

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY)	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): Development Services Department		DATE: 1/23/2014	
SUBJECT: Amendments to the Municipal Code and Local Coastal Program Related to Mobile Food Trucks					
PRIMARY CONTACT (NAME, PHONE): Amanda Lee,(619) 446-5367, MS 501			SECONDARY CONTACT (NAME, PHONE): ,		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE): Costs associated with implementation of these regulations in the future will be covered by project applicants.					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Liaison Office		ORIG DEPT.	Vacchi, Robert	01/27/2014	
Environmental Analysis		CFO			
Financial Management		DEPUTY CHIEF			
		COO			
		CITY ATTORNEY	Thomas, Shannon		
		COUNCIL PRESIDENTS OFFICE			
PREPARATION OF:		<input type="checkbox"/> RESOLUTIONS	<input checked="" type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)
Preparation of an Ordinance Amending Municipal Code Chapters 5, Article 4; Chapter 12, Article 3; Chapter 13, Article 1; Chapter 14, Article 1; and Chapter 15 Articles 6 and 7 relating to mobile food vending.					
Ordinance will require consistency determination from Airport Authority following Council action and prior to becoming effective, and will require certification by the Coastal Commission of the associated local coastal program amendments prior to becoming effective in the coastal overlay zone.					

STAFF RECOMMENDATIONS: Approve the ordinance.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	All
COMMUNITY AREA(S):	All
ENVIRONMENTAL IMPACT:	This activity is Categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15311(c) (Accessory Structures). A Notice of Exemption was prepared for filing with the County Recorder, and a Notice of Right to Appeal the environmental determination was posted and distributed on 1/9/2014.
CITY CLERK INSTRUCTIONS:	Please provide copies of the Noticing Certificate of Publication, Council hearing speaker slips, and the final signed ordinance to Amanda Lee at MS 501.

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 1/23/2014

ORIGINATING DEPARTMENT: Development Services Department

SUBJECT: Amendments to the Municipal Code and Local Coastal Program Related to Mobile Food Trucks

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Amanda Lee/(619) 446-5367, MS 501

DESCRIPTIVE SUMMARY OF ITEM:

This is a request for approval of an ordinance to establish new regulations for mobile food trucks that will clarify where mobile food trucks are allowed to operate, what land use regulations apply, and what permit is required, if any. The ordinance is intended to apply citywide.

STAFF RECOMMENDATION:

Approve the ordinance.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Mobile food businesses are part of an emerging local industry that has helped to create an active and social pedestrian environment in communities throughout the City. They have relatively low start up costs and provide economic opportunity for entrepreneurial individuals with little capital.

Operators of mobile food trucks currently must obtain a City business tax certificate and a County health permit, pass health inspections, and display a certification sticker prominently on the mobile food truck. Operations that involve preparation of food must also display a health letter grade. The County estimates there are approximately 500 mobile food vendors with active health permits in the region. However, existing municipal code limitations on sales from vehicles are not consistent with the desired mobile food vending business model, and the City's zoning code currently does not provide for mobile food vending on private property anywhere, except downtown in the Centre City Planned District where it is permitted subject to a Conditional Use Permit.

On September 19, 2013, Interim Mayor Todd Gloria issued a memorandum requesting regulatory changes "to legally allow food trucks to operate on private property in a manner that best balances safety, community character, and economic interests of the surrounding areas". Mobile food vending is protected by state law (California Vehicle Code). However, the City is able to regulate the zones where food trucks operate, and the time, place, and manner of food truck operations on public streets in the interest of the public health, safety, and welfare.

As proposed, a new use category would be created to regulate the sales of food and beverages (pre-packaged or prepared) from motorized vehicles to the general public, including new regulations that apply generally, and more specific regulations that apply depending on whether the operations are in the public right-of-way or on private property. The ordinance would generally allow mobile food trucks in industrial, commercial, multi dwelling residential zones,

and Centre City Planned District zones in accordance with specified criteria; and would not permit the use in zones that do not allow commercial development (i.e. environmentally sensitive open space or low density residential). Food trucks would also not be permitted in the Gaslamp Quarter Planned District, Little Italy, or in existing mapped parking impacted areas in the Parking Impact Overlay Zone (based on concerns for the public health, safety, and welfare in high pedestrian and vehicle activity areas).

