

Sumter City-County Planning Commission

May 25, 2011

OA-11-01, Produce Sales / Planning Staff (City)

I. THE REQUEST

Applicant: Planning Staff

Request: Request to amend Section 5.b.3.s (Special Design Review Criteria for Mobile Vendors & Concession Operators) of the City Zoning and Development Standards Ordinance to add language permitting produce sales under certain conditions

II. BACKGROUND

The question of appropriate locations for the sale of produce has been presented to planning staff on numerous occasions. An ordinance amendment approved in 2009 changed the language of the City Zoning Ordinance to permit the use of mobile vending carts (such as hot dog carts) under certain conditions in the GC zoning district. This proposed amendment would also allow sale of produce under certain conditions.

Definition of Use

After review of the request, Planning Staff concludes that *Produce Sales* uses are similar to both the Seasonal Activity licenses that are currently issued by the Sumter Business License Department for individuals to operate mobile vending operations during City-sponsored festivals such as the Iris Festival at Swan Lake Gardens, and the Mobile Vending licenses permitted for such uses as hot dog carts or snow-cone sales. However, for an operation such as this to be permitted on an ongoing basis on private property, it is necessary to evaluate the impacts on land use, traffic generated, and possible issues such as debris, signage, encroachment and community aesthetics. In other jurisdictions reviewed, these mobile vendors generally operate in the downtown and general commercial districts.

Current Practice

Aside from vendors such as these operating at fairs and events, the City currently places strict prohibitions on retail sales operations of a mobile or temporary nature. Today, temporary retail stands are permitted for a period of 60 days and must be operated out of a permanently affixed structure. Firework stands are permitted for a period of 30 days and Christmas sales lots are allowed for 45 days. Sumter has experienced its share of illegal retail peddlers and merchants, the kind seen on weekends, operating trailer-based barbeque stands, selling furniture out of the back of trucks, or spreading oriental rugs for view on vacant lots. These occurrences are not permitted under the Zoning Ordinance and constitute violations of City Ordinance. Several citations and warnings have been issued in recent months to individuals attempting to sell produce from vacant lots and commercial parcels in the city.

Currently, Mobile Vendors shall be permitted:

- a. To operate on private property or on designated public property that is located within the GC zoning districts, and the cart and all items associated with any Mobile Vending operation *must be removed* from the premises during non-business hours.
- b. To operate only on property on which there is located at least one active, permitted Primary Use. Under no circumstances shall a Mobile Vendor be issued a permit to operate on property that is uninhabited or vacant.
- c. To operate only between the hours of 7 a.m. and 5 p.m. on weekdays, and between the hours of 7 a.m. and 6 p.m. on Saturdays, and between 12 p.m. and 5 p.m. on Sundays;
- d. To operate only within designated parking areas on private property only so long as the minimum parking requirements for the primary use located on the property are met, or within a designated Mobile Vending area on a sidewalk or on private property where such designated Mobile Vending areas are set aside expressly for the use. The mobile vendor shall not be located more than 50 feet from the principal structure. If the mobile vendor is to be located within a designated Mobile Vending area on private property, a zoning visit shall be required prior to the issuance of a permit to ensure that the size and location of the Mobile Vending area is in conformity with all other requirements for the primary use, including parking, landscaping, ingress and egress, and vehicular circulation.
- e. To operate only with the maintenance and use of a litter receptacle that is made available for the patrons' use. Excessive litter caused by product packaging or other associated products of the Mobile Vendor operation may result in revocation of zoning approval to operate.
- f. To operate only in a self-contained manner and without the utilization of any outside power source.
- g. To operate only with such signage as may be attached to the cart, vehicle, or device (not to exceed two (2) sq. ft.) and without any further signage used to advertise the business, including portable signs or signs affixed to any structure.
- h. To operate and to sell only such permitted merchandise as is listed herein. Permitted merchandise shall be limited to reading material such as newspapers, magazines, and books; and ready-to-eat items and finger foods such as hot dogs, sausages, hamburgers, tacos, burritos, baked potatoes, bagels, pastries, candy, prepackaged sandwiched, cookies, chips, biscuits, popcorn, nuts, pretzels, ice product, ice cream, milk products, frozen yogurt, hot and cold beverages containing no alcohol, flowers, and items related to permitted merchandise. Items specifically banned from being sold by Mobile Vendors include, cigarettes, cigars, and any product containing tobacco.
- i. To operate only with the appropriate licensing as required by SC-DHEC and the Sumter City Business License Department, including a background check and any other requirements for Mobile Vendor operations of the City, County, and the State of South Carolina.
- j. To operate upon written permission of the property owner.
- k. To operate only when *all* conditions listed have been met. There shall be no temporary licensing of Mobile Vendors until such conditions are met. Only duly licensed operators shall be permitted.

