

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation
<p><b>SHORT TITLE</b>      <b>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 PORTABLE VENDING CONCESSIONAIRE; BY CREATING SECTION 115.19, "PIER AREA PORTABLE VENDING," TO PROVIDE DEFINITIONS, APPROVALS, PROCEDURES, REGULATIONS AND STANDARDS FOR PORTABLE VENDING IN DESIGNATED LOCATION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.</b></p>				

**Summary of Purpose and Why:**

Staff is recommending text amendments to Chapter 115 regarding kiosks and refreshment stands for the Pompano Pier Project. Per Section 8.2 of the Amended Development Agreement between the City and Pier Developer, approved via Ordinance 2014-49, the City has one year from the effective date of the Development Agreement to provide the Developer with a set of guidelines for the use of the Beachfront Area, including a description of the types of structures to be permitted (such as kiosks and refreshment stands), procedure for obtaining design approval of structures and permits, hours of operation etc...The effective date of the Agreement was July 28, 2014. The proposed text amendments, therefore, have been prepared to satisfy the requirements of Section 8.2 of the Amended Development Agreement. The text amendments were a collaborative effort between Staff from Development Services, CRA, Parks and Recreation, and Public Works. As a courtesy, the text amendments were reviewed at the June 24, 2015 Planning and Zoning Board hearing.

- (1) Origin of request for this action: Development Services Dept.
- (2) Primary staff contact: Robin M. Bird/ Karen Friedman *KBF* Ext. 7792
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	06/15/2015	Approval	Memo #15-322 <i>[Signature]</i>
City Attorney	07/06/2015	Approval	Memo #2015-1222 <i>[Signature]</i>
X Planning and Zoning Board		Support	Memo #15-046 / (07/06/2015)
X City Manager	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

<u>Ordinance Workshop</u>	<u>Resolution</u>	<u>Consideration</u>
1 <sup>st</sup> Reading	1 <sup>st</sup> Reading	Results:
2 <sup>nd</sup> Reading		Results:



**City Attorney's Communication #2015-1222**  
July 6, 2015

**TO:** Karen Friedman, AICP, Planner  
**FROM:** Gordon B. Linn, City Attorney  
**RE:** Ordinance Amending Chapter 115, "Miscellaneous Businesses"

As requested in your memorandum of June 29, 2015, Department of Development Services Memorandum No. 15-346, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

**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 PORTABLE VENDING CONCESSIONAIRE AS DEFINED IN SECTION 115.19; BY CREATING SECTION 115.19, " PIER AREA PORTABLE VENDING," TO PROVIDE DEFINITIONS, APPROVALS, PROCEDURES, REGULATIONS AND STANDARDS FOR PORTABLE VENDING IN DESIGNATED LOCATION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please carefully review the Ordinance to ensure that it meets with your desires.

  
GORDON B. LINN

/jrm  
l:cor/dev-srv/2015-1222

Attachment

**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 PORTABLE VENDING CONCESSIONAIRE AS DEFINED IN SECTION 115.19; BY CREATING SECTION 115.19, " PIER AREA PORTABLE VENDING," TO PROVIDE DEFINITIONS, APPROVALS, PROCEDURES, REGULATIONS AND STANDARDS FOR PORTABLE VENDING IN DESIGNATED LOCATION; 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:

...

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

...

**SECTION 2.** That Section 115.19, "Pier Area Portable 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 PORTABLE 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) **PORTABLE VENDING AGREEMENTS ("AGREEMENTS").** A document issued by the Pier Developer to a Portable Vending Concessionaire for use of a designated Portable Vending Space. The agreement shall set forth the terms and conditions for use in accordance with approved policies and procedures. Additionally, the Portable Vending Concessionaire shall be required to comply with all applicable laws and ordinances.

(2) **PORTABLE VENDING SPACE.** An assigned space located within one of the Zones and whose location is depicted on the Portable Vending Master Plan.

(3) **PORTABLE VENDING CONCESSIONAIRE.** A person, corporation, company or business authorized to operate Portable Vending Equipment in the Pier Area.

(4) **PORTABLE VENDING EQUIPMENT.** A small, temporary, portable structure, which is open at one or more sides, self-contained, and from which services or merchandise may be sold.

(5) **PORTABLE VENDING MASTER PLAN.** A plan submitted by the Pier Developer and approved via Resolution by the City Commission which depicts the general location of all proposed Portable Vending Equipment, architecture of the Portable Vending Equipment, access and loading for the Portable Vending Equipment, and other relevant information

(6) **PIER AREA.** That portion of the beach, right-of-way and other lands as described in Exhibit "A" and including the Pompano Beach Municipal Pier.

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

(8) **SIDEWALK ZONE.** As depicted on the Portable Vending Master Plan, that portion of the Pier Area defined as Sidewalk Zone.

(B) Required Approval. Prior to installation of any portable vending equipment, the Pier Developer shall first submit the proposed Portable Vending Master Plan to the Development Services Department for review and approval. After approval by the Development Services Department, the Pier Developer must obtain approval of the Portable Vending Master Plan by the City Commission via Resolution. The following documentation shall be submitted and shall comply with applicable standards:

(1) Architectural schematics including information about materials.

(2) Site Plan depicting the following:

(a) Method of installation and removal of the concession equipment;

(b) Dimensions of the concession equipment;

(c) Loading and Unloading plan;

(d) Provision for ADA Accessibility (unless applicant demonstrates not required);

(e) Dimensions of all signage;

(f) Depiction of location of on-site disposal of business related wastes;

(g) Depiction and location of power sources; and

(h) 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.

(C) Portable vending space regulations.

The dimensional standards and the limitation on the number of Portable Vending Spaces are shown in Table 115.19(C). 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 155.19.D.3.

