

# REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

FEBRUARY 7, 2017

TITLE:

PUBLIC HEARING - ADOPT AN  
ORDINANCE TO REGULATE MOBILE  
FOOD VENDING VEHICLES  
{STRATEGIC PLAN NO 5, 4}

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☒ As Amended
- ☐ Ordinance on 1<sup>st</sup> Reading
- ☐ Ordinance on 2<sup>nd</sup> Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For \_\_\_\_\_

CONTINUED TO March 7, 2017

FILE NUMBER \_\_\_\_\_

  
CITY MANAGER

## RECOMMENDED ACTION

Adopt an ordinance repealing existing mobile food vehicle regulations in the Santa Ana Municipal Code and replacing them with new regulations.

## DISCUSSION

Santa Ana's leadership and community have expressed safety concerns with mobile food vending vehicles that pose traffic hazards and/or special danger to the safety and welfare of children and residents. The City's intent is to provide clear and concise regulations with regard to mobile food vending vehicles to ensure public safety and prevent traffic hazards, preserve the peace, and safeguard the welfare of the community.

In December 1994, the City Council adopted regulations for vending vehicles. Subsequently in 2004 and 2005, the City Council adopted regulations by Ordinances NS-2655 and NS-2701, which were challenged by an action filed at the Orange County Superior Court (*Vasquez v. City of Santa Ana* - Case No. 05CC13450). The Court ruled in favor of the plaintiffs, finding that California Vehicle Code section 22455 preempted Santa Ana's ordinances because City regulations were not limited to protecting public safety. Following the *Vasquez* case, the City was restrained from enforcing regulations on mobile food vending vehicles even though Vehicle Code section 22455 allows a local authority to adopt additional requirements for mobile vending, restricting the time, place and manner of vending in order to protect public safety.

In a collaborative effort to obtain input on this issue, City staff held meetings with community stakeholders impacted by mobile food vending. Participants in these meetings included representatives from the mobile vending industry, Comm-Link, Pico-Lowell Neighborhood Association, Orange County Health Care Agency, and representatives from the business community. City staff from the Planning and Building Agency, Santa Ana Police Department, Community Development and Public Works Agency also participated in the meetings. In addition, City staff researched best practices from other cities that had mobile vending

regulations in place. The information gathered served as the findings to formulate staff's recommendations. This effort included a review from the City Attorney's Office staff to ensure adherence and compliance with applicable laws and to ensure we had proper evidence to support our regulations.

In an effort to update the Santa Ana Municipal Code (SAMC), City staff recommends that City Council repeal the existing sections in Chapter 36; SAMC section 36-700 through 36-720 and SAMC section 36-50 through 36-63, and remove said sections from the municipal code.

Additionally, to provide reasonable regulations for food and produce vehicles, City staff recommends the adoption of a new Food Vending Vehicle ordinance to protect the public's health and safety in accordance with Vehicle Code section 22455 and the California Retail Food Code and County of Orange Health Care Agency/Environmental Health.

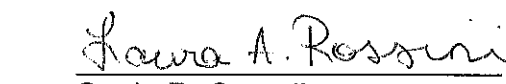
### **STRATEGIC PLAN ALIGNMENT**

Approval of this item supports the City's efforts to meet Goal #5 – Community Health, Livability, Engagement and Sustainability; Objective #4 (Support neighborhood vitality and livability).

### **FISCAL IMPACT**

There is no fiscal impact associated with this action.

  
Hassan Haghani, AICP  
Executive Director  
Planning & Building Agency

  
for Sonia R. Carvalho  
City Attorney

AN:rb

Rb\reports\PBA Vehicle Vending 02-07-17

EXHIBITS: 1. Ordinance to Repeal Former Sections and Adopt New Regulations  
2. Findings

ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA REPEALING DIVISION 3 OF ARTICLE 1. OF CHAPTER 36 "VENDING VEHICLES" (SANTA ANA MUNICIPAL CODE SECTIONS 36-50 THROUGH 36-63); REPEALING ARTICLE XIV OF CHAPTER 36 "FOOD VENDING VEHICLES" (SANTA ANA MUNICIPAL CODE SECTIONS 36-700 THROUGH 36-720); AND ADOPTING THE NEW FOOD VENDING VEHICLE ORDINANCE IN CHAPTER 36 OF THE SANTA ANA MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The City Council of the City of Santa Ana expressly finds that vending vehicles pose traffic hazards and special danger to the safety and welfare of children and residents of the City. The City's intent is to provide clear and concise regulations to ensure safety and prevent traffic hazards, as well as preserve the peace, safety and welfare of the community.
- B. The City Council of the City of Santa Ana previously adopted Article XIV in Chapter 36 "Food Vending Vehicles" in December 1994 (Santa Ana Municipal Code sections 36-700 through 36-720).
- C. The City Council later adopted Division 3 of Article 1 in Chapter 36 "Vending Vehicles" in 2004 and 2005 (Ordinances NS-2655 and NS-2701) codified as Santa Ana Municipal Code sections 36-50 through 36-63.
- D. The later ordinances were challenged in an action filed in Orange County Superior Court (*Vasquez v. City of Santa Ana* - Case No. 05CC13450). The Court ruled for the plaintiffs, finding that California Vehicle Code section 22455 preempted the City ordinances because the City regulations were not limited to protecting public safety.
- E. Following the *Vasquez* case, the City has not sought to enact or enforce further regulation of food vending vehicles, even though Vehicle Code section 22455 allows a local authority to adopt additional requirements for mobile vending which restricts the time, place and manner of vending in order to protect the public safety.

**Exhibit I**

- F. In an effort to clean up the Santa Ana Municipal Code (SAMC), the City Council hereby repeals Article XIV in Chapter 36 "Food Vending Vehicles" (SAMC section 36-700 through 36-720) as well as Division 3 of Article 1 in Chapter 36 "Vending Vehicles" (SAMC section 36-50 through 36-63).
- G. The City Council hereby adopts a new Food Vending Vehicle ordinance restricting the place and manner of vending in order to protect the public safety in accord with Vehicle Code section 22455.

Section 2. In accordance with the California Environmental Quality Act, the recommended action is categorically exempt from further review per section 15061(b)(3), in that it can be seen with certainty that the project will have no possible significant impact on the environment. A Categorical Exemption for Environmental Review No. ER-20\_\_ - \_\_\_\_ will be filed for this project.

Section 3. Article XIV in Chapter 36 "Food Vending Vehicles" (Santa Ana Municipal Code Sections 36-700 through 36-720) is hereby repealed in its entirety.

Section 4. Division 3 of Article 1 in Chapter 36 "Vending Vehicles" (Santa Ana Municipal Code Sections 36-50 through 36-63) is hereby repealed in its entirety.

Section 5. The City hereby adopts the new "Food Vending Vehicles", Article XIV to Chapter 8 of the Santa Ana Municipal Code to read as follows:

#### **ARTICLE XIV. FOOD VENDING VEHICLES.**

##### **Sec. 36-700. Purpose and Intent.**

The City Council expressly finds that vending vehicles pose traffic hazards and special dangers to the safety and welfare of children and residents of the city. It is the purpose and intent of the City Council, in enacting this article, to provide responsible companies and persons who engage in the operation of vending from vehicles with clear and concise regulations to ensure safety and prevent traffic hazards, as well as preserve the peace, safety and welfare of the community.

##### **Sec. 36-701. Definitions.**

As used in this article:

- A. "Crosswalk" shall be defined by the California Vehicle Code, as that term may be amended from time to time.

B. "Business license" means a business license required by Chapter 21 of the City of Santa Ana Municipal Code.

C. "Food vending vehicle" or "vending vehicle" means any vehicle or trailer, as those terms are defined in the California Vehicle Code, which is equipped or used for retail sales of produce and/or prepared, pre-packaged, or unprepared, unpackaged food or foodstuffs of any kind on any public street, alley or highway or private street or alley within the City. The inventory of these vehicles is not necessarily limited to edible items and may include nonfood sundries. Food vending vehicle as used in this article does not refer to, nor include, ice cream trucks as regulated in Article X of Chapter 36 of this Code.

D. "Operator" as used in this article shall mean any entity and all person(s) that:

- (1) Owns, controls, manages, and/or leases a food vending vehicle; and/or
- (2) Contracts with any person(s) to drive, operate, prepare food in, and/or vend from, a food vending vehicle; and/or
- (3) Drive, operate, vend and/or prepare food in or from a food vending vehicle.

E. "Goods" or "merchandise" shall include items and products of every kind and description, including all foods, produce, and beverage items.

F. "Park" shall be defined by Chapter 31 of this Code, as it may be amended from time to time.

G. "School" shall mean any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the state board of education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include either a vocational institution or a professional institution of higher education, including a community or junior college, college, or university.