III. DRAFT ORDINANCE AMENDMENT

Proposal

The staff's proposal suggests that produce sales should be permitted from a vehicle such as a pickup truck within designated parking areas with the property owner's permission on an active business site in the General Commercial (GC) zoning district. The 50' maximum distance requirement would be eliminated from the ordinance only for the produce sales. Currently sales must take place from a specific type of cart, as defined below:

Cart: Means any portable vending device, pushcart or other wheeled vehicle or device which may be moved without assistance of a motor and which is not required to be licensed and registered by the Department of Motor Vehicles, used for the displaying, storing or transporting of articles offered for sale by a vendor, and which does not exceed four feet in width, six feet in length, and five feet in height, excluding canopy or cover.

This request would amend the current Mobile Vending section of the ordinance to read as follows (**proposed changes are shown in bold type**):

h. To operate and to sell only such permitted merchandise as is listed herein. Permitted merchandise shall be limited to reading material such as newspapers, magazines, and books; **produce, (meaning fruits and vegetables, from a vehicle such as a pickup truck, as long as all produce remains in the vehicle until sold. No goods or merchandise offered for sale may be stored in or sold from a tractor-trailer. The sale of produce from a cart will also be permitted. No merchandise other than produce may be sold from a vehicle.)** and ready-to-eat items and finger foods such as hot dogs, sausages, hamburgers, tacos, burritos, baked potatoes, bagels, pastries, candy, prepackaged sandwiched, cookies, chips, biscuits, popcorn, nuts, pretzels, ice product, ice cream, milk products, frozen yogurt, hot and cold beverages containing no alcohol, flowers, and items related to permitted merchandise. Items specifically banned from being sold by Mobile Vendors include, cigarettes, cigars, and any product containing tobacco.

A definition for Produce would also be added to Article 10 of the Ordinance reading thus:

Produce: Fresh fruits, vegetables and other edible plant materials or plant by-products such as herbs, spices, edible mushrooms and honey.

Other proposals to the ordinance that were considered during review of this issue included the following options:

- The option of permitting produce sales on vacant or unused parcels in certain situations. Sales of produce on vacant or uninhabited parcels may lead to a slippery enforcement slope, whereby other salespeople (of rugs, furniture, etc.) will argue that they should also have the right to sell their products. For this reason, staff decided this was not a good option.
- Staff debated the option of allowing produce sales but not in parking areas. It was decided that the property owner has the power to determine whether or not produce sales in the parking area is detrimental to their business activity, and can grant or deny permission accordingly.

- Staff also discussed the issue of whether to allow sales from the back of a vehicle such a pickup truck, and determined that this was acceptable but that sales from a tractor-trailer was not.
- The other option staff considered was to make no changes to the current ordinance requirements for mobile vending.

IV. STAFF RECOMMENDATION

Staff recommends a change to the mobile vending section of the ordinance so that it specifically allows produce sales from a vehicle such as a car or truck, but not from a tractor-trailer, in General Commercial zoning districts within the city limits. No other items shall be sold from a vehicle except for produce sales. Such sales would be permitted within the parking area, and the 50' maximum distance requirement from the building would be removed for produce sales only. The property owner must give written permission for this to occur.

V. DRAFT MOTIONS

I move that the Planning Commission approve Staff's Proposal of OA-11-01 as submitted by the applicant.

I move that the Planning Commission deny Staff's Proposal of OA-11-01 as submitted by the applicant.

I move that the Planning Commission consider an alternate action on OA-11-01.

VI. PLANNING COMMISSION – MAY 25, 2011

The Sumter City – County Planning Commission, at its meeting on Wednesday, May 25, 2011, voted to recommend approval for the following request

VII. CITY COUNCIL – JUNE 21, 2011 – FIRST READING / PUBLIC HEARING