<b>TABLE 115.19(C): Portable Vending Space Standards</b>			
<b>Zone</b>	<b>Maximum Length (in feet)</b>	<b>Maximum Width (in feet)</b>	<b>Maximum number of Portable Vending Spaces in Zone</b>
Sand Zone	12'-6"	12'-6"	4
Sidewalk Zone	12'-6"	12'-6"	4

(D) Portable vending equipment standards.

(1) The dimensional standards for the Portable Vending Equipment are shown in Table 115.19(D)(1). 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 155.19.D.3.

<b>TABLE 115.19(D)(1): Portable Vending Equipment Dimensional Standards</b>			
<b>Zone</b>	<b>Maximum Length (in feet)</b>	<b>Maximum Width (in feet)</b>	<b>Maximum Height (in feet)</b>
Sand Zone	10'-0"	8'-0"	10'-6"
Sidewalk Zone	10'-0"	8'-0"	10'-6"

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

(a) The color and style theme of the Portable Vending Equipment shall be consistent with the adjacent pavilions, restroom facilities and/or other maritime design elements consistent with the beach style theme.

(b) The architectural design shall reflect the "Shed roof" design demonstrated in the example of vending kiosk in Exhibit "B" and/or other maritime design elements consistent with the beach style theme.

(c) The Portable Vending Equipment shall be readily moveable, which may include equipment on wheels, modular equipment or other similar construction.

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

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

(f) All materials must be in accordance with all Local, State, and Federal rules and regulations.

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

(h) No permanent fixtures, facilities or encroachments may be affixed to the sidewalk or to any paved area, if applicable.

(i) Cooking Apparatus.

i. Food preparation for Portable Vending Equipment located within the Sidewalk Zone is strictly limited to ready-to-eat foods only, and shall be in accordance with this section and state regulations.

ii. Food preparation for Portable Vending Equipment located within the Sand Zone shall be in accordance with this section and state regulations.

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

i. Portable Vending Equipment must provide their own safe power sources, if any are required.

ii. Portable Vending Equipment may be propelled by an electric motor or similar mechanical device.

iii. Connection to electric outlets or power sources owned by the city or on private property is prohibited.

iv. Internal combustion engines or other similar mechanical devices are prohibited.

- v. Extension cords are prohibited; and
- vi. 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

(k) Waste receptacles. All Portable Vending Equipment must be self-contained with a waste receptacle. Portable Vending Concessionaires shall comply with the following standards:

- i. Portable Vending Concessionaires permitted to sell food and/or beverages shall also provide a waste receptacle available for patron's use.

- ii. Portable Vending Concessionaires must not empty any waste into City-owned trash receptacles;

- iii. Portable Vending Concessionaires shall not allow any fluids to be discharged from the Portable Concession equipment or any accessory equipment;

- iv. No liquid waste or grease shall be disposed in tree pits, storm drains, or onto the sidewalks, streets, or other public space; and

- v. The Portable Vending Concessionaires is responsible for the removal of grease from sidewalk and street surfaces resulting from the daily operation, unloading, and loading of the Concession Equipment and any accessory equipment.

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

- (a) Outside of the assigned Portable Vending Space;

- (b) Overhanging the Portable Vending Space boundary line;

- (c) Leaning against or hanging from any building, structure, tree or other plant;

- (d) Blocking the following:

- i. Pedestrian or vehicular traffic;

- ii. Access to an entrance to a building;



- iii. Access to the playground or pavilions;
- iv. Access to a bicycle rack;
- v. Access to a trash receptacle; and
- vi. A sprinkler inlet or standpipe inlet (both wet and dry).

(e) For portions of the equipment less than seven feet above grade only, within the following locations:

- i. Seven feet from the curb line and from street furniture; and
- ii. Ten feet from crosswalks, planters and fire hydrants.

(E) Operational standards.

(1) Portable Vending Concessionaires shall be assigned a specific Portable Vending Space.

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

(b) A separate business tax receipt will be required for each Portable Vending Space.

(c) No more than one Portable Vending Equipment shall be located in one Portable Vending Space.

(d) Portable Vending Equipment shall be parallel to the curb, with the longest side of the Portable Vending Equipment parallel to the curb.

(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 155.3703.2.a.

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

(a) Portable Vending Concessionaires shall maintain their designated space in a clean, hazard-free condition;

(b) Portable Vending Concessionaires shall maintain an area within a radius of 25 feet of their designated space in a clean condition which is free of trash and debris;

(c) Portable 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 Concessionaire to City property including, but not limited to, the sidewalk, shall be repaired by the Concessionaire within 24 hours of notice of damage by the City Manager, or his designee. If any such damage is not repaired within 24 hours of notice of damage by the City Manager, or his designee, it is understood that the City will take the necessary steps to complete the work and charge the Concessionaire for the restoration costs.

(4) *Noise standards.*

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

(b) Portable 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 Concession Equipment in emergency situations or for safety considerations.

(b) Upon the issuance of a hurricane warning by the county, the Portable Vending Concessionaires shall forthwith cease operation and

remove all equipment. The issuance of such a hurricane warning shall constitute an emergency situation. As additional means of enforcement, the city may remove any 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 concession equipment and/or merchandise shall be the responsibility of the Portable Vending Concessionaires. The city is not responsible for any damages or loss of equipment or merchandise which is lawfully confiscated.

(c) If the Zone or Portable Vending Space assigned for a Portable 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 Portable Vending Concessionaire to a different zone or location, or temporarily suspend (if no alternative is available) the Portable 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) Loading and unloading times are restricted to 8:00 a.m. to 9:00 a.m. and 9:00 p.m. to 10:00 p.m.

