

ORDINANCE NO. 2009- \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING THE DEFINITION OF “RESTRICTED SALES AND SERVICES” OF CHAPTER 60, APPENDIX, DEFINITIONS, OF PART III, TITLE VI, VERO BEACH CODE; LIMITING RETAIL AND PERSONAL SERVICE STORES TO 4,000 SQUARE FEET OF FLOOR AREA; EXCLUDING STORES WITH WAREHOUSING, HEALTH AND FITNESS CLUBS, AND STORES THAT SELL MOTOR VEHICLE PARTS; EXCLUDING HARDWARE STORES WITH OUTDOOR MERCHANDISE DISPLAYS AND LAUNDRY AND DRY CLEANING STORES WITH ON-SITE CLEANING AND CLOTHING REPAIR SERVICES; EXCLUDING STORES WITH DRIVE-IN, DRIVE-UP, OR DRIVE-THROUGH FACILITIES AND STORES THAT OFFER FOR SALE PREDOMINATELY PRE-PACKAGED FOOD PRODUCTS, BEVERAGES, AND OTHER FREQUENTLY OR RECURRING NEEDED HOUSEHOLD ITEMS BETWEEN THE HOURS OF 11:00 P.M. AND 6:00 A.M, INCLUDING DELIVERIES BETWEEN THIS SAME TIME PERIOD; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the permitted use category of “restricted sales and services,” which is a restrictive subset of the all inclusive “general retail sales and services” category, has created problems in its interpretation and application by the Planning and Development Department staff, property owners, and business owners; and

**WHEREAS**, the Planning and Development Department staff held workshops with the Planning and Zoning Board on October 1 and 15, 2009, to discuss the issues related to the definition of “restricted sales and services” and review proposed language to revise the definition; and

**WHEREAS**, the Planning and Zoning Board requested staff to move forward, provided guidance, and requested staff to move forward with preparation of an Ordinance to amend the definition of “restricted sales and services;” and

**WHEREAS**, the Planning and Zoning Board held a public hearing November 5, 2009, on the proposed text amendment and made a recommendation of approval to the City Council; and

**WHEREAS**, the City Council finds that the adoption of this Ordinance amending the definition of “restrictive sales and services” in Chapter 60, Appendix, Definitions of Part III, Title VI of the City of Vero Beach Code is in the public interest and is consistent with the criteria for text amendments to the City’s Land Development Regulations in Section 65.22(i)(3) of the Vero Beach Code that requires such amendments to be consistent with the goals, objectives, and policies of the comprehensive plan and internally consistent with the purposes, permitted uses, bulk regulations, and other standards of the Land Development Regulations;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:**

Section 1. Amendment of Chapter 60, Appendix, Definitions

The definition of “restrictive sales and services” in Chapter 60, Appendix, Definitions, is hereby amended as follows:

~~*Restricted sales and services:* Small limited shops and stores limited to retail sales of frequently needed small convenience items or services typically needed on a frequent and recurring basis such as barber and beauty care, small scale drugstores, dry cleaning pickup stations (excluding cleaning and repair services), small specialty food shops such as wine and cheese stores, imported food shops, or similar unique limited item shops (excluding general food market stores such as 7-11, Majik Market, Little General Store and similar stores); interior decorators and/or designers with retail sales and no warehousing; and home furnishing and accessory shops with no warehousing. This land use classification is intended to accommodate shops with limited inventory or goods directed expressly to a special market area including:~~

- ~~(1) A household market area in the immediate vicinity as opposed to city-wide or region;~~

- ~~(2) — A specialized market with customized service demand; or~~
- ~~(3) — A tourist-oriented market area in the immediate vicinity.~~

~~Seuba shops, repair shops, motor vehicle parts, health spas, wholesale, warehousing and discount stores and similar general sales are expressly excluded.~~

Restricted sales and services: Retail and personal service stores with a floor area of no greater than 4,000 square feet that are intended to primarily serve markets for specialty goods and services or tourist-oriented and neighborhood markets in the immediate vicinity. Such uses shall expressly exclude the following: hardware stores with outside merchandise displays; stores with warehousing; stores with drive-in, drive-up or drive-through facilities; laundry or dry cleaning stores with on-site cleaning and clothing repair services; health and fitness clubs; stores that sell motor vehicle parts; and stores that offer for sale predominately pre-packaged food products, beverages, and other frequently or recurring needed household items between the hours of 11:00 p.m. and 6:00 a.m., including deliveries during this same time period.

