ORDINANCE NO. 13-01

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 18 ENTITLED "BUSINESSES" OF THE CODE OF ORDINANCES AND IN PARTICULAR, AMENDING ARTICLE VI., DIVISION 2. ENTITLED "PEDDLERS, ITINERANT VENDORS" AMENDING THE DEFINITION OF "PEDDLERS AND ITINERANT VENDORS", ESTABLISHING RESTRICTIONS ON THE USE OF THE PUBLIC RIGHTS-OF-WAY BY PEDDLERS WHEN SOLICITING OR ENGAGING IN SALES, EXCLUDING AREAS WHERE PEDDLERS CAN CONDUCT BUSINESS, AMENDING THE GOODS NOT ALLOWED TO BE SOLD; ELIMINATING THE DISTANCE SEPARATION REQUIREMENT, ESTABLISHING RESTRICTIONS ON DISPLAY AND STORAGE OF GOODS SOLD; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City has significant government interests in vehicular and pedestrian safety and the free flow of traffic; and

WHEREAS, street vending contemplates a transaction between the street vendor afoot and the driver or occupant of a motor vehicle while the vehicle is on the traveled portion of the roadway and is not legally parked or sales conducted by a vendor from a motorized vehicle travelling on the roadways;

WHEREAS, street vending is an inherently dangerous activity that compromises both pedestrian and vehicular safety by causing a motorist to obstruct traffic or disregard traffic signals if engaged in buying goods from a street vendor or by causing a street vendor to remain in the roadway after traffic flow has resumed;

WHEREAS, interstate ramps, under overpasses, and limited access facilities and intersections to interstate highways carry higher volumes of traffic presenting a greater exposure and risk from street vending to motorists and vendors themselves;

WHEREAS, the purpose and intent of this ordinance is to restrict the conduct of street vending on the roadways where the safety of vehicular and pedestrian traffic is paramount;

WHEREAS, the street vendors presently store and display their merchandise openly in the public rights-of-way and on private property without regard to the intended use of the public rights-of-way, safety of the pedestrians using the public rights-of-way, or the general requirement in the City's zoning code in all commercial and industrial districts that all storage of products and materials be entirely within a building and the specific prohibition against the operation of open air markets, bazaars and flea markets in the City's retail commercial district;

WHEREAS, street vendors in the conduct of their lawful business activity should enjoy co-terminous rights on private property as would the owners themselves to display or store merchandise; and

WHEREAS, the purpose and intent of this ordinance is to restrict the conduct of street vending as it concerns the display and storage of their merchandise on the public rights-of-way and public property to preserve safety and order in the use of the public rights-of-way and to equally enforce the provisions of the City's zoning code.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 18 entitled "Businesses", of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended to read as follows:

Chapter 18

BUSINESSES

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ARTICLE VI. PEDDLERS, SOLICITORS, ITINERANT VENDORS

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Sec. 18-301. - Definitions.

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

Peddlers and *itinerant vendors* include all ~~retail, wholesale, and/or service providers, when conducting business other than from an inspected building constructed and maintained in~~

~~accordance with the South Florida Building Code and all applicable life safety codes~~ persons going from place to place for the purpose of selling or offering for sale, any goods, merchandise or wares for immediate delivery of the goods, merchandise, or wares at the time the order is taken, whether or not using a wagon, pushcart or other vehicle. This definition does not include delivery of any item previously ordered, the sale of items along delivery routes, solicitation of orders by sample where the goods are not delivered at the time the order is taken, or food truck operators.

Sec. 18-302. – Sales or solicitations on the public right-of-way, Sstopping or parking to do business in one location.

~~A peddler and/or itinerant vendor, whether operating as a pedestrian or from a fully mobile truck, van, cart, bicycle, or other vehicle, is prohibited from stopping and/or parking or doing business at any one location, except when actually involved in the completion of a sales transaction with a member of the public and then for no more than ten minutes~~.

A peddler or itinerant vendor cannot, as a result of any conduct related to his/her solicitation or sales, obstruct, delay, hinder, interfere with or impede the free flow of vehicular traffic on the roadways or pedestrian traffic on the sidewalks. A peddler or itinerant vendor soliciting or conducting sales on foot must observe all pedestrian traffic regulations. No peddler or itinerant vendor soliciting or conducting sales on foot can permanently stop or remain at any one location on public property; or private property (unless allowed for by zoning), for the purpose of soliciting, displaying goods, merchandise or wares, or conducting sales. Nothing in this section shall be interpreted to authorize a peddler or itinerant vendor to stop or remain at any one location on private or public property with such regularity and permanency that would lead a reasonable person to believe the location is the vendor's fixed business location.