(c) During City-sponsored special events, where the special event's hours exceed those listed in this section, the Portable Vending Concessionaire may operate according to the special events hours of operation.

(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.

**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 \_\_\_\_\_, 2015.

**PASSED SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

GBL/jrm  
7/8/15  
L:ord/ch115/2015-408

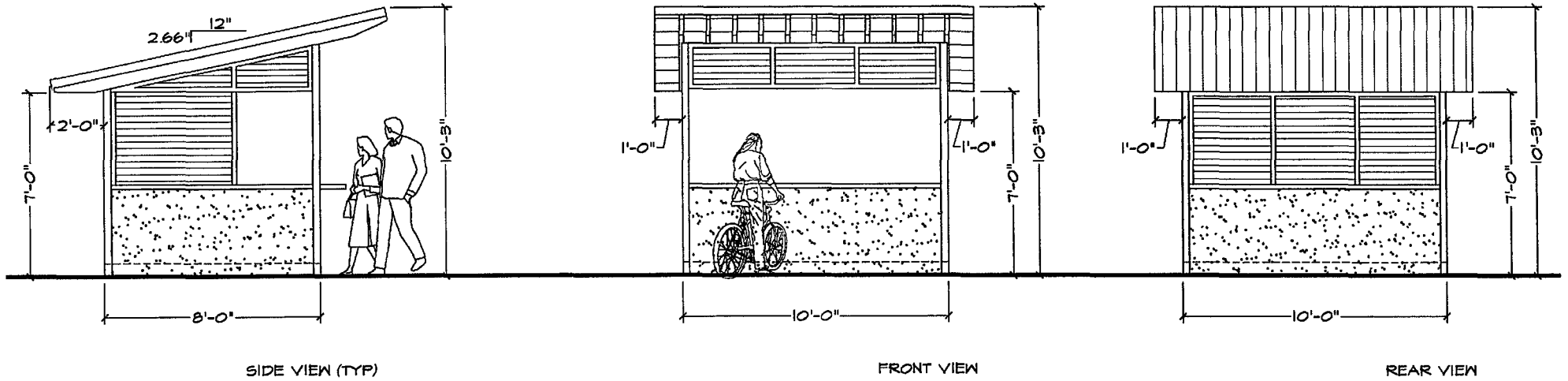
## EXHIBIT A

### **Legal Description of Beachfront Area**

PORTIONS OF BLOCKS 6, 7, 11 & 12 OF POMPANO BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD AND THE SOUTH RIGHT-OF-WAY LINE OF N.E. 1<sup>ST</sup> STREET; THENCE NORTHEASTERLY ALONG SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD 1,800 FEET; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE, SOUTHEASTERLY ALONG A LINE PERPENDICULAR TO SAID RIGHT-OF-WAY LINE TO THE EROSION CONTROL LINE; THENCE SOUTHWESTERLY ALONG SAID EROSION CONTROL LINE TO THE INTERSECTION OF A LINE PERPENDICULAR TO THE SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD; THENCE NORTHWESTERLY ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.

### EXHIBIT B



### EXAMPLE OF VENDING KIOSK

**PLANNING AND ZONING BOARD/ LOCAL PLANNING AGENCY**  
**MEMORANDUM #15-046**

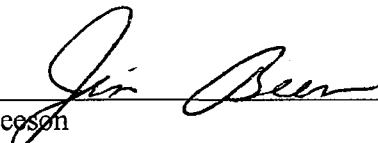
**DATE:** July 6, 2015  
**TO:** City Commission  
**FROM:** Planning and Zoning Board/ Local Planning Agency  
**SUBJECT:** Proposed Text Amendments to the Code of Ordinances, Pier Area Portable Vending

---

At the meeting of the Planning and Zoning Board/ Local Planning Agency held on June 24, 2015, the Board considered text amendments to the Code of Ordinances, Chapter 115, regarding permitting refreshment and kiosks stands in conjunction with the Pier Development project as set forth in the Department of Development Services Administrative Report 15-322.

Staff recommends text amendments to §115.18 and §115.19 permitting refreshment and kiosks stands in the Pier Area in conjunction with the Pier Development project. The text amendments include standards for the Portable Vending Agreement, Portable Vending Master Plan, type and location of vending equipment, merchandise sold, operating hours and so on.

It is the unanimous decision of the Board to support the proposed text amendments.

  
\_\_\_\_\_  
Jim Beeson  
Chairman  
Planning and Zoning Board/ Local Planning Agency



**MEMORANDUM**

DATE: July 21st, 2015

TO: Planning and Zoning

FROM: Juan C. Ayala, CRA Project Manager

THRU: Kim Briesemeister, CRA Executive Director,  
Chris Brown, CRA Executive Director

RE: Pier Portable Vending, Section 115.19 - Text amendments

---

The Community Redevelopment Agency (CRA) is in support of the text amendments and the creation of the new Section 155.19 "Pier Area Portable Vending" of chapter 115, "Miscellaneous Businesses", of the City of Pompano Beach Code of Ordinances. The CRA and city staff on a collaborative effort participated and provided input for the definition of the Portable Vending space regulations, dimensional standards and design guidelines to be followed.





# MEMORANDUM

## Development Services

**MEMORANDUM NO. 15-322**

DATE: June 15, 2015  
TO: Planning and Zoning Board  
VIA: Robin M. Bird, Development Services Director *RB*  
FROM: Karen Friedman, AICP, Principal Planner *KBF*  
SUBJECT: Text Amendment – Ch 115  
§ 115.19 Pier Area Portable Vending.

Staff is recommending text amendments to the Code of Ordinances, Chapter 115, to permit refreshment and kiosks stands in conjunction with the Pier Development project.