Section 2. Conflict and Severability.

In the event any provision of this ordinance conflicts with any other provision of this Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this ordinance, the more strict provision shall apply and supersede. If any provision of this article is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this article, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 3. Effective Date.

This ordinance shall become effective upon final adoption by the City Council.

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This Ordinance was read for the first time on the \_\_\_\_ day of \_\_\_\_\_, 2009, and was advertised in the Indian River Press Journal on the \_\_\_\_ day of \_\_\_\_\_, 2009, as being scheduled for a public hearing to be held on the \_\_\_\_ day of \_\_\_\_\_, 2009, and was also advertised in the Indian Press Journal on the \_\_\_\_ day of \_\_\_\_\_, 2009, as being scheduled for a second public hearing to be held on the \_\_\_\_ day of \_\_\_\_\_, 2009, at the conclusion of which hearing it was

moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote:

<b>Mayor Kevin Sawnick</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Vice Mayor Sabin C. Abell</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Thomas P. White</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Brian T. Heady</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Charles R. Wilson</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**ATTEST:**

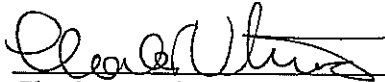
**CITY OF VERO BEACH,  
FLORIDA**

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

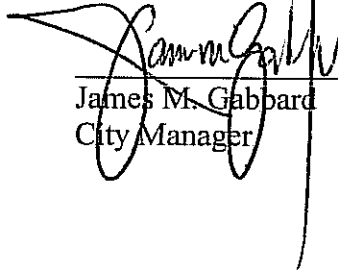
\_\_\_\_\_  
Sabin C. Abell  
Mayor

Approved as to form and legal sufficiency:

Approved as conforming to  
municipal policy:

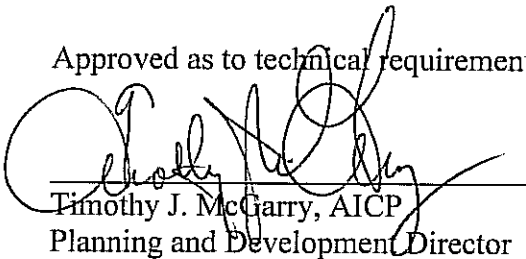


\_\_\_\_\_  
Charles P. Vitunac  
City Attorney



\_\_\_\_\_  
James M. Gabbard  
City Manager

Approved as to technical requirements:



\_\_\_\_\_  
Timothy J. McGarry, AICP  
Planning and Development Director

## EXHIBIT ONE

### **DEFINITIONS FOR RESTRICTED SALES AND SERVICES AND GENERAL RETAIL SALES AND SERVICES CHAPTER 60. APPENDIX. DEFINITIONS VERO BEACH CODE**

*Restricted sales and services:* Small limited shops and stores limited to retail sales of frequently needed small convenience items or services typically needed on a frequent and recurring basis such as barber and beauty care, small scale drugstores, dry cleaning pickup stations (excluding cleaning and repair services), small specialty food shops such as wine and cheese stores, imported food shops, or similar unique limited item shops (excluding general food market stores such as 7-11, Majik Market, Little General Store and similar stores); interior decorators and/or designers with retail sales and no warehousing; and home furnishing and accessory shops with no warehousing. This land use classification is intended to accommodate shops with limited inventory or goods directed expressly to a special market area including:

- (1) A household market area in the immediate vicinity as opposed to city-wide or region;
- (2) A specialized market with customized service demand; or
- (3) A tourist-oriented market area in the immediate vicinity.

Scuba shops, repair shops, motor vehicle parts, health spas, wholesale, warehousing and discount stores and similar general sales are expressly excluded.

*General retail sales and services:* Retail sale or rental from the premises of goods or both goods and services for personal, informational or instructional service; department stores; hardware stores (without lumberyards or major storage areas); supermarkets; pet shops; large specialty shops; furniture stores (without major warehousing); decorating services and sales; carpet stores; dry goods stores; and similar personal sales and services; household goods and services; Fire Prevention Code Class IV or Class V dry cleaning establishments using only nonflammable Class IV solvents such as perchlorethelene, except for spotting as provided in section 9.6(m) of the Fire Prevention Code; lawn and garden supplies; agricultural products and feed stores; office equipment and supplies; and other similar goods and services. These activities exclude the following: restaurants and food service establishments; sale or rental of motor vehicles, except small parts and accessories; sale of construction materials, except paint, fixtures, and hardware; vehicular service and maintenance activities, including filling stations.

