and the county health department relating thereto, prior to the issuance of any permit pursuant to this section.

- (3) All persons, prior to receiving a permit, shall procure Commercial General Liability insurance, in a minimum amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate including Fire Damage Legal Liability in a minimum amount of three hundred thousand dollars (\$300,000.00) per occurrence. Policy shall name the City of Venice as an additional insured; and the same shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty (30) days' advance written notice to the city. Coverage is to respond on a primary basis and include a waiver of subrogation in favor of the city. Proof of such insurance, issued by an insurance company licensed to do business in the state, shall be delivered prior to the issuance of a permit to the city manager or his designee.
- (4) An application fee in the amount of one hundred fifty dollars (\$150.00) shall be payable at the time the application for a permit is filed. In the event that the requested permit shall not be issued, the permit fee shall be refunded to the vendor and the vendor shall be notified, in writing, as to the reasons for the denial of the permit.
- (5) Permits shall be valid for a period of no more than one (1) year and shall expire on October 1. Permits issued after October 1 of any given year shall be issued through the following September 30.
- (6) No permit shall be issued if the mobile vending requires the use of any device which is of such physical size so as to impede or interfere with the flow of pedestrian or vehicular traffic on or across the right-of-way.

Sec. 62-143. Responsibilities of vendors.

A person who is issued a permit pursuant to this section shall:

- (1) Engage in mobile vending only after having obtained a business tax receipt from the development services department.
- (2) Engage in mobile vending only between 6:00 a.m. and 12:00 midnight.
- (3) Provide a litter receptacle for use by patrons or customers.
- (4) Leave a location only after picking up, removing and disposing of all trash or refuse remaining from the mobile vending activity.

- (5) Not set up, maintain or permit the use of any crates, cartons, coolers, ice chests, freestanding racks, chairs for customers, tables or boxes. Notwithstanding the foregoing, a vendor may set up and use a chair for rest during working hours.
- (6) Not solicit, offer to sell or make any sales to persons in motor vehicles which are traveling on any street, roadway, thoroughfare or alley.
- (7) A permit shall specify a vending site and authorizing the vendor to occupy and use that specific location. The permit and the site specified therein shall be personal to the vendor named in the permit and the permit or site to which it pertains shall not be sold or transferred by the vendor to any other person or entity. A vending site may only be transferred by the city manager upon the termination of a vending permit. A vendor may not grant permission for a substitute person or entity to operate under the vendor's permit. Notwithstanding the foregoing, a vendor may hire one (1) employee per site and said employee may occupy the site in vendor's stead so as to work the vending cart thereby allowing the vendor time off while maintaining the business as well as allowing the vendor to make provisions for vacation, scheduled appointments, business meetings, illness and the like.
- (8) Annually, a vendor may request renewal of a valid vending permit. The vendor shall be entitled to renew the permit for the vending site provided for in an expiring permit so long as the application for the new permit is made. An application made within the first seven (7) working days of the month of October shall be deemed timely. If a previously assigned vending site is not renewed because an application for renewal was not submitted in a timely manner, then that particular vending site may be assigned to the first vendor making application therefore.
- (9) Should a vendor abandon the site identified in the vending permit, without prior approval of the city manager, the vending permit shall be deemed automatically terminated and the city manager may then issue a permit to a new vendor for that vending site. "Abandonment" shall be deemed to have occurred if a vendor fails to occupy and vend from the permitted vending site for seven (7) or more working days in succession. Provided, however, that a vendor may temporarily interrupt the conduct of business at the vending permit site by giving advance written notice to the city manager, specifying the reasons for the temporary suspension of business.

Sec. 62-144. Interference with traffic prohibited.

Persons issued permits pursuant to this section shall not impede or interfere with the flow of pedestrian or vehicular traffic along or across the public property. Should any person

refuse to move or disperse, upon the order of the city manager, his designee, or any member of the police department of the city, the permit issued to allow the commercial activity of such person shall be subject to revocation. No person shall conduct his or her mobile vending activity so as to hawk, offer, solicit or sell to operators or passengers in motor vehicles if the motor vehicle must be stopped or parked illegally in or on the public right-of-way in order for the vendor to engage in the mobile vending activity.

Sec. 62-145. Revocation of permit.

The city manager or his designee may revoke any permit issued pursuant to this section for the failure of a permittee to adhere to any standard or requirement of this section. Prior to revoking a permit, the permittee shall be given written notice of the violation and the action necessary to correct the same. The notice shall be delivered by U.S. registered mail, return receipt requested, or by hand delivery. The notice shall provide that failure to correct the offending condition, within five (5) days, shall result in the revocation of the permit. Within five (5) days of the receipt of the aforementioned notice, the permittee may request an opportunity to appear before the city manager or his designee in order to show cause why the permit should not be cancelled. However, such appearance shall not be required in the event that the permittee takes corrective action within the time designated.

Sec. 62-146. Appeal.

A permittee may appeal, to the city council, any decision of the city manager or his designee, pertaining to the denial of a permit applied for, or the revocation of an issued permit pursuant to Section 62-145 above. An appeal must be filed within ten (10) days of the action, determination or notice from which the appeal is taken. An appeal shall be deemed filed when the permittee has submitted, in writing, a statement of the administrative action being appealed and the basis for such appeal and has delivered the same to the city clerk. The city clerk shall schedule the appeal for consideration by the city council at its next regular meeting. At the hearing before the city council, the permittee shall be given a reasonable opportunity to be heard in order to show cause why the action, determination or notice appealed from should be reversed or modified. In all such cases, the burden of proof shall be upon the permittee to

show that there was no substantial evidence to support the action, determination or notice. At the conclusion of the hearing, the decision of the city council shall be final.

Sec. 62-147. Penalty.

Any act prohibited, made or declared to be unlawful by the terms of this chapter or the doing of any act prohibited or the failure to do any required act shall be deemed a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500.00), or imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment. Each day any violation of this chapter shall continue shall constitute a separate offense.

Sec. 62-148. Mobile vending in designated parks.

The South Jetty Park (aka Humphris Park, See 46-1) is hereby designated as a mobile vending location.

SECTION 4. All Ordinances or parts of Ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 5. If any part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The city council specifically declares that no invalid or prescribed provision or application was an inducement to the enactment of this ordinance, and that it would have enacted this ordinance regardless of the invalid or prescribed provision or application.

SECTION 6. This Ordinance shall take effect immediately upon approval and adoption as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 13TH DAY OF SEPTEMBER 2016.

First Reading: August 23, 2016

Final Reading: September 13, 2016

Adoption: September 13, 2016

ATTEST:

John W. Holic, Mayor

Lori Stelzer, MMC, City Clerk

Approved as to form:

David Persson, City Attorney