H. "Street" shall be defined by the California Vehicle Code, as that term may be amended from time to time.

I. "Vend" or "vending" as used in this article means soliciting, displaying, offering for sale for monetary or other consideration, or sale, of any goods or merchandise to the public from a vehicle; offering produce, prepared food, prepackaged food or nonfood sundries of any kind for sale from a food vending vehicle on a public or private street, alley, highway or public place within the City of Santa Ana and includes the movement or standing of a food vending vehicle for the purpose of searching for,

obtaining or soliciting retail sales of produce, prepared food, prepackaged food or nonfood sundries.

J. "Restocking" means the transfer of food, goods or merchandise to a food vending vehicle from any other person or vehicle and includes, but is not limited to, loading and delivery of food, goods and merchandise.

#### **Sec. 36.702. Operational Requirements.**

A. No person shall own, control, operate, manage, lease, or contract with any other person for the operation of a food vending vehicle in the City without a valid business license issued, in addition to any other license or permit required under any other chapter of this code, for each and every food vending vehicle.

B. All operators shall comply with the following regulations:

1. Each operator vending any produce or other food item shall comply with all County of Orange Health Care Agency requirements for mobile food facilities, as well as all required food handling permits. Each operator shall possess and at all times display such permits in conspicuous view upon each vending vehicle.

2. Each operator shall possess and at all times display in conspicuous view upon each such vehicle a City business license.

3. Every food vending vehicle shall have the name, address, and telephone number of the holder of the business license permanently affixed on both the left and right sides of the vehicle. Such information shall be in letters and numerals not less than four inches in height and shall be in contrast to the color of the background upon which the letters are placed.

4. No additional lighting other than that required by the California Vehicle Code may be installed or operated on a food vending vehicle. No food vending vehicle that is stopped, parked or standing on any street, alley, or highway shall display flashing neon or electronic display signs or visual displays that are intended to, or do in fact, distract drivers and draw attention to the food vending vehicle.

5. No operator of a food vending vehicle shall operate any sound amplification systems or other sound making devices or music systems to advertise, draw attention to, or announce the presence of any such vehicle while such vehicle is moving, stopped, standing, or parked upon any public or private street.

6. No owner or operator of a vending vehicle shall permit vending within five hundred (500) feet from a school, park, community center or public playground facility.

7. No owner or operator shall permit the vending vehicle to vend within one hundred (100) feet of a marked or unmarked crosswalk in an intersection.

8. No food vending vehicle shall be parked, stopped, or left standing in any manner which blocks or impedes vehicular access to any driveway or restricts the free movement of other vehicles upon any public or private street. Vending shall only be permitted where the food vending vehicle has been brought to a complete stop and parked adjacent to the curb in a lawful manner

9. Vending from a food vending vehicle while the vehicle is parked, stopped, or standing on any public or private street, alley, or highway is permitted only when that part of the food vending vehicle open to prospective customers is on the side of the vehicle immediately next to the right side of the public or private street, alley, or highway. Under no circumstances may vending occur from the left side of a food vending vehicle. Notwithstanding the above provisions, no person shall vend to any customer whose location creates a traffic hazard.

10. All food vending vehicles shall be equipped with refuse containers large enough to contain all trash and refuse generated by the operation of such vehicle. The operator of the food vending vehicle shall pick up all trash and refuse generated by the operator's vending during the time the vehicle is stopped, that is within not less than a fifty (50)-foot radius of the vehicle, before such vehicle is moved.

11. Restocking of a food vending vehicle is prohibited while the vehicle is on any public or private street or alley.

12. No food vending vehicle shall attach to or receive any electrical power or other utilities from any public or private property while the vehicle is located on any private or public street or alley.

13. Vending is prohibited from a food vending vehicle that is parked, stopped, or standing on any public street, alley, or highway where the posted speed limit on the public street, alley, or highway is thirty-five miles per hour or greater.

14. No owner or operator of a vending vehicle shall permit objects, including but not limited to tables, chairs, or other furniture, trash receptacles, generators or equipment, to be placed into that portion of the street, alley or highway which is open to vehicular traffic, nor shall any object, including but not limited to tables, chairs, other furniture, trash receptacles, generators or equipment, be placed within or upon the parkway or sidewalk.

15. In conformance with the California Retail Food Code and County of Orange Health Care Agency/Environmental Health, food vending vehicles shall be stored at or within an approved commissary in order to have protection from unsanitary conditions. Food vending vehicles shall not be stored overnight outside of an approved commissary.