Per Section 8.2 of the Amended Development Agreement, approved via Ordinance 2014-49, the City has one year from the effective date of the Development Agreement, to provide the Developer with a set of guidelines for the use of the Beachfront Area, including a description of the types of structures to be permitted, procedure for obtaining design approval of structures and permits, hours of operation etc...The effective date was July 28, 2014. The text amendments submitted for the Planning and Zoning Board's consideration, therefore, have been prepared to satisfy the requirements of Section 8.2 of the amended Development Agreement. Below is an explanation of the proposed amendments:

### Explanation

**§115.18(B)(4)**

- Clarifies that Pier Area Portable Vendors are exempt from the standards in §115.18

**§115.19(A)**

- The definitions include terms specific to vendors approved to operate in the Pier Area.
- The definition for Portable Vending Agreement clarifies that the developer is authorized to enter into agreements directly with concessionaires. This is consistent with Section 8.3 of the Amended Agreement.
- The definition for Portable Vending Master Plan clarifies that the developer creates the plan for the location of the vending spaces as well as the architecture of the spaces, which requires approval from the City Commission.

**§115.19(B)**

- Clarifies that the Master Plan must be submitted to the Development Services Department. After receiving approval of the plan from the Development Services Department, the plan must be approved by the City Commission.
- The Master Plan must include architectural schematics, a "site plan", and proof of insurance.

**§115.19(C)**

- Permits a maximum of four portable vending spaces within the sand and four along the sidewalk. As part of the Portable Vending Master Plan, the Developer gets to select the location of the four spaces within the sand and the four spaces along the sidewalk.
- Provides the maximum threshold for the portable vending space dimensions. However it is also clarified that the overriding requirement is compliance with the prohibited locations.

# MEMORANDUM

## Development Services

### §115.19(D)

- Provides the maximum threshold for the portable vending equipment dimensions. However it is also clarified that the overriding requirement is compliance with the prohibited locations.
- Creates standards for the design and construction of the equipment. As part of the Portable Vending Master Plan, the Developer gets to propose the style/architecture of the equipment.
- Requires the style/architecture of the equipment to be consistent with a shed roof design or with maritime design elements consistent with the beach theme.
- Limits the types of materials permitted.
- Clarifies that the equipment on the sidewalk is limited to preparation of ready to eat foods, while the concession equipment on the sand is permitted to cook food.
- Florida Administrative Code, Section 64E-11.002 defines "ready-to-eat" food as: *"Food that is in a form that is edible without washing, cooking, or additional preparation by the establishment or the consumer and that is reasonably expected to be consumed in that form"*
- Restricts the type of energy sources permitted and strictly prohibits connections to a city electric outlet, internal combustion engines, extension cords, and hazardous power sources.
- Regulates waste receptacles and also addresses grease and other liquid waste.
- Includes a list of prohibited locations for vending equipment, including specific distances from the curb line, crosswalks, etc... as well as not blocking access to various locations including building entrances, bicycle racks etc...

### §115.19(E)

- Clarifies that the equipment must stay stationary during hours of operation and cannot traverse the sidewalk (such as a mobile ice cream vendor might do).
- Requires the vendors to obtain a BTR.
- Limits only one portable vending equipment in a portable vending space.
- Prohibits certain types of merchandise, including alcoholic beverages, tobacco products and paraphernalia, chewing gum and other uses prohibited in the AOD.
- References the maintenance standards in the Development Agreement.
- Requires the concessionaire to maintain a 25 ft radius of their site free of trash and debris.
- Requires all damage to city property to be remedied by the concessionaire within 24 hours of notice by the City.
- Clarifies the concessionaires are not exempt from the Noise Ordinance and are not eligible for an exemption.
- Includes procedures for hurricane warnings.
- Limits the hours of operation and hours of loading. Also permits additional hours of operation during special events.
- Prohibits most accessory equipment, including tables, chairs, racks, and signage.

### Staff's Request

The proposed revisions to §115.19 are being presented to this Board as a courtesy. However, Staff is seeking a positive endorsement of the proposed revisions.

G:\Zoning 2009\Code Rewrite\Code Amendments\Pier Project related Text Amendments\P&Z\_June 2015\Memo\_P&Z.doc

**§ 115.18 MOVING VENDOR, ITINERANT MERCHANT, OR PEDDLER.**

\*\*\*

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

\*\*\*

(4) The regulations contained in this section are not applicable to Portable Vendors approved to operate per § 115.19 Pier Area Portable Vending.

\*\*\*

**§ 115.19 PIER AREA PORTABLE 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) **PORTABLE VENDING AGREEMENTS ("AGREEMENTS").** A document issued by the Pier Developer to a Portable Vending Concessionaire for use of a designated Portable Vending Space. The agreement shall set forth the terms and conditions for use in accordance with approved policies and procedures. Additionally, the Portable Vending Concessionaire shall be required to comply with all applicable laws and ordinances.
- (2) **PORTABLE VENDING SPACE.** An assigned space located within one of the Zones and whose location is depicted on the Portable Vending Master Plan.
- (3) **PORTABLE VENDING CONCESSIONAIRE.** A person, corporation, company, or business authorized to operate Portable Vending Equipment in the Pier Area.
- (4) **PORTABLE VENDING EQUIPMENT.** A small, portable structure, which is open at one or more sides, which is a self contained, and from which services or merchandise may be sold.
- (5) **PORTABLE VENDING MASTER PLAN.** A plan submitted by the Pier Developer and approved via Resolution by the City Commission which depicts the general location of all proposed Portable Vending Equipment, architecture of the Portable Vending Equipment, access and loading for the Portable Vending Equipment, and other relevant information
- (6) **PIER AREA.** That portion of the beach, right-of-way and other lands as described in Exhibit "A" and including the Pompano Beach Municipal Pier.
- (7) **SAND ZONE.** As depicted on the Portable Vending Master Plan, that portion of the Pier Area defined as Sand Zone.
- (8) **SIDEWALK ZONE.** As depicted on the Portable Vending Master Plan, that portion of the Pier Area defined as Sidewalk Zone.

