

## **VENDOR COMMITTEE MEETING**

Tuesday, September 16, 2009 – 2:30 p.m.

Eileen Dondero Foley Council Chambers

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### **I. Call to Order**

Assistant Mayor Blalock called the meeting to order at 2:30 p.m.

### **II. Attendance**

Committee Members: Assistant Mayor Blalock, Dave Ferland, Police Chief; Steve Griswold, Deputy Fire Chief; Kim McNamara, Health Officer; Lea Aeschliman, Trustees of Trust Fund Representative; Suzanne Woodland, Assistant City Attorney, and Dianne M. Kirby, Deputy City Clerk

Members Absent: Jason Page, Code Enforcement Officer

Other Members: Jon Frederick, Parking Manager, Councilor Smith, Parking Committee and Andrew Purgiel, Parking Committee

### **III. Acceptance of the Minutes – June 9, 2009**

Assistant Mayor Blalock moved to accept and approve the minutes of the June 9, 2009 Vendor Committee meeting. Seconded by Police Chief Ferland and voted.

### **IV. Mobile Vendors and Parking Spaces**

#### **Request for Vending from Parking Spaces Increases**

Kim McNamara, Health Officer stated that vendors are seeing the Fresh Local truck using parking spaces to vend from and she now has two new mobile vendors who want to do the same. She said she is unsure whether to permit them or not since we are trying to prevent vendors from using municipal parking spaces.

Assistant City Attorney Woodland stated that since mobile units can vend on private property, they should be issued a permit. She said it would be helpful to advise them that while they may have the opportunity to vend from a parking space now, the matter is under consideration and it might change depending on what the policy makers decide to do. She said this would put the vendors on notice that things may change. She stated that there is concern that parking spaces should be used for parking rather than vending. Assistant Mayor Blalock asked if this change would be by ordinance. Assistant City Attorney said that is correct. Parking Manager Frederick stated there is nothing in the parking ordinance that prohibits vending from parking spaces and feels if the Vendor Committee makes a change to the Vending Ordinance, a change to the Parking Ordinance should also be made. Assistant Mayor Blalock asked if the Ordinance change should come from the Parking Committee or the Vendor Committee. Assistant City Attorney Woodland stated a combined ordinance would be nice. She said as a practical matter you would think you would find a reference to this under the parking ordinance, but you don't. She said it would be nice if it was a joint recommendation.

Kim McNamara, Health Officer stated she currently has five (5) mobile units holding permits with two (2) new vendors requesting mobile permits. She said counting the Fresh Local truck she would have eight (8) mobile units that would be allowed to use parking spaces to vend from.

Councilor Smith asked how many approved vending spots there are. Lea Aeschliman, Trustees of Trust Fund Representative stated there are seven (7) approved spaces. Kim McNamara, Health Officer stated the eight (8) vendors she is talking about are trucks and cannot vend in the seven (7) approved spaces. Assistant Mayor Blalock said these are actual mobile trucks that would pull into a private parking lot. He said we only regulate these for health standards. He said we are only addressing the trucks that use parking spaces. He said the understanding we thought we had some time ago was that parking was for parking and not for vending.

Councilor Smith asked if the Parking Committee and the Vendor Committee are all in agreement that parking spaces should be for parking and not for vending.

Deputy Fire Chief Griswold asked if we have received a lot of merchant or public complaints. Assistant Mayor Blalock stated he has had only a couple of merchant complaints from downtown, specifically for one vendor. He said we have not had any formal complaints unless the Health Officer or Zoning Enforcement Officer has fielded them. Kim McNamara, Health Officer stated she has had two in the Health Department from downtown merchants who felt that because they pay property taxes and they do all the maintenance and upkeep of the buildings and have to abide by all the rules that it is not fair for these vendors to use these limited parking spaces. She further stated that Jason Page, Zoning Enforcement Officer has received two or three complaints in addition to what she has received. Councilor Smith said he has received some complaints, probably from the same people, expressing concerns.