16. In conformance with the California Retail Food Code and County of Orange Health Care Agency/Environmental Health, any food vending vehicle which is parked and vending in single location for one hour or longer must be parked within two hundred (200) feet of an approved and readily available toilet and handwashing facility, to ensure that restroom facilities are available to food vending vehicle employees. The food vending vehicle operator must provide written evidence of permission from an adjoining property owner to use their restroom facilities.

**Sec. 36-703. Exemptions.**

This article shall not apply to any City-sponsored event where the operator of the food vending vehicle is operating pursuant to a valid contract with the City.

**Sec. 36-704. Land Use Certificate Required for Vending on Private Property.**

A. Food vending vehicles shall be allowed on private property in conjunction with a Land Use Certificate and/or special event permit for activities on property in commercial, manufacturing, or planned development zones designated for commercial or manufacturing uses. Food vending vehicles operating on private property must obtain the consent of the person who is in legal control of the property and subject to the provisions of Chapter 41 of the City of Santa Ana Municipal Code.

B. Food vending vehicles shall be allowed on private property in conjunction with a Land Use Certificate and/or special event permit for activities such as filming for movies, a party, fair, or carnival. Food vending vehicles operating on private property must obtain the consent of the person who is in legal control of the property and subject to the provisions of Chapter 41 of the City of Santa Ana Municipal Code.

C. Pursuant to this section, the following restrictions apply to vending on private property:

1. A food vending vehicle may only vend and remain parked on private property for the period of time noted in the Land Use Certificate and/or special event permit.
2. All food vending vehicles are required to have a City of Santa Ana business license conspicuously displayed when vending.
3. Nothing in this section shall be construed to excuse food vending vehicles from complying with all other provisions of this chapter.



**Sec. 36-705. Penalty for Violation.**

Every violation of the provisions of this article shall be deemed to be a misdemeanor and, upon conviction thereof, shall be punishable as provided for in section 1-8 of this Code. Each day any violation of any said provision of this article shall continue shall constitute a separate offense.

Alternatively, violations of this article may be addressed through the use of an administrative citation as set forth in sections 1-21.1 through 1-21.9 of this Code. Use of an administrative citation shall not prevent or preclude the City from seeking additional criminal, civil or other legal remedy established by law.

Section 6. If any section, subsection, sentence, clause or phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause or phrase or portion thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase or portions be declared invalid or unconstitutional.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia Carvalho, City Attorney

By:   
Lisa Storck  
Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_  
NOES: Councilmembers \_\_\_\_\_  
ABSTAIN: Councilmembers \_\_\_\_\_  
NOT PRESENT: Councilmembers \_\_\_\_\_

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2017, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana

## **Findings in Support of the Proposed SAMC Mobile Vending Regulations**

### **Distance restrictions from schools, parks, community centers, and public playgrounds**

A majority of school children in Santa Ana walk to and from school, and the City continuously works to improve the safety of walking routes to school and other community destinations for the City's youth. In the opinion of Engineering staff, the presence of vending trucks in the vicinity of schools, parks, and community centers creates a hazardous condition by providing an attraction for children to cross streets at midblock locations. The concern is greatest at schools where those streets have driving lanes queued with cars carrying parents arriving to pickup or drop off their students. Traffic Engineering staff has observed occurrences of students crossing streets midblock to reach vending trucks.

In addition, the gathering of customers waiting in line for vending trucks create the potential to block paths along sidewalks, thereby forcing children and other pedestrians to dangerously detour around the blocked sidewalk and out into the street in the travel path of vehicles. The size of vending trucks obstructs visibility to both vehicle drivers and pedestrians, resulting in potentially unsafe conditions under certain circumstances.

Therefore, similar to specific locations whereby engineering staff use red curb markings to maintain visibility and reduce line of sight obstructions, it is the opinion of Traffic Engineering staff, that vending trucks should not stop to operate/conduct business at any location within 500' from a school, park, community center or public playground.

### **Distance restrictions from a crosswalks and intersections**

Right of way for vehicle, bicycle and pedestrian traffic at roadway intersections and crosswalk is controlled by a variety of devices, such as traffic signals, signage, and flashing beacon, which are typically placed behind the curb to the right of the vehicle path. For the traffic control devices to be effective, the signage must be visible a sufficient distance in advance of the intersection or crosswalk to allow vehicles to stop.

The City recently approved Safe Mobility Santa Ana, which analyzed causes and correlation of traffic collisions for a ten year period. The analysis determined that over 50% of all pedestrian vs. motor vehicle collisions occurred at intersections. Often, these types of collisions are due to the motor vehicle driver not seeing, or otherwise not being aware of the pedestrian. Vending trucks, with their high profile, boxy shape, and lack of windows create an obstruction to visibility particularly near intersections and crosswalks where there is significant concentrations of vehicle and pedestrians.