EXHIBIT TWO

**FLOOR AREA STATISTICS  
ON EXISTING C-1A RETAIL AND SERVICES USES  
OCEAN DRIVE/CARDINAL DRIVE  
BUSINESS DISTRICT**

**Number of Retail and Service Establishments:** 52

**Total Estimated Floor Area:** 100,494 s.f.

**Average Floor Area Per Establishment:** 1,932 s.f.

**Median Floor Area of Establishments:** 1,225 s.f.

**Distribution of Establishments by Floor Area**

1,000 s.f. or less:	14
1,001 s.f. to 2,000 s.f.	20
2,001 s.f. to 3,000 s.f.	8
3,001 s.f. to 4,000 s.f.	7
4,001 s.f. to 5,000 s.f.	3

**Largest Floor Area of an Establishment:** 4,624 s.f.

Mr. Mucher said if we don't understand, he doubts they would.

Mr. Ryan asked Mr. McGarry to bring this up to the council.

Mr. McGarry said that he would bring this up to council as an item.

→ B. Issues with Restrictive Sales and Services Definition

Mr. McGarry spoke about the problems with the restrictive sales and service definition, which was discussed at the board's last meeting. He said there is a representative present who is interested in putting a small scale hardware store in this district. He handed out a Floor Area Fact Sheet detailing businesses and square footages in the Ocean Drive/Cardinal Drive District (attached) and suggested putting a limit on floor area of 3,500 square feet.

A discussion regarding the businesses on the fact sheet followed, including how this would affect Super Stop (nonconforming as it is now) and some examples of store, such as Sigfried of Germany with 4,400 square feet of floor area and some clothing stores with 3,000.

Mr. Andrew Kennedy, 3001 Ocean Drive, said John Talmadge and his wife Christian were here and would give an overall presentation and spoke of the many ways this use would benefit the tenant, landlord and employees working there.

Mr. John Talmadge, 2131 Stony Point Drive, Sebastian, gave a PowerPoint presentation (on file in Planning), which highlighted communities similar to Vero and that the one thing they all have in common is a community hardware store. He said Christian and he, along with our son Jackson, work together and that people hear of our name and think it's a corporate store. He said it's not; it's not a franchise. He said it's a cooperative and that it gives us access to good pricing and good products while allowing us the flexibility to do what we want with the inventory. He said we are looking at a 4,000 to 5,000 square foot store.

Mr. Mucher said the number we heard from Andrew [Kennedy] at the last meeting was 2,500 square feet.

Mr. Talmadge said 2,800 square feet and what he is providing here is to keep people from having to cross the island.

Mr. Mucher said you just heard us talking about a 3,300 to 3,500 square foot number unless you convince us to increase that number substantially.

Mr. Talmadge said the number he gave is our optimum and that the number Mr. Mucher gave was something they could do.

Mr. Mucher said he had gotten the idea last time there was a specific property in mind.

Mr. Terry Torres, 1555 Club Drive, representing the landlord of the property, Hale Family Trust, said the square footage is 3,975 to be more precise and that we currently have 2,800 square feet of the 3,975 available. He said it's always possible it could become a single tenant. He also said the Hale family supported this type of use with their property. He spoke about the differences between a typical 20,000 square foot hardware store and the small one being proposed that would fit in with the local aesthetics and would be in keeping with other neighboring uses, such as the Island Tile and the Designer Hardware stores. He felt a fairly good range as being up to 4,600 square feet.

Mr. McGarry suggested picking a number of 4,000 or 5,000.

Mr. Torres spoke of the convenience of not having to travel to Sewell's when you just need a screw or a washer. He said an additional convenience is that they could always have an item brought in on a day's notice from their main store on Oslo Road. He urged the board to support this request. He concluded saying it would be a very good thing to accommodate a business that he thinks would be an excellent business for our community.

Mr. Talmadge continued his presentation explaining that the merchandise would be specialized, such as stainless steel and brass, so they would last a long time on the island.

A discussion followed about the hours they planned to operate such a business, how the pricing would remain comparable to those on the mainland, how the site was actually the old Hale store that's been vacant, how part of the site was currently a beauty salon, and how there was adequate parking to support such a use.

Mr. Ryan was concerned with the aesthetics describing a similar store on Sanibel Island that had outdoor storage and how unattractive it appeared.

