

ORDINANCE NO. 229

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA, AMENDING CHAPTER 34, PARKS AND RECREATION, SECTION 34-41, MERCHANDISING, ADVERTISING AND SIGNS, SUBSECTION (1), VENDING AND PEDDLING; AMENDING SECTION 34-41(1) TO PROHIBIT ALL NON-PERMITTED COMMERCIAL ACTIVITIES WITHIN TOWN PARKS; AMENDING THE TITLE OF SECTION 34-42; AMENDING SECTION 34-42(c) TO ADD REQUIREMENT THAT ALL COMMERCIAL ACTIVITY IN TOWN PARKS TO BE PERMITTED; AMENDING SECTION 34-44(a) and (b), RECREATION FACILITY FEE, TO ESTABLISH THE AUTHORITY FOR CHARGING FEES FOR COMMERCIAL ACTIVITY PERMITS; PROVIDING FOR AUTHORITY; PROVIDING LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A PURPOSE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA ("TOWN"), AS FOLLOWS:

SECTION 1: AUTHORITY.

The authority for the enactment of this Ordinance is Sections 166.021 and 166.041, Florida Statutes and Section 101.75, Florida Statutes and other applicable Florida law.

SECTION 2: LEGISLATIVE FINDINGS AND INTENT.

WHEREAS, this Ordinance amends CHAPTER 34, PARKS AND RECREATION, Section 34-41(1) of the Town of Cinco Bayou, Code of Ordinances, by prohibiting any and all types of commercial activities within the Town of Cinco Bayou's parks and recreation facilities, unless properly permitted; and,

WHEREAS, the Town Council wishes to maintain the tranquility and recreational purposes of the town parks and recreational facilities through the general prohibition of non-permitted commercial activities within said parks and facilities; and,

WHEREAS, the Town Council has determined that non-permitted commercial activities pose safety, access, legal liability, and fairness issues when conducted within our community maintained parks/recreational facilities and run contrary to the recreational purpose of these facilities; and,

WHEREAS, a public hearing has been conducted regarding this ordinance by the Town Council after due public notice; and,

WHEREAS, the Town Council has determined that this ordinance is in the best interests of the Town and its citizens.

SECTION 3: PURPOSE.

The purpose of this Ordinance is to broaden the current park “vending and peddling” ordinance to prohibit all non-permitted commercial activities within the jurisdictional boundaries of all Town parks; including but not limited to, business services, classes, and all retail commerce.

SECTION 4: AMENDMENT TO CHAPTER 34, PARKS AND RECREATION, SECTIONS 34-41(1), 34-42(c) AND 34-44(a) AND (b) OF THE CODE OF ORDINANCES OF THE TOWN OF CINCO BAYOU.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

- A) Section 34-41(1), of the Code of Ordinances, Town of Cinco Bayou, Florida, is hereby amended as follows:

No person in a park shall:

(1) ~~Vending and peddling~~ Commercial activity. Solicit for any purpose, expose or offer for sale any article or thing, vend, peddle, ~~nor shall he~~ station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing, nor offer, solicit for, procure, or conduct any commercial service(s). ~~Exception is made as to any regularly licensed concessionaire acting by and under the authority and regulation of the town~~ except such restrictions shall not apply to any such activity when done with the consent of the town pursuant a properly issued commercial or recreational group activity permit.

- B) The title to Section 34-42 of the Code of Ordinances, Town of Cinco Bayou, Florida, is amended as follows:

Sec. 34-42. Park operating policy; permit for commercial and group events or recreational activities.

