

ORDINANCE NO.: 97-3094

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 25 OF THE CITY CODE ENTITLED "OFFENSES - MISCELLANEOUS" CREATING ARTICLE 25-66.2 ENTITLED "NON-PROFIT VENDING AND DISTRIBUTION" REGULATING MERCHANDISE SALES AND DISTRIBUTION.**

**WHEREAS**, numerous non-profit organizations seek to engage in First Amendment- related vending and distribution activities in the City, using portable tables set up on the public rights-of-way; and

**WHEREAS**, the uncontrolled placement of such portable tables threatens the aesthetic value of the area; and

**WHEREAS**, maintaining the ambiance and flavor of the streets of Miami Beach is essential to its popularity and to the economic well-being of the City; and

**WHEREAS**, the uncontrolled placement of portable tables presents an inconvenience and hazard to persons using the City's public rights-of-way and constitutes a public nuisance; and

**WHEREAS**, the provisions contained herein are permissible time, place, and manner regulations of the vending and distribution activity of the non-profit organizations and are intended to secure and promote the public health, safety, aesthetic values, and general welfare of persons in the City of Miami Beach in their use of public rights-of-way;

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1. AMENDMENT OF CHAPTER TITLE**

That the title of Miami Beach City Code Chapter 25 entitled "Offenses - Miscellaneous" be amended as follows:

Chapter 25

Non-Profit Sales and Distribution

**SECTION 2. CREATION OF ARTICLE 25-66.1 ENTITLED "NON-PROFIT VENDING AND DISTRIBUTION"**

That an Article 25-66.1 be created, entitled "Non-Profit Vending and Distribution" and added to Chapter 25 as follows:

**Article 25-66.1. Non-Profit Vending and Distribution**

- a. **Definitions**
- b. **Applicability**
- c. **Permit Required**
- d. **Permit Application**
- e. **Area Reserved for Non-profit Vending and Distribution**
- f. **Permit Rules and Requirements**
- g. **Prohibitions**
- h. **Hours of Operation**
- i. **Indemnification**
- j. **Penalty for Violations of this Article**

**a. Definitions**

"**Applicant**" shall mean the non-profit organization applying for a non-profit vending and distribution permit pursuant to this Article.

"**Department**" shall mean the Department of Finance of the City of Miami Beach.

"**Director**" shall mean the Director of Finance of the City of Miami Beach.

"**Distribution**" shall mean the transfer or offer to transfer merchandise.

"**Manager**" shall mean the City Manager of the City of Miami Beach.

**"Message-bearing merchandise"** shall mean a product bearing a message that is inextricably intertwined with the purpose and activities of a permittee pursuant to this Article. All message-bearing merchandise must constitute or contain a conspicuous political, religious, philosophical, or ideological message having intellectual content that is clearly informative of the purpose of the permittee's organization and is permanent and readable or recognizable from a reasonable distance.

**"Non-profit organization"** a corporation that is expressly organized for non-profit purposes, that is in good standing at the time of its application for permit hereunder, and that is deemed a tax exempt organization under Section 501 of the Internal Revenue Code.

**"Non-profit vending"** shall mean vending by a non-profit organization as those terms are herein defined.

**"Permittee"** shall mean the non-profit organization that has been issued a non-profit vending permit pursuant to this article.

**"Vending"** shall mean the transfer or offer to transfer merchandise for money, or requests for donations in exchange for merchandise.

#### **b. Applicability**

This Article regulates vending and distribution from portable tables by non-profit organizations as defined herein. This Article does not affect the City's existing regulations regarding charitable solicitation or the City's prohibition on other commercial vending outside of an enclosed structure.

#### **c. Permit Required**

It shall be unlawful for any person to engage in non-profit vending or distribution on public

property without obtaining a permit as required by this Article.

**d. Permit Application**

Applications for a non-profit vending and distribution permit shall be made at the office of the director. Only those applications on City of Miami Beach forms will be accepted. If the application form is complete, the applicant agrees to abide by the terms of this Ordinance, and the applicant provides proof of its tax-exempt status, the application will be approved.

1. Applications for permits under this Section may be obtained from the Finance Department.
2. The permit application shall require the following information:
  - a) The name and address of the non-profit organization;
  - b) The names, addresses, and social security numbers of persons in charge of the vending or distribution and phone numbers where they may be reached during business hours;
  - c) The names and social security numbers of persons who are vending or distributing at the location;
  - d) The period of time for which the applicant seeks a permit;
  - e) A description of the merchandise to be vended or distributed; and
  - f) A certification by the persons vending or distributing that they have read and understood the requirements of this Section.
3. The City may charge an application processing fee in the amount of not less than fifteen dollars (\$15.00) per application.
4. The application shall be submitted to the City during the calendar month prior to the permit month.

5. Permits are non-transferrable.

**e. Area Reserved For Non-Profit Vending and Distribution**

1. Non-profit vending and distribution shall only be conducted in those approved designated areas. The non-profit vending and distribution areas shall be assigned randomly.

2. If the number of requests for non-profit vending and distribution permits exceeds the number of available locations, the available locations will be assigned by a quarterly lottery and each non-profit vendor and distributor shall be limited to one location within the City.

