
1 **2019-26 (2ND READING): AN ORDINANCE GRANTING A BOARDWALK**
2 **VENDOR FRANCHISE AGREEMENT TO _____ FOR THE 3RD AVE N**
3 **PORTION OF THE PUBLIC BOARDWALK OF THE CITY OF MYRTLE BEACH**
4 **FOR A PERIOD OF THREE YEARS BEGINNING MAY 11, 2019.**

5 **Applicant/Purpose:** Staff/ to award a Boardwalk vendor franchise for 3rd N for 3 years
6 beginning 5/11/19.

7
8 **Brief:**

- 9 • There are 4 existing Boardwalk franchise locations at 3rd N, 4th N, 5th N & 6th N.
- 10 • 2 of the 4 franchise locations expire in 2020 (4th Ave., N & 5th Ave., N).
- 11 • Ordinance 2019-25 awards a franchise for the 6th Ave., N location.
- 12 • After advertisement, 2 new proposals were received for the 3rd N. location.
 - 13 ○ Mellow Ice Cream operated by Ethan Brown.
 - 14 ○ D & D Pretzel n Franks operated by Denise Chestnut.
- 15 • Both proposers have been invited to the City Council Meeting.
- 16 • If Council desires to consider a franchise for 1st Reading, an ordinance has been
17 placed on the agenda w/ only the name of proposer needing to be completed.
18

19 **Issues:**

- 20 • Proposal calls for a 3 yr. agreement w/annual franchise fee of \$1,000/year.
- 21 • Proposed agreement:
 - 22 ○ Requires vendors to insure the City.
 - 23 ○ Prohibits vending at other locations.
 - 24 ○ Limits operational hours to 6 AM - 11 PM.
 - 25 ○ Requires off-site storage of carts.
 - 26 ○ Requires proper litter receptacles & clean-up materials.
 - 27 ○ Prohibits verbal solicitations, & amplified sounds.
 - 28 ○ Requires vendor to provide pedestrian boardwalk passage.
29

30 **Public Notification:** Normal meeting notification.

31
32 **Alternatives:**

- 33 • Do not allow boardwalk vendor franchises.
- 34 • Re-advertise for additional potential franchisees.
35

36 **Financial Impact:** City will receive annual franchise fee of \$1,000/vendor & annual
37 Business License revenues based on sales.
38

39 **Manager's Recommendation:**

- 40 • I recommend 1st reading (3-12-19), w/ the actual selection of the vendor to
41 come at 2nd reading.
- 42 • I recommend this franchise be awarded to Ethan Brown dba Mellow Ice Cream
43 for 2 reasons. First, w/ the exception of Italian Ice, Mr. Brown's proposed
44 product line does not compete w/ either of the other 2 boardwalk vendors.
45 Secondly, he is a City resident.
46

47 **Attachment(s):** Proposed ordinance.

CITY OF MYRTLE BEACH
COUNTY OF Horry
STATE OF SOUTH CAROLINA

AN ORDINANCE GRANTING A
BOARDWALK VENDOR FRANCHISE
AGREEMENT FOR THE 3rd AVE N
PORTION OF THE PUBLIC
BOARDWALK OF THE CITY OF
MYRTLE BEACH FOR A PERIOD OF
THREE YEARS BEGINNING MAY 11,
2019.

WHEREAS, the City of Myrtle Beach anticipates the convenience of its tourist and residential population requires an efficient and effective franchise program for consumables on the Myrtle Beach Boardwalk; and

NOW, THEREFORE, PURSUANT TO THE FRANCHISE POWER OF THE CITY OF MYRTLE BEACH, and in consideration of the foregoing premises and the mutual promises of each to the other made agree as follows:

The City of Myrtle Beach grants a Boardwalk Vendor Franchise to _____, which shall become effective upon the execution of the Boardwalk Vendor Franchise Agreement, attached hereto.

This ordinance is effective on March 26, 2019.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

First reading: 3-12-19
Second reading: 3-26-19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

BOARDWALK VENDOR FRANCHISE AGREEMENT

WHEREAS, the City of Myrtle Beach anticipates the convenience of its tourist and residential population requires an efficient and effective franchise program for consumables on the Myrtle Beach Boardwalk; and

NOW, THEREFORE, and in consideration of the foregoing premises and the mutual promises of each to the other made agree as follows:

The City of Myrtle Beach grants a concession franchise on the public Boardwalk unto

1. _____, at
2. 3rd Ave., N., from
May 11, 2019 to May 10, 2022.
3. To vend the following: _____.

SECTION 1: Authority.

The granting of franchises for the use of public streets and the making of charges therefore are authorized by S.C. Code 1976, § 5-7-30, and are subject to such conditions as the council may impose to protect the public interest, welfare and convenience.

SECTION 2: Permitted merchandise.

No merchandise shall be sold by a vendor from a cart in a vending district except the merchandise approved for the specific location of the cart.

SECTION 3: Franchise and license required; franchise fee; no transfer of franchise.

A nonexclusive franchise for not more than three year may be granted for the operation of one or more carts at locations specified by resolution of city council within a vending district prior to the acceptance of applications for a franchise. An annual franchise fee of \$1000.00 per location shall be paid in advance. One business license for each franchisee shall be required at the applicable rate pursuant to ordinance. A franchise may not be transferred in any manner. Sale of a majority of stock in a corporate franchisee by stockholders listed on the franchise application or sale of a majority interest in a partnership as listed on the franchise application shall be deemed a transfer of the franchise which is prohibited.

SECTION 4: Application to business license division for franchise.