Assistant Mayor Blalock stated if there was a recommended ordinance change it would then go to the City Council for a first reading, a second reading with a public hearing and a third reading and vote.

Andrew Purgiel, Parking Committee asked how many mobile units were presently using parking spaces. Kim McNamara, Health Officer stated that presently only Fresh Local is utilizing a parking space, but she has five (5) that already have permits and by the ordinance can use a parking space and two new mobile units that are applying to specifically do what Fresh Local does. Councilor Smith stated Fresh Local has an agreement. Andrew Purgiel, Parking Committee asked where the Fresh Local truck usually parks. Parking Manager Frederick stated they park on State Street across from the Ocean Bank. He said they have a friend, who works in the area, who will park in a space and when Fresh Local drives up, the friend drives away and gives Fresh Local the space. Andrew Prugiel, Parking Committee asked if they vend from the sidewalk and the street side. Councilor Smith stated they just vend from the sidewalk side.

Councilor Smith stated it sounds like an ordinance change is the direction we want to go. He recommended we make an ordinance change to say that mobile vendors will not be allowed to vend from a parking space.

Andrew Purgiel, Parking Committee asked when they close Parrott Avenue down, don't the ice cream trucks go down that road? Kim McNamara, Health Officer stated they do. Andrew Purgiel asked if this would still be allowed. Kim McNamara stated this is a temporary event and is a little different. She said this has been delegated for that purpose and those are all year licensed vehicles. Councilor Smith said he doesn't think he has ever seen an ice cream truck pull into a space and stay there. He said they pull over to the curb when a child waves them down.

Assistant Mayor Blalock stated it is not the intent to eliminate the mobile vendor; it is to decrease the demand on our already short downtown parking. He further stated it is not the one mobile truck, but the potential eight mobile trucks and if it works for eight then it could become sixteen or more.

Assistant Mayor Blalock said these vendors are currently not violating any parking regulation because they are paying their quarters for the two hours. He asked if they are vending for more than two hours. Councilor Smith said if they do stay longer than the two hours, they roll the vehicle forward or back to keep in compliance and continue to feed the meter. Lea Aeschliman, Trustees of Trust Fund Representative said this is an issue we will have to look at again. She said there are real limitations with what the Arts Festival can do with regards to food. She said we are in kind of a transitional situation. She said as a trial this year they have been allowed to do this, but they were supposed to be operating as part of the Arts Festival. She further said the Trustees of the Trust Fund will have to look at this again for next year.

Assistant Mayor Blalock said the second half of this agenda item is to schedule a joint meeting with the Parking Committee and vendors to allow for public input. He said he would assume it would be at a time when the merchants and the vendors and anyone else concerned with downtown parking and the effects of the vending in parking spaces could come and give us their input. Councilor Smith stated the Parking Committee is having a special meeting on September 30, 2009. He asked if we would want to schedule this meeting at the same time. He said the Parking meeting is at 7 p.m., and we could have this meeting afterwards at say 8 p.m. He said half the team would be already there. He asked if there would be enough notice time. Police Chief Ferland asked the Parking Committee if this would interfere with the Traffic & Safety Committee meeting usually held after the Parking meeting. Councilor Smith said this is a special meeting at 7 p.m. to talk about the potential of rolling back the meter enforcement one hour.

Assistant Mayor Blalock stated the notice time is 7 days. He asked if this is something the committee would be interested in.

Assistant City Attorney Woodland stated we originally talked about getting public input on the vending issues in their entirety, so she thinks that the committee needs to decide or be clear about this in their notice. She said we had to make sure that we limit the public input on vending to parking spaces. She said then if the Vendor Committee wants to hold another meeting with the public to communicate their other vending issues they can. She asked if the committee should segregate this issue out so the Parking Committee doesn't have to get all this too. Assistant Mayor Blalock said while we have the opportunity to have a public meeting,

we should have all the issues on the table. He further stated that a lot of the vending issues do affect the Parking Committee. Parking Manager Frederick stated the agenda can be set up as item 1 is the parking issue, item 2 is the next issue and so on.