Mr. Talmadge said he completely understands and that is why this would be an outpost to our larger store and that he had no plans for external storage.

Mr. McGarry said we could put that in the definition.

In discussion, some members thought keeping the size 3,500 square feet would be appropriate while others said they wouldn't object to increasing it to 4,000.

Mr. Doty said in all fairness to the issue, when it was Hale, it was a drive-through and it was all one operation that goes back to the 70s and 80s.

Mr. McGarry said he would like to exclude that for drive throughs.

Mr. Mucher asked Mr. Talmadge, can you live without outside displays and storage?

Mr. Talmadge said they make very limited use of outdoor displays and that they couldn't put anything that stays overnight at their existing site and that he would expect they would have a monument sign.

Several of the members supported a store size of 4,000 square feet.

Mr. McGarry made sure they understood this would affect everybody, not just this site.

Mr. Mucher said he knows we're not spot zoning; he just didn't think that building is a huge size for a business of this type.

Mr. McGarry said he would amend the overlay district since they had come up with 5,000 square feet as a measure. He said he would bring it back to the board for further consideration.

#### **IV. PLANNING DEPARTMENT MATTERS**

None.

#### **V. CHAIRMAN'S MATTERS**

None.

#### **VI. ADJOURNMENT**

The meeting adjourned at 2:32 p.m.

gkb

10/01/09

**FLOOR AREA FACT SHEET ON  
C-1A RETAIL AND SERVICE USES  
OCEAN DRIVE/CARDINAL DRIVE  
BUSINESS DISTRICT**

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ATTACHMENT

**DEFINITIONS FOR  
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VERO BEACH CODE**

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Mr. Norris said he seconds that and has a question for the applicant.

Mr. Daniel Zink, Pastor of Vero Worship Center, 7055 29<sup>th</sup> Court. responding to Mr. Norris's request to tell the board a little bit about his organization, said the church began about a year and a half ago and explained a little of the church's background, including its affiliation with a group called the Master Builders and that it is a charismatic church. He said they believe in the bible as absolutely infallible and that they are main line Protestants and evangelical.

Mr. Norris asked if they would have to come back for a follow up.

Mr. McGarry said they are going to have a change of use, which might be an administrative approval because they probably have the parking they need in the shopping center.

The motion to recommend council approval was unanimously approved (6-0) on a roll call vote: Mr. Vogt, aye; Mr. Norris, aye; Ms. Pease, aye; Mr. Mucher, aye; Mr. McCracken, aye; Mr. Kennedy, aye.

#### IV. PLANNING DEPARTMENT MATTERS

→ A. Proposed Revised Definition of "Restricted Sales and Services" in Chapter 60, Appendix. Definitions

Mr. McGarry said this is one of the issues the Planning Department chose to take on to do and is a good example of somebody coming to us. He said there's a lot more going on than just the application. He said at the last minute he didn't realize he had enough time to advertise this for a public hearing. He said he did an outline of the proposed language for restricted sales and services (attached). He said he basically followed what was discussed at the last meeting and that it covers almost every establishment other than restaurants. He said he got rid of the ambiguous language and decided to incorporate the intent of the district. He reviewed the proposed changes and the reasons why.

Mr. Vogt said he was fine with the health spas, but was concerned with the proposed hours of operation saying 11 p.m. is too late and 5 a.m. is too early.

A brief discussion followed about the times different stores close and how people should be notified if the hours of operation are changed and how visitors would relish having a convenience store like that open for extended hours. Some members didn't object to the later hours and asked if staff checked hours of operation for existing businesses.

Mr. McGarry said they had not, but would.

There was a lengthy discussion about the existing drive-through dry cleaning business and how this would impact it.

Mr. Mucher understood that the dry cleaning would be grandfathered unless there was substantial damage. He asked why is it [the dry cleaning business] such a terrible thing? He said he would argue that it should be allowed and that his office is directly across the street from it and that he didn't see it as an evil.

Mr. McGarry said he's just following what was in the ordinance. He said this is for the C-1A and that only a few areas in the city have this. He said he would suggest he was getting too ambitious here and maybe he could exclude this. He said this fits all the C-1A and that he could address it to the overlay district, which is more pedestrian oriented.

A discussion followed about drive ins, drive ups, and drive throughs and whether they should be excluded. The issue of dry cleaners was revisited and whether actual on-site cleaning should be permitted as opposed to being a pick up location. The dry cleaning issue brought up laundromats and how they are different.