Therefore, similar to specific locations whereby engineering staff use red curb markings to maintain visibility and reduce line of sight obstructions, it is the opinion of Traffic Engineering

staff, that to maintain visibility of traffic and traffic control devices, vending trucks (stop to operate/conduct business at any location) are prohibited within 100' of intersections and marked or unmarked crosswalks.

**Vending prohibited on streets where posted speed is 35 mph or greater.**

The City recently approved Safe Mobility Santa Ana, which analyzed causes and correlation of traffic collisions for a ten year period. The study determined that, while arterial streets constitute only 21% of the roadway network in the City, over 60% of collisions involving severely injured or killed pedestrians and bicyclists occur on arterial streets where speeds are typically 35 mph or higher.

In the opinion of Engineering staff, the presence of vending trucks on streets with speed limits greater than 35 mph creates a hazardous condition by obstructing visibility to view pedestrians, bicyclists, and traffic control devices, providing an attraction for patrons to cross streets at midblock locations, and creates the potential for customers to block sidewalk requiring pedestrians to enter the motor vehicle path.

**Additional Mobile Vending Health and Safety Issues Encountered by Santa Ana Police Department**

The Santa Ana Police Department has reported that during recent years, mobile vending trucks have attracted individuals engaged in the sales of narcotics. At times it has been employees of the mobile vending trucks and more frequently individuals who use the vending trucks as a way to blend in with the environment to give their illegal activity a perception of legitimacy. The illegal activity has included narcotics sales and illegal sale of cigarettes. It is also known that many gang members use the mobile vending trucks as a way to conceal narcotics and firearms in order to prevent being in possession of the items when contacted by the police. It is not unusual for truck operators to be intimidated by gang members and feel obligated to pay a "tax" to the local gang(s). Mobile vending truck operators have also been victims of crimes from robbery to homicide. A high concentration of vending trucks are found in the most challenging gang areas of the city and exacerbate the quality of life/crime related issues in those areas.

Many of the vending trucks sell replica/toy firearms. As such often times guns purchased from the vending trucks have been used to perpetrate crimes. Those firearms have also been used by vending truck operators as a feint form of protection. The toy/replica firearms being sold in areas with a high concentration of vending trucks may lead to disastrous results to the prevalence of real firearms and violent crime in some of those areas.

Vending trucks post both pedestrian and traffic related problems. Many of the vendors set out chairs and tables along the curb/sidewalk areas which can obstruct the use of the public walkway by those not patronizing the vending truck. Due to the size of mobile vending trucks and their common presence in some of the most densely populated areas of Santa Ana the risk for

pedestrian fatalities is a major concern. Many of the areas with the high concentration of vending trucks have a large amount of children who live and go to school in the area.



# **CORRESPONDENCE**

**From:** Ginelle [<mailto:ginelleann@gmail.com>]

**Sent:** Monday, February 27, 2017 3:03 AM

**To:** Benavides, David

**Subject:** new Ordinance to Regulate Mobile Food Vending Vehicles (Strategic Plan No 5, 4)

Dear Councilmember Benavides,

I support the new Ordinance to Regulate Mobile Food Vending Vehicles (Strategic Plan No 5, 4).

The entire and complete proposed new ordinance is conclusive and covers much of the regulations neighborhoods have needed and wanted.

The following are especially important elements for food and pedestrian safety, and to aid in being a good neighbor while parked in our neighborhoods:

4. No additional lighting other than that required by the California Vehicle Code may be installed or operated on a food vending vehicle. ...

5. No operator of a food vending vehicle shall operate any sound amplification system or other sound making devices or music systems ...

7. No owner or operator shall permit the vending vehicle to vend within on hundred (100) feet of a marked or unmarked crosswalk in an intersection.

11. Restocking of a food vending vehicle is prohibited while the vehicle is on any public or private street or alley.

14. No owner operator of a vending vehicle ... nor any object, including but not limited to tables, chairs, other furniture, trash receptacles, generators, or equipment, be placed within or upon the parkway or sidewalk.

16. ... one hour or longer must be parked within 200 feet of an approved and readily available toilet and handwashing facility ...

Please vote to adopt the new Ordinance to Regulate Mobile Food Vending Vehicles (Strategic Plan No 5, 4).

Thank you.

Ginelle Hardy

Heninger Park Neighborhood, President

[ginelleann@gmail.com](mailto:ginelleann@gmail.com)