A peddler or itinerant vendor soliciting or engaging in sales of goods, merchandise or wares from a vehicle allowed to be safely operated on public roadways shall observe all rules of traffic. Prior to engaging in the sale of goods, merchandise or wares, the peddler or itinerant vendor must exit the roadway safely and properly park his/her vehicle in an area designated for parking. If parking on private property, the vendor must have the property owner's authorization. Once the sale or sales of goods, merchandise or wares have been completed, the peddler or itinerant vendor must return to circulate on the roadways if he or she intends to continue

soliciting sales for the goods, merchandise or wares offered. A peddler or itinerant vendor soliciting or conducting sales of goods, merchandise or wares from a vehicle cannot permanently stop or park at any one location on public or private property for the purpose of soliciting from their vehicle, advertising or displaying their goods merchandise or wares from their vehicle or conducting sale of goods merchandise or wares from their vehicle. A peddler or itinerant vendor operating from a vehicle must continuously drive their vehicle on the roadways in order to solicit, advertise or display their goods merchandise or wares. Nothing in this section shall be interpreted to authorize a peddler or itinerant vendor operating from a vehicle to stop or park at any one location on private or public property with such regularity and permanency such that would lead a reasonable person to believe the location is the vendor's fixed business location. There shall be a rebuttable presumption that a vendor has established a fixed business location in violation of this section if the vehicle is stopped or parked at any one location on private or public property for a period of time exceeding thirty minutes when no sales are taking place, the goods, merchandise or wares are on display and the vendor is advertising or soliciting sales. The peddler or itinerant vendor shall not utilize any artifice or scheme to circumvent the intent of this section.

Sec. 18-303. – ~~Prohibition~~ Restrictions on location and goods allowed.

(a) Solicitations or sales on the public rights-of-way are prohibited at the following locations:

(i) At or within 300 feet of an entrance or exit ramp to a limited access highway, at or within 300 feet of an intersection to a limited access highway entrance or exit ramp, under or within 300 feet of an overpass, or at or within 300 feet of a limited access facility; and

(ii) Within designated school zones during the posted hours when school is in session.

(b) Peddlers or itinerant vendors shall not sell or offer to sell:

(i) raw, unprepared, or uncooked meats, poultry, fish or seafood within city limits~~.~~; and

(ii) any food item, except non-hazardous food as determined by federal or state laws, prepared in a food service establishment required to be licensed and inspected by the Division of Hotels Restaurant of the Florida Department of Business and Professional Regulation.

Sec. 18-304. – Display, Storage, or ~~Placeting~~Placement of supplies, merchandise or equipment on public or private property.

~~All supplies, materials, merchandise, and/or equipment used by a peddler and/or itinerant vendor or within the mobile unit from which the peddler and/or itinerant vendor is conducting business shall not be permitted to be placed upon either public or private property for the purpose of facilitating the offering of merchandise and/or services to the public.~~

No inventory of goods, merchandise or wares offered for sale, supplies, materials, containers, contraptions, stands, carts, boxes, signs or any other property shall be placed or stored on any portion of the public right-of-way, including the sidewalk or swale. A peddler or itinerant vendor shall not craft, arrange, package or otherwise engage in any activity required to prepare or make the goods, merchandise or wares available for purchase on any portion of the public right-of-way, including the sidewalk or swale.

Any inventory of goods, merchandise or wares, samples, materials or supplies, if stored on private property, must be stored with the prior written approval of the property owner, within the confines of a building or shed erected, kept, and maintained pursuant to Code or in an area lawfully designated for storage and out of the public's view. There shall be no outside storage permitted. A peddler or itinerant vendor soliciting or conducting sales on foot may store inventory, merchandise, samples, materials or supplies within the peddler's or itinerant vendor's vehicle so long as the vehicle is properly parked in an area designated for public parking or properly parked in an area designated for parking on private property as authorized in writing by the property owner. The peddler or itinerant vendor must provide proof of authorization upon request by a code inspector or license inspector. The peddler or itinerant vendor soliciting or conducting sales on foot may display, with the intent of soliciting sales, only as much of the goods, merchandise or wares as the peddler or itinerant vendor can carry on the peddler's or itinerant vendor's person. The prohibition against outside storage or display of goods, merchandise, wares, samples, materials or supplies, does not apply to peddlers or itinerant vendors soliciting or conducting sales from a vehicle driven on the roadway and where the storage or display of goods, merchandise, wares, samples, materials or supplies is incidental to the conduct of a sale while parked on private or public property,

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~~**Sec. 18-306. - Distance separation.**~~

~~There shall be a minimum distance separation of 300 feet for peddlers and itinerant vendors to conduct business from the physical location of a leased or owned space or premises in which the same or similar merchandise, goods or services are being offered for sale or sold as that offered for sale or sold by the peddler or itinerant vendor.~~

Sec. 18-307. - Application.

The application for a peddler or ~~an~~ itinerant vendor~~'s~~ license shall include the following information:
(1)Name, home and business address of the applicant, and name and address of the owner, if other than the applicant, of the vending business, stand or motor vehicle to be used in the operation of the vending business.
(2)A description of the ~~food~~ goods or merchandise to be sold.
(3)A description ~~and photograph~~ of any ~~stand or~~ motor vehicle to be used in the operation of the business, including the license and registration number of any motor vehicle used in the operation of the business.
(4)Three two-inch by two-inch prints of a full-face photograph, taken not more than 30 days prior to the application date, of any person who will sell, or offer for sale, any food or merchandise within the city.
(5) Written approval from the property owner, or a duly authorized agent of the property owner, for each location where the peddler or itinerant vendor will be storing any inventory, samples, materials or supplies in his/her vehicle or parking his/her vehicle, if applicable.

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Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of

violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: **Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 5: **Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: **Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 08 day of January, 2013.

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Isis Garcia-Martinez
Council President

Attest: Approved on this 9 day of Jan, 2013.

Marbelys Rulvio, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".