Assistant Mayor Blalock recommended having the Vendor Committee public input session follow the Special Parking meeting on September 30, 2009 at 8:00 p.m. in the Council Chambers. Councilor Smith stated the Parking Committee is having a public information session on rolling back the parking meter time from 7p.m. to 6 p.m., which could include raising the parking rate from \$.75 to \$1.00. Assistant City Attorney Woodland asked the Parking Committee if they expected their meeting to last the whole hour and if we should have a joint agenda. Parking Manager Frederick said their track record with input sessions isn't great so he didn't feel it would take the whole hour. Assistant Mayor Blalock recommended we say the vendor section will begin at 7:30 p.m. or upon completion of the Special Parking meeting and we will just follow when your meeting concludes.

Assistant City Attorney Woodland stated she would not be able to attend the meeting on September 30, 2009, but the meeting will mostly be input and so there shouldn't be any decision making being done, but she will see if City Attorney Sullivan can attend in her place.

Councilor Smith asked if the Vendor Committee would want another joint meeting after the September 30, 2009 session or will you come up with a draft ordinance change and send it to the Parking Committee for us to take up at our meeting. Assistant Mayor Blalock suggested a report from the Parking Committee to the Vendor Committee would be good and then have another joint meeting to review the draft.

Deputy Fire Chief Griswold said he does not believe we need to regulate everything. He stated that with only two merchant complaints, do we really want to change the ordinance now. Assistant Mayor Blalock stated by having a public input meeting we will get the input from the people to see if there is a real concern. Kim McNamara, Health Officer stated the Health Office is neutral on this parking issue, but said when our merchants, that we license, bring complaints to them that they can't address in an appropriate way we have to bring it to a more appropriate realm. She said that is the reason the Health Department brought this to the table. She said the merchants didn't know who to complain to and the Health Department didn't know either.

Assistant City Attorney Woodland said the challenge is that although we are lucky Fresh Local is vending away from merchants, there is nothing in our present ordinance to prevent other vendors from vending in parking spaces in front of conflicting merchants. She said we have no tool right now in the ordinance to enforce any terms. She said we do have a license structure that the City Council is well familiar with in terms of someone wanting to use a parking space for the purpose of construction. She said there is an alternative vehicle to perhaps come up with a mobile vendor license base. She said there is nothing to prevent the City Council from identifying one or two spaces somewhere in the City or wherever as a vending space for motorized vehicles.

Andrew Purgiel, Parking Committee stated the City could also limit the number of vendors allowed to utilize parking spaces to perhaps two (2) per year. Assistant City Attorney Woodland stated we are looking at a potential overhaul of the entire vending ordinance to make it more user-friendly and easier to enforce. She said this summer she had an intern in the Legal Department and he assisted her in doing some research. She said they found that in some municipalities they actually put their vending spaces out for bid. She said these spaces are valuable and their research showed there are many different options we can use to handle this.

Assistant Mayor Blalock stated that presently vendors are not in direct competition with local restaurants. He said he actually feels the vendors are good for the City. He said currently the vendors are not occupying parking spaces in front of local merchants, but it is projected that there is this potential danger. He asked if there were anymore comments on having a joint meeting with Parking on the mobile vending. He further stated that this would be scheduled through the City Clerk's office and Ms. Barnaby would send out the notice.