The application to the business license division for a vendor's franchise include the following information:

- 1) The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the cart to be used in the operation of the vending business.
- 2) A description of the type of food, beverage or merchandise to be sold.
- 3) A list of the proposed location of the vending cart for which a franchise is sought.
- 4) A description and photograph or drawing of the cart proposed to be used.
- 5) The location and description of off-street cart storage facilities.

- 6) The method and routes for transporting carts to and from sidewalk locations and storage facilities.
- 7) The names, addresses and percentage of stock owned by shareholders in a corporate applicant, and the percentage interest of each partner in a partnership applicant.
- 8) Such other information as the applicant may choose or as may be requested by the city manager or city council to demonstrate that the applicant has the financial ability to perform the conditions of a franchise.

SECTION 5: Issuance of franchise.

The franchise shall be issued by ordinance in accordance with the vote of City Council. Any franchise issued shall be subject to modification by ordinance at any time deemed necessary by the council for protection of public interests. Any franchise shall be granted as a privilege and not as a matter of right. Vending at any location may be temporarily suspended or relocated by the city manager upon reasonable notice when private or public construction or activities of the city make it unsafe or impractical to allow vending. There is no recourse for lost profits upon such an action.

SECTION 6: Evidence of compliance with health and fire regulations; insurance.

A certificate of inspection or compliance as required by applicable health regulations and evidence of compliance with the fire code shall be filed with the city clerk before any sales are made from carts. Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the owner and the city from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the owner, shall be filed with the city manager prior to use of the franchise and annually. Such policy shall be a general liability policy naming the franchisee as insured in an amount not less than \$500,000.00 per occurrence and \$1,000,000.00 aggregate combined single limit for bodily injury, personal injury and property damage. The policy shall specifically provide that the insurer shall provide written notice to the city at least 30 days prior to cancellation, termination or modification of the coverage provided to the city.

SECTION 7: Prohibited conduct.

No vendor shall:

- 1) Vend on any street or sidewalk where vending is otherwise prohibited.
- 2) Vend between 11:00 p.m. and 6:00 a.m. of the following day.
- 3) Leave any cart unattended.
- 4) Store, park or leave any cart overnight on any street or sidewalk.
- 5) Sell food or beverages for immediate consumption unless there is a litter receptacle which is available for patrons' use.
- 6) Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor.
- 7) Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the cart.
- 8) Set up, maintain or permit the use of any table, crate, carton, rack or other device to increase the selling or display capacity of his cart.
- 9) Solicit or conduct business with persons in motor vehicles.
- 10) Sell anything other than that for which a franchise and license to vend have been issued.
- 11) Sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public.
- 12) Vend without the insurance coverage specified herein.

- 13) Allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's permission.
- 14) Verbally solicit customers.
- 15) Fail to maintain a functional, clean and orderly cart.
- 16) Obstruct passage.
- 17) Fail to provide the franchise service for any day during the period of June 1 to August 31 of each franchise year, without notification of reason to the City Manager.

SECTION 8: Advertising.

No advertising shall be permitted on any cart except to identify the name of the product or the name of the vendor, and the posting of prices.

SECTION 9: Renewal of franchise.

All franchises issued are valid for the entire franchise period unless revoked or suspended prior to expiration. An application to renew a franchise shall be made not later than 60 days before the expiration of the current franchise.

SECTION 10: Denial, suspension or revocation of franchise.

Any franchise granted under this division may be denied, suspended or revoked by the city manager for any of the following reasons:

- 1) Fraud or misrepresentation contained in the application for a franchise.
- 2) Fraud or misrepresentation made in the course of carrying on the business of vending.
- 3) Conduct of the franchised business in such manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
- 4) Conduct which is contrary to the provisions of this franchise, or which is detrimental to the reputation of the City of Myrtle Beach.
- 5) Failure to use the franchise fully in accordance with its terms within 90 days after notice of the grant of franchise, or failure to provide the service for five (5) days consecutively without City approval, during the term of the franchise.
- 6) Failure to qualify for a business license or determination that any condition in Sections 11-34 or 11-35 of the Myrtle Beach Code of Laws exists.
- 7) A determination that the applicant is not able or qualified, by reason of background, medical limitations, financial condition or conditions related to the vending business, to render acceptable service to the public pursuant to this division.
- 8) A determination that a more qualified applicant for the same location will accept a franchise.
- 9) A determination that no franchise should be granted to any applicant and that a location should be removed from the vending district approved list.

SECTION 11: Boardwalk cleanliness

Each Franchisee will be responsible for the cleanliness of his/her franchise zone(s) as assigned. The area of responsibility extends in either direction of the cart. Re-occurring legitimate complaints about litter around or originating from the cart shall be grounds for franchise termination.

SECTION 12: Indemnification

Franchisee agrees to protect, defend, indemnify and hold the City of Myrtle Beach, its officers, agents and employees free and harmless from and against any and all losses, fines, penalties, damages, settlements, costs, charges, professional fees or other expenses and liabilities of

every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Franchise and or the performance hereof, that are due to acts, errors, omissions or negligence of Franchisee, its officers, agents, employees or subcontractors. Franchisee further agrees to investigate, handle, respond to, provide defense for and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

SECTION 13. Notice

To the City
City Manager
P. O. Box 2468
Myrtle Beach SC 29577

To the Franchise

SECTION 14 Signatures

WITNESS the due execution hereof this __ day of _____, 2016.

CITY OF MYRTLE BEACH

Manager: _____

Witness: _____

Franchisee: _____

Witness: _____