**(B) REQUIRED APPROVAL**

Prior to installation of any portable vending equipment, the Pier Developer shall first submit the proposed Portable Vending Master Plan to the Development Services Department for review and approval. After approval by the Development Services Department, the Pier Developer must obtain approval of the Portable Vending Master Plan by the City Commission via Resolution. The following documentation shall be submitted and shall comply with applicable standards:

- (1) Architectural schematics including information about materials.
- (2) Site Plan depicting the following:
  - a. Method of installation and removal of the concession equipment;
  - b. Dimensions of the concession equipment;
  - c. Loading and Unloading plan;
  - d. Provision for ADA Accessibility (unless applicant demonstrates not required);
  - e. Dimensions of all signage;
  - f. Depiction of location of-on-site disposal of business related wastes;
  - g. Depiction and location of power sources; and
  - h. 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.

**(C) PORTABLE VENDING SPACE REGULATIONS.**

The dimensional standards and the limitation on the number of Portable Vending Spaces are shown in Table 115.19(C). 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 155.19.D.3.

<b><u>Zone</u></b>	<b><u>Maximum Length (in feet)</u></b>	<b><u>Maximum Width (in feet)</u></b>	<b><u>Maximum number of Portable Vending Spaces in Zone</u></b>
<u>Sand Zone</u>	<u>12'-6"</u>	<u>12'-6"</u>	<u>4</u>
<u>Sidewalk Zone</u>	<u>12'-6"</u>	<u>12'-6"</u>	<u>4</u>

**(D) PORTABLE VENDING EQUIPMENT STANDARDS.**

- (1) The dimensional standards for the Portable Vending Equipment are shown in Table 115.19(D)(1). 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 155.19.D.3.

<b><u>Zone</u></b>	<b><u>Maximum Length (in feet)</u></b>	<b><u>Maximum Width (in feet)</u></b>	<b><u>Maximum Height (in feet)</u></b>
<u>Sand Zone</u>	<u>10'-0"</u>	<u>8'-0"</u>	<u>10'-6"</u>
<u>Sidewalk Zone</u>	<u>10'-0"</u>	<u>8'-0"</u>	<u>10'-6"</u>

- (2) **Design and Construction.** Portable Vending Equipment shall be constructed and designed in compliance with the following standards.
- a. The color and style theme of the Portable Vending Equipment shall be consistent with the adjacent pavilions, restroom facilities and/or other maritime design elements consistent with the beach style theme.
  - b. The architectural design shall reflect the "Shed roof" design demonstrated in the example of vending kiosk in Exhibit "B" and/or other maritime design elements consistent with the beach style theme.
  - c. The Portable Vending Equipment shall be constructed of durable material. No plastic, unfinished, or pressure treated wood shall be visible.
  - d. The Portable Vending Equipment shall have no features which would be a nuisance or hazardous to public safety.
  - e. All materials must be in accordance with all Local, State, and Federal rules and regulations.
  - f. All signage must be securely attached to the Portable Vending Equipment.
  - g. No permanent fixtures, facilities or encroachments may be affixed to the sidewalk or to any paved area, if applicable.
  - h. **Cooking Apparatus.**
    - i. Food preparation for Portable Vending Equipment located within the Sidewalk Zone is strictly limited to ready-to-eat foods only, and shall be in accordance with this section and state regulations.
    - ii. Food preparation for Portable Vending Equipment located within the Sand Zone shall be in accordance with this section and state regulations.

- i. **Energy Supply.** All Portable Vending Equipment must be entirely self-sufficient in regards to gas, water, and telecommunications and comply with the following standards:
  - i. Portable Vending Equipment must provide their own safe power sources, if any are required.
  - ii. Portable Vending Equipment may be propelled by an electric motor or similar mechanical device.
  - iii. Connection to electric outlets or power sources owned by the city or on private property is prohibited.
  - iv. Internal combustion engines or other similar mechanical devices are prohibited.
  - v. Extension cords are prohibited; and
  - vi. 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
  
- j. **Waste Receptacles.** All Portable Vending Equipment must be self-contained with a waste receptacle. Portable Vending Concessionaires shall comply with the following standards:
  - i. Portable Vending Concessionaires permitted to sell food and/or beverages shall also provide a waste receptacle available for patron's use;
  - ii. Portable Vending Concessionaires must not empty any waste into City-owned trash receptacles;
  - iii. Portable Vending Concessionaires shall not allow any fluids to be discharged from the Portable Concession equipment or any accessory equipment;
  - iv. No liquid waste or grease shall be disposed in tree pits, storm drains, or onto the sidewalks, streets, or other public space; and
  - v. The Portable Vending Concessionaires is responsible for the removal of grease from sidewalk and street surfaces resulting from the daily operation, unloading, and loading of the Concession Equipment and any accessory equipment.

- (3) **Prohibited Locations.** No portion of Portable Vending Equipment and/or any permitted accessory equipment shall be located as follows:
- a. Outside of the assigned Portable Vending Space;
  - b. Overhanging the Portable Vending Space boundary line;
  - c. Leaning against or hanging from any building, structure, tree or other plant.
  - d. For portions of the equipment less than seven feet above grade only, within the following locations):
    - i. Seven feet from the curb line and from street furniture; and
    - ii. Ten feet from crosswalks, planters and fire hydrants
  - e. Blocking the following:
    - i. Pedestrian or vehicular traffic
    - ii. Access to an entrance to a building
    - iii. Access to a bicycle rack
    - iv. Access to a trash receptacle; and
    - v. A sprinkler inlet or standpipe inlet (both wet and dry).