## **V. Escalating Incidents Between Vendors and Solutions**

Kim McNamara, Health Officer stated that there are some vendors that are threatening other vendors. She said there are vendors who are stating that they own a specific space as they have vended from that spot in the past. She said the Hawkers & Peddlers information package they are given clearly says that a vendor can not claim spaces or be assigned spaces. She stated there is also one gentleman who failed a couple inspections and we pulled his license when we found him storing food in his garage in unclear containers instead of preparing food in a commissary. She said he tends to reappear making threatening calls and text messages the other vendors. She said he has gotten a vendor fired by going to his employer with some information. She said this practice isn't limited to this person alone. She said we have other vendors who are afraid to report the threats to the Police because they are concerned about the ramifications of reporting it. She said we have these wars going on downtown between the vendors. She said there are very clear rules in place saying they can't do this, but they are doing it and she can't just go pull their food permit without going through the Legal Department because of non-food related problems. She said she would like a clear statement to come out of the Vendor Committee saying these are the rules and if you don't abide by them you will immediately lose your license. She said when the Health Department gets involved they have to find out if there are any food violations and it takes a tremendous amount of their time. She said she feels sorry for the vendors who are getting bullied as they are playing by the rules and doing a good job. She said this should not be happening. Police Chief Ferland asked the Health Officer if he was correct that other than a food violation the Health Department can not act upon their license. Kim McNamara, Health Officer said if a vendor is out of compliance with any rule they can pull their food license, but some of these problems are more guidelines than rules. Assistant City Attorney Woodland said the vendors not only have the food license, but they have the Hawkers & Peddlers license issued by the City Clerk's office. She said if it is a non-food related item the proper remedy is to pull their Hawkers & Peddlers license. She said it may also be that we have a policy where we will report the incident to the State as there is a State license involved as well. She said the difficulty we will have is the matter of he said – she said. She said there really needs to be a statement from someone sworn under oath that they received a phone call at x-time (so we can verify the phone records) from so and so and the message that was delivered. She said

we would want all those pieces in place from a due process point of view. She said the question is how we put all these pieces in place if we already have vendors who are hesitant to come forward. She said this gets back to the other issue of should we revamp the vending ordinance so we are assigning spaces at the beginning of the season. She said if we can't find a good enforcement mechanism, then maybe we need to look at a different way of dealing with the spaces. Lea Aeschliman, Trustees of Trust Fund Representative stated there is almost no resolution to these problems unless you assign spaces.

Police Chief Ferland stated the threshold to act upon the license would be the same threshold for a criminal matter. He said you might just as well go with the criminal matter and be done with it. He said anything else is just a school yard spat that you can't do anything about. Assistant City Attorney Woodland stated this to be correct. She said if a vendor is being intimidated or threatened that would be a criminal matter that would be investigated. She said there is a different burden of proof for criminal vs. a civil matters. She said you have to have beyond a reasonable doubt vs. 51-49 preponderance of the evidence standard. She said we could make a different standard, but it would be hard to enforce. She said this brings us back to should we consider assigning spots say week by week or month by month.

Assistant Mayor Blalock said he thinks what the Health Officer is asking for is a statement saying that if you violate a Hawkers & Peddlers requirement or the food license requirement your licenses will be pulled. Kim McNamara, Health Officer said this is correct, but something a little more clear. She said the problem is a little more beyond somebody just saying I like that spot, it is truly intimidation and it is going against the rules. She said she doesn't know if we could prove it or if the vendors would even report it since they haven't in the past. She said she would like to see something like - if we have complaints against a vendor and we find evidence that maybe doesn't rise to the level of criminal, but is impacting somebody's business then at that point and time we can pull that permit. Assistant Mayor Blalock asked if they are complaining to Ms. McNamara or is she hearing this on her routine checks. Kim McNamara, Health Officer said both. She said she is getting calls from different vendors. She said she had a vendor in her office in tears a few weeks ago concerned because his children are with him and he has gotten these threats. She stated his children are not allowed to operate the cart. She further stated the vendor is disabled and his children are there to deal with the heavy lifting and things he can not do. She said there is reason for concern on that level.

Assistant Mayor Blalock said that the committee can certainly state emphatically what the purpose of the license is to begin with. Kim McNamara, Health Officer said perhaps by the next meeting she can bring together a short list of what the statement should include and that can be approved or rejected.