Mr. McGarry said it's a different process and that it's not a pick up station.

A discussion followed where it was noted that there used to be a laundromat that operated 24 hours a day. During this discussion, one member wondered why you would have to cross a bridge to get you clothes done. Another member suggested when this is brought back before the board to invite the operators of these facilities to come and comment on this.

In concluding, several alternatives were considered to modify the proposal with the end result being staff would bring this item back to the board as a public hearing and that changes could be made at that time.

#### **V. CHAIRMAN'S MATTERS**

None.

#### **VI. ADJOURNMENT**

The meeting adjourned at 2:25 p.m.

gkb

**MINUTES - APPROVAL PENDING - REGULAR MEETING OF THE CITY PLANNING AND ZONING BOARD – NOVEMBER 5, 2009, 1:30 P.M., COUNCIL CHAMBER, CITY HALL, VERO BEACH, FLORIDA**

PRESENT: Chairman Dennis Ryan; Ms. Connie Pease; Mr. Bob Sammons; Mr. Mark Mucher; Mr. Charles Vogt; Mr. Scott McCracken; Mr. Kevin Doty; Mr. Hank Flores, Current Planning Manager; Mr. Wayne Coment, Assistant City Attorney; Ms. Ginny Beigel, Secretary

EXCUSED ABSENCES: Mr. Richard Kennedy; Mr. Ed Llerena

UNEXCUSED ABSENCE: Mr. Cliff Norris

**I. PRELIMINARY MATTERS**

A. Agenda Additions and/or Deletions

None. The excused absences of Mr. Kennedy and Mr. Llerena were noted.

**II. APPROVAL OF MINUTES**

A. Regular Meeting – October 1, 2009

Ms. Pease moved for approval of the minutes; Mr. Vogt seconded the motion and it was unanimously approved (7-0).

**III. PUBLIC HEARING**

**[LEGISLATIVE]**

→ A. Public Hearing on a Proposed Ordinance to Amend the Definition of "Restricted Sales and Services" in Chapter 60, Appendix. Definitions

Mr. Flores mentioned that this issue had been brought before the board several times, so he wasn't going to review the changes in the backup made based on those previous discussions (on file in Planning). He said if you have any questions, please ask.

Ms. Pease asked if there would be any property rights issues by limiting the square footage.

Mr. Coment said it actually makes it better because we have more definitive criteria instead of something nebulous.

Mr. Sammons asked could a hardware store have feed and things like that? He was concerned about it getting all over and wondered if it were possible to regulate such sales.

Mr. Ryan said to be careful with that because many hardware stores sell birdfeed and things along those lines.

Mr. Flores said hay and things like that need to be stored outside and said no outside storage would be permitted.

Mr. Vogt noted there would be no outside storage and the floor area would be limited to 4,000 square feet.

Mr. Mucher said he thought we were pretty much agreed last time. He asked why are we here?

Mr. Flores said because this is the public hearing.

As discussed at the board's previous meeting, the hours of operation were again considered and the majority favored 6 a.m. to 11 p.m. In addition, they chose to limit deliveries to the same schedule.

Mr. Vogt pointed out a minor correction to the Planning Department's name in the first whereas clause in the ordinance that staff will amend by replacing Zoning with Development.

No one wished to speak for or against the proposal.

Mr. Mucher said he would move staff recommendation with the exception of changing the hours of operation from 5 a.m. to 6 a.m. and of sales to operations or whatever our attorney feels is necessary. Mr. Coment said he would stick some language in it. Mr. Sammons seconded it and it was unanimously approved (7-0) on a roll call vote: Chairman Ryan, aye; Ms. Pease, aye; Mr. Sammons, aye; Mr. Mucher, aye; Mr. Vogt, aye; Mr. McCracken, aye; Mr. Doty, aye.

#### **IV. PLANNING DEPARTMENT MATTERS**

None.

#### **V. CHAIRMAN'S MATTERS**

None.

Mr. Doty said while he knows this is not on the agenda, he would like to throw this out and that he didn't know if this is something the this board should consider or something city council might want to consider. He spoke of how he is really tired of driving through the grass storm in traffic when landscapers blow all the grass cuttings into the street and that he doesn't understand it. He said it seems rude throwing it out there for somebody else to clean up. He said he thinks there should be an ordinance to say it should be kept on your property.