3. If the area reserved for non-profit vending and distribution is needed for a special event, municipal repairs, or other City business, the Director may temporarily relocate the non-profit vending and distribution activity to a different area or areas.

4. The following locations shall be available pursuant to this Section:

i) The East side of Ocean Drive and 7th Street, 25ft from curb, on ocean access sidewalk.

ii) The East side of Ocean Drive and 9th Street, 25ft. from curb, on ocean access sidewalk.

iii) The East side of Ocean Drive and 11th Street, 25ft. from curb, on ocean access sidewalk.

iv) North of 727 Lincoln Rd., middle of mall, under the overhang.

v) North of 400 Lincoln Rd., middle of mall, between two palm trees.

**f. Permit Rules and Requirements**

Non-profit vending and distribution shall be conducted in accordance with the following rules and requirements:

1. The permittee shall be limited to a display area of one table with no more than 8 square feet of surface area.

2. The permittee shall be limited to one sign which shall include the permittee's Federal I.D. Number and shall be no greater than one foot by two feet. The permittee's name shall be legibly displayed on said sign, said sign shall be approved by Design Review.

3. The permittee shall neatly display all message-bearing merchandise on the table. No message-bearing merchandise shall be displayed in any other area. Any boxes or additional merchandise shall be stored wholly underneath the table which is fully skirted to public right-of-way so that the boxes and additional merchandise will not be visible.

4. The table and all message-bearing merchandise shall be removed from City property daily, and the permittee shall clean the permit area and deposit trash in proper receptacles.

5. The non-profit vending and distribution permit issued by the City shall be displayed at the permit area at all times.

6. Only message-bearing merchandise, as defined in this article, may be vended or distributed. The message-bearing merchandise must also satisfy the following conditions:

(a). The message carried or conveyed on the merchandise must be physically part of the merchandise, indelible, and non-removable.

(b). The mere placement of an organization's name or message on merchandise other than a T-shirt, which merchandise is unrelated to purpose or activity of the organization, shall not qualify the merchandise as inextricably intertwined with the purpose and activity of the permittee.

7. Each member of the permit holder's organization who is engaged in sale or

distribution activities at the permitted location shall at all times wear keep and keep visible a legible identification badge containing the name of the individual and the name and address of the non-profit organization.

8. Each permit holder shall provide a receipt with each sales transaction. The receipt shall contain the name and address of the organization, the date of sale, the number and types of items sold, and the dollar amount of the transaction.

9. Each permit holder shall maintain the area around the permit holder's table free of litter and debris.

### **g. Prohibitions**

A permit holder shall not:

1. Engage in verbal or physical harassment or coercion;
2. Impede the flow of vehicular traffic;
3. Obstruct access to businesses or other properties;
4. Engage in activities that prevent the free passage of pedestrians;
5. Use lounge chairs
6. Create a fire hazard;
7. Create excess noise in violation of the Dade County Ordinance 21-28;
8. Engage in fraudulent practices or solicitations, including but not limited to, misrepresentation about any sale or solicitation, misrepresentation about the nature and type of the non-profit organization, or misrepresentation or concealment of any material fact in the application process;

### **h. Hours of Operation**

1. Non-profit organizations that have obtained a permit hereunder may vend and distribute during daylight hours only and under no circumstances earlier than 8:00 A.M. All tables, displays, signs, and inventory used in the sale and distribution of merchandise shall be removed no later than thirty minutes after sunset.

**i. Indemnification**

1. All permit holders shall agree to defend, indemnify, and hold harmless the City of Miami Beach and its officers, agents, and employees, from any suit, actions on claims arising out of or in any way connected with the activities permitted and hereunder, except for any claims or liability arising from the negligence or misconduct of the City, its agents, officers, or employees.

**j. Penalty for Violations**

A violation of this Section shall constitute a misdemeanor subject to the penalties set forth in section 1-8 of the City Code of Miami Beach.

**SECTION 3. SEVERABILITY.**

If any section, subsection, clause, or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

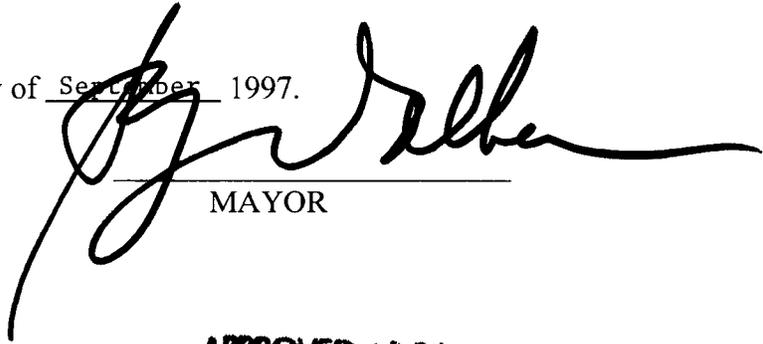
**SECTION 4. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days after its adoption on the 4<sup>th</sup> day of October, 1997.

PASSED AND ADOPTED\* this 24th day of September 1997.

  
MAYOR

ATTEST:

  
CITY CLERK

F:\ATTO\SACS\NONPROF 003

1st reading 9/10/97

2nd reading 9/24/97

Ordinance No. 97-3094

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
City Attorney 10/1/97

\*reflects amendments as adopted on September 24, 1997.