Police Chief Ferland asked what the process is now for pulling a license. He asked if there is a hearing or a board. Kim McNamara, Health Officer stated the vendor must be in compliance with all City, State and Federal regulations. She said a clear violation of that and their license can be pulled immediately. She said there is an appeal process the vendor can go through, but there isn't a process that people can go through before you can take immediate action. Police Chief Ferland asked who pulls that license. He further asked if the Health Officer has that authority. Assistant City Attorney Woodland stated she has the authority if it's a health issue. Police Chief Ferland asked who has the authority to pull the license if it is a Hawkers & Peddlers issue. Assistant City Attorney Woodland stated the City Clerk does. Assistant Mayor

Blalock stated the City Clerk has the authority with the assistance of the Code Enforcement Officer. Assistant City Attorney Woodland stated it is actually the City Clerk with the assistance of the Legal Department. Police Chief Ferland asked if the appeal process is done through the Vendor Committee. Assistant City Attorney Woodland stated there is no established appeal process as she recalls. Kim McNamara, Health Officer said when she said appeal, she meant through the Legal Department. She said it hasn't happened yet, but if we pull somebody's permit and they wanted to appeal, they would go through the City Attorney's office. Police Chief Ferland asked if a vendor wanted to bring a complaint would that be enough for the City Clerk's office to pull a vendor's license. He asked is there something already in place that we just are not using. Assistant City Attorney Woodland said she thought there is a penalty provision and then just a very general regulation. She stated the Legal Department would not have a problem, if we thought it was really well founded, to sit with the City Clerk's office to review individual statements, talk to the person who felt threatened and then decide if it is appropriate to issue a written notice from either the City Clerk's office or the Legal Department. Deputy Fire Chief Griswold stated this would be better because we would not be punishing the vendors who are doing things right. He said we would be just going after the person causing the headaches.

Lea Aeschliman, Trustees of Trust Fund Representative asked what other surrounding cities are doing. Assistant City Attorney Woodland stated it varies a lot. She said it varies by communities depending on community values.

#### **VI. Operational issues found during inspection and consequences for the winter months**

Kim McNamara, Health Officer stated that this winter all hot dog carts failed inspection. She further stated that in the event these carts continue to fail, we might need to discontinue winter vending.

#### **VII. Timeline for Policy Review, Public Hearings and Ordinance Changes**

Assistant Mayor Blalock stated the timeline for an ordinance change is three (3) Council meetings. He said there is a first reading, second reading with a public hearing and a third reading with a vote.

Assistant City Attorney Woodland stated that because there are so many vending issues she foresees multiple meetings to hash out what we might want to present. She suggested that about the end of October the committee should begin looking at an outline for a new vending ordinance. She said by then we would have some public input and we can sit down with this preliminary ordinance and look at all the options we want to consider and approve or deny each option until we get all the way through. She said she had a summer intern put together a draft ordinance and if it is as good as she hopes it is we could begin working on it soon. She said she feels it is going to take awhile to sort through whether we will be creating more problems or if this will solve the problems. She said this should give us plenty of time to have it ready by March for the new vending season. Assistant Mayor Blalock stated that it would make sense to come in with one ordinance with all the issues. He further stated a City Council Policy could also be used, but Policies are only current with the present Council. Assistant City Attorney Woodland stated the Policy would have to fall within the existing ordinance.

Assistant Mayor Blalock stated we are going to have the joint meeting with public input on September 30<sup>th</sup>. He said the Parking Committee meets on October 8<sup>th</sup> and if we scheduled a meeting a week or two after that we could start the ball rolling. He said he would have City Clerk Barnaby set up a follow-up meeting for mid to end October 2009.

#### **VIII. Discussion/Questions**

There were no further discussion/questions.

#### **XIII. Adjournment**

At 3:30 p.m., Deputy Fire Chief Griswold moved to adjourn. Seconded by Lea Aeschliman and voted.

Respectfully submitted by:

Dianne M. Kirby, Deputy City Clerk