#### **(E) OPERATIONAL STANDARDS.**

- (1) Portable Vending Concessionaires shall be assigned a specific Portable Vending Space.
  - a. During the hours of operation, the Portable Vending Equipment must remain within the boundaries of the assigned Portable Vending Space.
  - b. A separate business tax receipt will be required for each Portable Vending Space.
  - c. No more than one Portable Vending Equipment shall be located in one Portable Vending Space.
  - d. Portable Vending Equipment shall be parallel to the curb, with the longest side of the Portable Vending Equipment parallel to the curb.

- (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 155.3703.2.a.
- (3) **Maintenance Standards.** In addition to the Maintenance Standards included in the Pier Developer's Agreement, Portable Vending Concessionaires shall comply with the following:
- a. Portable Vending Concessionaires shall maintain their designated space in a clean, hazard-free condition;
  - b. Portable Vending Concessionaires shall maintain an area within a radius of 25 feet of their designated space in a clean condition which is free of trash and debris; and
  - c. Portable 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.
  - d. Any damage caused by the Concessionaire to City property including, but not limited to, the sidewalk, shall be repaired by the Concessionaire within 24 hours of notice of damage by the City Manager, or his designee. If any such damage is not repaired within 24 hours of notice of damage by the City Manager, or his designee, it is understood that the City will take the necessary steps to complete the work and charge the Concessionaire for the restoration costs.
- (4) **Noise Standards**
- a. Portable Vending Concessionaires shall not cause or permit any sound to exceed the sound limits set forth §97.20.A.
  - b. Portable 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 Concession Equipment in emergency situations or for safety considerations.
  - b. Upon the issuance of a hurricane warning by the county, the Portable Vending Concessionaires shall forthwith cease operation and remove all equipment. The issuance of such a hurricane warning shall constitute an emergency situation. As additional means of enforcement, the city may remove any 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 concession equipment and/or merchandise shall be the responsibility of the Portable Vending Concessionaires. The city is not responsible for any damages or loss of equipment or merchandise which is lawfully confiscated.
  - c. If the Zone or Portable Vending Space assigned for a Portable 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 Portable Vending Concessionaire to a different zone or location, or temporarily suspend (if no alternative is available) the Portable 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. Loading and unloading times are restricted to 8:00 a.m. to 9:00 a.m. and 9:00 p.m. to 10:00 p.m.
  - c. During City-sponsored special events, where the special event's hours exceed those listed in this section, the Portable Vending Concessionaire may operate according to the special events hours of operation.

- (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.

## EXHIBIT A

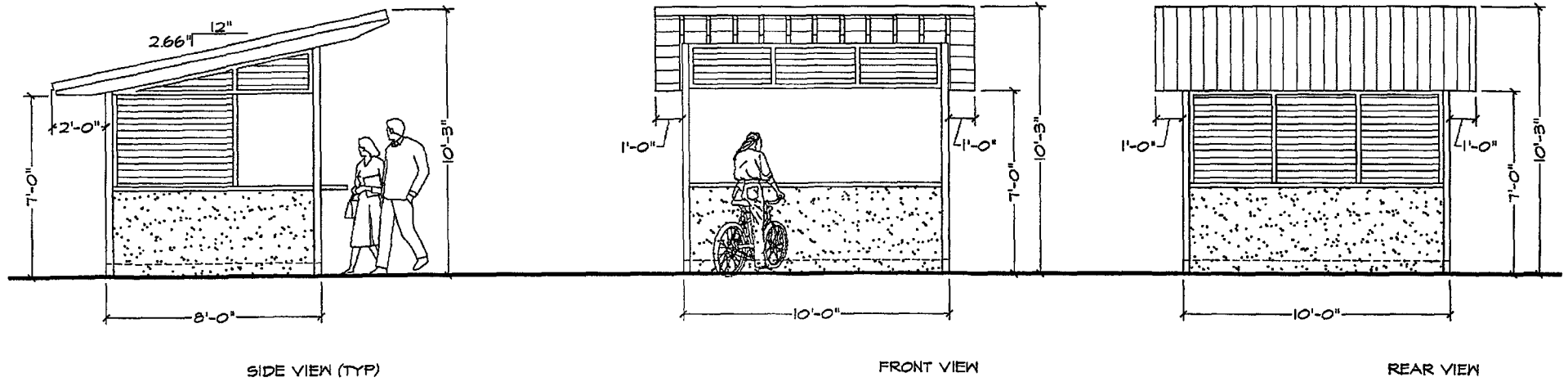
### Legal Description of Beachfront Area

PORTIONS OF BLOCKS 6, 7, 11 & 12 OF POMPANO BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD AND THE SOUTH RIGHT-OF-WAY LINE OF N.E. 1<sup>ST</sup> STREET; THENCE NORTHEASTERLY ALONG SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD 1,800 FEET; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE, SOUTHEASTERLY ALONG A LINE PERPENDICULAR TO SAID RIGHT-OF-WAY LINE TO THE EROSION CONTROL LINE; THENCE SOUTHWESTERLY ALONG SAID EROSION CONTROL LINE TO THE INTERSECTION OF A LINE PERPENDICULAR TO THE SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD; THENCE NORTHWESTERLY ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.