- C) Section 34-42(c), of the Code of Ordinances, Town of Cinco Bayou, Florida, is hereby amended as follows:

(c) Permit for commercial and group events or recreational activities. A permit shall be obtained from the town before ~~participating in~~ conducting any commercial activity or a group event or recreational activity composed of 20

15 or more persons, not including the activity of loading or unloading boats or recreational vehicles, pursuant to the following:

- (1) *Application; fee.* A person seeking issuance of a permit under this subsection shall file an application with the town. The application shall state:
 - a. The name and address of the applicant.
 - b. The name and address of the person, corporation or association sponsoring the act
 - c. The day and hours for which the permit is desired.
 - d. The park or portion thereof for which such permit is desired.
 - e. An estimate of the anticipated attendance.
 - f. Any other information which the town manager/clerk shall find reasonably necessary to a fair determination as to whether a permit should be issued under this subsection. All applicants desiring to obtain a permit for a commercial activity or for exclusive use of any portion of a park will be required to pay a nonrefundable fee at the time of permit issuance in an amount as established by resolution of the town council.
- (2) *Standards for issuance.* The town shall issue a permit under this subsection when the town manager/clerk or his designee finds that:
 - a. The proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park.
 - b. The proposed activity ~~and~~ or use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.
 - c. The proposed activity or use is not reasonably anticipated to incite violence, crime or disorderly conduct.
 - d. The proposed activity will not entail unusual, extraordinary or burdensome expense or police operation by the town.
 - e. The facilities desired have not been reserved for other use at the day and hour required in the application.
- (3) *Appeal of denial.* If a permit is denied, within three days after receipt of an application, the town manager/clerk or his designee shall apprise an applicant, in writing, of the reasons for refusing a permit. Any aggrieved person shall have the right to appeal, in writing, within three days, to the town council, which shall consider the application under the standards set forth in subsection (2) of this subsection, and sustain or overrule the decision of the town manager/clerk or his designee within 14 days. The decision of the council shall be final.
- (4) *Effect of permit.* A permittee shall be bound by all park rules and regulations and all applicable ordinances fully, as though such rules,

regulations and ordinances were inserted in the permit.

- (5) *Liability of permittee.* The person or entity to whom a permit is issued shall be liable for any loss, damage or injury sustained by any person whatsoever by reason of the negligence of the person or entity to whom such permit shall have been issued.
- (6) *Revocation.* The town manager/clerk shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance, or upon good cause shown.

D) Sections 34-44(a) and (b), of the Code of Ordinances, Town of Cinco Bayou, Florida, are hereby amended as follows:

34-44. Recreational facility fees.

- (a) *Purpose.* The purpose of this section is to establish fees for the various commercial and event/recreational activities that utilize public property within the town and to establish procedures for the enforcement of such fees.
- (b) *Schedule.* The town shall levy fees for commercial and event/recreational activities that utilize public property including, but not limited to, vending, peddling, delivery of services for a fee, group activities, meetings, receptions, and boat launching and recovery. The amount of the commercial or event/recreation fee required shall be that as established by resolution of the town council. No recreational or park fees shall be charged to any governmental or law enforcement agency when using the town's facilities for official business. No person shall fail to pay such fees.

SECTION 5: INCORPORATION INTO CODE OF ORDINANCES.

This ordinance shall be incorporated into the Town of Cinco Bayou's Code of Ordinances and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

SECTION 6: CONFLICTING PROVISIONS.

Town Ordinances and Town Resolutions, or parts, thereof, in conflict with the provisions of this ordinance are hereby repealed by this ordinance to the extent of such conflict.

SECTION 7: SEVERABILITY.

If any section, phrase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 8: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon its final passage and adoption by the Town Council and signature of the Mayor.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF CINCO BAYOU, FLORIDA ON THIS 14th DAY OF NOVEMBER 2013.

ATTEST:

BY: Nell Dykes
Nell Dykes, Town Manager/Clerk

THE TOWN OF CINCO BAYOU, FLORIDA

BY: Nick Chubb
Nick Chubb, Mayor Pro Tem

[SEAL]

The form and legal sufficiency of the foregoing has been reviewed and approved by the Town Attorney.

C. Jeffrey McInnis
C. Jeffrey McInnis,
Town Attorney