### EXHIBIT B



EXAMPLE OF VENDING KIOSK

original 22

ORDINANCE NO. 2014-49

**CITY OF POMPANO BEACH  
Broward County, Florida**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT RELATING TO CITY PROPERTY LYING BETWEEN NORTH OCEAN BOULEVARD (A1A) AND THE ATLANTIC OCEAN AND BETWEEN ATLANTIC BOULEVARD (S.R. 814) AND NE 5<sup>TH</sup> STREET BETWEEN THE CITY OF POMPANO BEACH AND POMPANO PIER ASSOCIATES, LLC; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City owns property which is a prime redevelopment parcel located as a landmark site between A1A and the ocean, and between Atlantic Boulevard and NE 5<sup>th</sup> Street, hereinafter the "Property"; and

**WHEREAS**, the City and Pompano Pier Associates, LLC, ("Developer") entered into an agreement for the development of the Property, City Ordinance No. 2013-39; and

**WHEREAS**, City and Developer now desire to amend the said agreement for the development of the Property; and

**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 the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct.

**SECTION 2.** That An Amended and Restated Development Agreement between the City of Pompano Beach and Pompano Pier Associates, LLC, a copy of which agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

**SECTION 3.** That the proper City officials are hereby authorized to execute said agreement.

**SECTION 4.** 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 5.** This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8th day of July, 2014.

PASSED SECOND READING this 22nd day of July, 2014.

  
\_\_\_\_\_  
LAMAR FISHER, MAYOR

ATTEST:

  
\_\_\_\_\_  
MARY L. CHAMBERS, CITY CLERK

GBL/jrm  
6/26/14  
L:ord/2014-319

- 7.8.1. **Parcel C2 Improvement Cost.** The Parcel C2 Improvement Cost must be at least \$1,000,000. Developer agrees to expend a minimum of 50% of the Parcel C2 Improvement Cost during the first two years of the Lease Term of the Parcel C2 Ground Lease, and the balance of the Parcel C2 Improvement Cost during the second two years of the Lease Term.
- 7.8.2. **Parcel C2 Minimum Rent.** The Minimum Rent for Parcel C2 will be \$75,000 per Lease Year.
- 7.8.3. **Parcel C2 Percentage Rent.** The Percentage Rent for Parcel C2 will be 1.25% of the Gross Revenue of Parcel C2 in excess of \$6,000,000.
- 7.9. **Increases to Minimum Rent and Percentage Rent Threshold.** The Minimum Rent and the threshold for Percentage Rent ("**Percentage Rent Threshold**") for each Parcel will remain constant for a period of 5 Lease Years. Beginning in the 6th Lease Year, and every five years thereafter, the Minimum Rent and the Percentage Rent Threshold will increase by 7.5% .
8. **Grant of License for Beachfront Area.** City grants to Developer a non-exclusive license ("**Beachfront License**") to use a portion of the property described in **Exhibit E** ("**Beachfront Area**") for any uses permitted by the applicable Governmental Requirements, other than the uses set forth in the Concessionaire Agreement between the City and Oceanside Beach Service, Inc., dated July 12, 2012 and attached as **Exhibit F** ("**OBS Agreement**"). The term of the Beachfront License will begin on the Effective Date of this Agreement and end upon expiration of the Lease Term of the last Parcel Ground Lease to be in effect. Under the Beachfront License, Developer will have the right, subject to all Governmental Requirements, to develop structures such as kiosks and refreshment stands in the Beachfront Area, and to enter into concession or use agreements ("**Beachfront Concession Agreements**") with concessionaires ("**Beachfront Concessionaires**").
- 8.1. **Overlap Between Beachfront Area and Property.** City and Developer acknowledge that the Beachfront Area encompasses a portion of the Property which will be subject to one or more Parcel Ground Leases in the future. If Developer or the Parcel Tenant, after leasing the Parcels included within the Beachfront Area, continues to use any portions of those Parcels for beachfront concessions, the provisions of this Section 8 will continue to apply to the concessions being operated within the Beachfront Area.
- 8.2. **City to Provide Beachfront Area Guidelines.** Within one year after the Effective Date, City will provide Developer with a set of guidelines for the use of the Beachfront Area, including a description of the types of structures to be permitted, procedure for obtaining design approval of structures and permits, hours of operation, etc.
- 8.3. **Developer's Concession Agreements.** Developer must provide copies of all executed Beachfront Concession Agreements to City within ten days after execution. Each Beachfront Concession Agreement must include the following provisions

- 8.3.1. **Maintenance.** A provision requiring the Beachfront Concessionaire to maintain in clean condition the portion of the Beachfront Area used by it, including the removal on a daily basis of all litter and debris resulting from the concession operation.
- 8.3.2. **Insurance.** A provision requiring the Beachfront Concessionaire to provide the insurance required by the City's Standardized Insurance Requirements attached as **Exhibit G**.
- 8.3.3. **Sales Tax.** A provision requiring the Beachfront Concessionaire to remit to the appropriate Governmental Authority all sales tax and any other taxes required by the applicable Governmental Requirements to be collected by the Beachfront Concessionaire.
- 8.3.4. **City Requirements for Audits and Recordkeeping.** A provision requiring the Beachfront Concessionaire to comply with the City's requirements regarding audits and recordkeeping as set forth below.
- 8.3.5. **City's Rights.** An acknowledgment by the Beachfront Concessionaire that the City has the right to terminate the Beachfront Concession Agreement with or without cause upon 30 days written notice to Developer and the Beachfront Concessionaire.
- 8.4. **City's Right to Revoke Concession Agreements.** City will have the right to terminate any Beachfront Concession Agreement with or without cause by giving 30 days written notice of termination to Developer and the Beachfront Concessionaire.
- 8.5. **Sharing of Revenue from Beachfront Area.** The revenue generated by Developer's Beachfront License will be shared by Developer and City as follows:
  - 8.5.1. **Percentage Rent.** If Developer is receiving Percentage Rent under a Beachfront Concession Agreement, City will receive 50% of the Percentage Rent received by Developer.
  - 8.5.2. **Fixed Rent.** If Developer is receiving a fixed rent or collecting any fees or charges under a Beachfront Concession Agreement, City will receive 50% of the fixed rent, fees, and charges received by Developer.
  - 8.5.3. **Payments to City.** Developer will remit City's share of the revenue from the Beachfront Area quarterly on first day of January, April, July and October. Developer will deliver the payments to the following address, with a statement listing each separate Beachfront Concession Agreement, the amount of rent received by Developer under the respective agreement, the time period covered, and the amount remitted to City for the respective Beachfront Concession Agreement:

City of Pompano Beach Treasury Division  
100 West Atlantic Boulevard, Room 135  
Pompano Beach, Florida 33060  
Attention: Revenue Collections Manager, Room 135

- 8.6. **Developer's Rights of First Refusal.** Beginning on the Effective Date of this Agreement, if the City desires to enter into a Beachfront Concession Agreement with a party, the Developer will have a right of first refusal to provide the concession use (whether a service, food, or goods) in the Beachfront Area on the same (or better) terms than those proposed by the proposing party. The right of first refusal will operate as follows:
- 8.6.1. **Unsolicited Concession Proposals.** If an unsolicited proposal comes to the City which the City is interested in pursuing, City will provide Developer with a copy of the proposal, and Developer will have a period of 30 days in which to notify the City that it wishes to exercise its right of first refusal for the proposed concession. Developer will then have a period of 30 days from its notice to the City to sign a Beachfront Concession Agreement with either the proposer or with another entity to provide the same services or goods. If Developer fails to sign a Beachfront Concession Agreement within the 30-day period, the City may thereafter enter into the concession agreement for its own benefit.
- 8.6.2. **Concession Requested by City.** If the City desires to enter into a concession agreement for a particular use in the Beachfront Area, City will provide Developer with notice of the City's desire, and Developer will have a period of 30 days in which to notify City that Developer wishes to provide the concession use in the Beachfront Area. Developer will then have a period of 30 days from its notice to the City to sign a Beachfront Concession Agreement for the use desired by the City. If Developer fails to sign a Beachfront Concession Agreement within the 30 day period, the City may thereafter issue a request for proposal (if required) for the desired use, and may enter into a concession agreement for the desired use, without further notice to Developer.
- 8.6.3. **Developer's Right to Object to Concessions.** If Developer has a reasonable objection to goods or services to be provided under a concession agreement requested by City, Developer must give City written notice of its objection, and the reasons for its objection, within 10 days after City has given Developer notice of the proposed concession. If City determines (in its sole but reasonable discretion) that Developer's objection is reasonable, then City will refrain from entering into the proposed concession agreement.
- 8.7. **Revenues from City's Operations in Beachfront Area.** City will receive 100% of all revenues from any concession agreements entered into by City for the Beachfront Area. Developer will have no right to any revenues received by City from any of the following:
- 8.7.1. **Concessions.** Concession agreements entered into by City and a third party;
- 8.7.2. **Pavilions.** Any operations at City's existing and future pavilions and structures located in the Beachfront Area, including any existing or future lifeguard stations;

- 8.7.3. **Rental Fees.** Any fees paid to City for rental of City's beachfront pavilions.
- 8.8. **No Competing Concessions.** City agrees that it will not enter into any concession agreements in the Beachfront Area which directly compete with any existing or proposed uses of the Property.
- 8.9. **City Events in Beachfront Area.** The City currently uses the Beachfront Area for certain major events ("**Major City Events**") which are presented by or sponsored by the City, such as a city-wide seafood festival, 4<sup>th</sup> of July celebration, and similar events. Developer acknowledges and agrees that the City will have the continuing right to carry on Major City Events in the Beachfront Area during the term of this Agreement, as long as City provides Developer with at least 60 days prior written notice of any Major City Event.
- 8.10. **Food Trucks.** Subject to the provisions of Sections 100.40 and 115.18 of the City of Pompano Beach Code of Ordinances ("**City Code**"), as well as any other applicable Governmental Requirements, during any Major City Event, both City and Developer will be permitted to have food trucks or similar types of temporary or mobile food, vending or retail businesses in the rights of way adjacent to the Property and the Beachfront Area. City and Developer will each retain the food truck revenues generated by their respective food trucks.
9. **Gross Revenue.** For purposes of calculating the Percentage Rent due under any Parcel Ground Lease or any Beachfront Concession Agreement, the term "**Gross Revenue**" means any and all revenue (whether cash, credit or barter) paid to or collected by (a) any individual or entity that uses or occupies any portion of a Parcel (a "**Subtenant**"), and by (b) any Beachfront Concessionaire.
- 9.1. **Exclusions from Gross Revenue.** Gross Revenue does not include any of the following:
- 9.1.1. Parking Revenue generated by the Property;
  - 9.1.2. Insurance loss proceeds which are applied toward restoration of the Improvements;
  - 9.1.3. Any award or payment made by a Governmental Authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power;
  - 9.1.4. Sales taxes;
  - 9.1.5. Employee meals, if free or discounted for such employees and their immediate family members, and
  - 9.1.6. The proceeds of any sale of a Subtenant's business to a third party.
10. **Reporting of Gross Revenue.** Developer and all Subtenants and Beachfront Concessionaires must report Gross Revenue in a format which identifies and shows the dollar amount of any item which is excluded from Gross Revenue. All reports of Gross Revenue used to calculate any payments due City under this Agreement, any Parcel Ground Lease, any sublease of a portion of a Parcel ("**Sublease**"), or any Beachfront