As proposed, food truck operators would continue to be required to maintain a County Health permit and business tax certificate. However, no City permit would be required of mobile food truck operators unless operations would require a code deviation request, or would result in the assembly of 75 people or more on public property, which requires a Special Events Permit (SDMC Section 22.4004).

Property owners would be required to obtain a permit to host mobile food truck operations on private property; however, no permit would be required in industrial zones, or for catering a private event, service to an active construction site, or operations on the property of a school, university, hospital, or religious facility. The ministerial permit would be issued by staff for applications that demonstrate compliance with the requirements. Submittal requirements would be minimal. The cost for the new ministerial permit would range from \$491-\$935 for the initial permit and \$132 for renewal based on the City's existing fee schedule. The permit would expire annually. The proposed process is expected to facilitate an understanding as to what regulations apply to a specific location, which in turn is expected to facilitate code compliance.

In circumstances where flexibility is desirable for a certain location (i.e. extended hours of operation near residential), a Process Two Neighborhood Use Permit (staff decision appealable to the Planning Commission) could be requested. Existing code provisions for temporary use permits and special events permits are also options available to allow limited time events in locations where the use may not otherwise be allowed.

Throughout the process, the question of fairness has been raised, particularly by small businesses in commercial areas. A common request was for the City to adopt a 75 foot separation distance from restaurant entrances consistent with the existing ordinance in the City of San Francisco, and/or a requirement for food trucks to pay a fee with their annual business tax that would allow them access to operate in business improvement districts and benefit from their amenities and customer base. However, the City Attorney identified legal concerns with those options (see City Attorney memorandum of law).

As a result, the food trucks and Business Improvement District Council continue to have a difference of opinion as to what should apply to food trucks in commercial zones. The BID Council is concerned about enforcement, while the food trucks are requesting that the City require a permit only where multiple food trucks operate at the same time and same location, which would make the regulations more difficult to implement and enforce in commercial and residential areas.

The proposed ordinance meets the initial policy direction and has garnered support from the Planning Commission, Community Planners Committee, Technical Advisory Committee, Code

Monitoring Team, Tierrasanta Community Council, La Jolla Shores Association, East Village Association, and San Diego Regional Chamber of Commerce. On January 30, 2014, the Planning Commission recommended approval with the addition of Little Italy as a prohibited area for food trucks and a new permit exemption for non-profits.

FISCAL CONSIDERATIONS: Costs associated with implementation of these regulations in the future will be covered by project applicants. The proposed permit fee for a mobile food truck permit would include standard permit costs per the City's adopted fee schedule including flat fees for general plan maintenance, mapping, records and permit issuance, and an hourly plan check fee (\$148 per hour for planning review) proposed to be capped at 4 hours maximum. The estimated permit cost (\$491-\$935 initial permit; \$132 renewal) is consistent with the cost of permits required by other cities.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On October 23, 2013, the Smart Growth and Land Use Committee received a report on potential regulations and expressed concerns about the need for fairness.

PUBLIC OUTREACH EFFORTS: Staff has conducted extensive public outreach with the County of San Diego, United Association of Food Trucks San Diego, California Restaurant Association, Small Business Advisory Board, food truck operators, BIDs, and community groups.

Vacchi, Robert
Originating Department

Deputy Chief/Chief Operating Officer



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: January 9, 2014

REPORT NO. PC-14-011

ATTENTION: Planning Commission, Agenda of January 30, 2014

SUBJECT: AMENDMENTS TO THE MUNICIPAL CODE AND LOCAL COASTAL PROGRAM RELATED TO MOBILE FOOD TRUCKS

SUMMARY

Issue(s): Should the Planning Commission recommend approval to the City Council of the proposed ordinance related to mobile food trucks, including a new ministerial permit type and associated fee?

Staff Recommendation:

1. **Recommend approval** to the City Council of the Amendments to the Land Development Code and Local Coastal Program including Municipal Code Chapter 5, Article 4; Chapter 12, Article 3; Chapter 13, Article 1; Chapter 14, Article 1; and Chapter 15, Articles 6 and 7.
2. **Recommend approval** to the City Council of a new permit type for mobile food trucks with associated fees charged in accordance with the adopted fee schedule as it currently exists or as may be amended.

Environmental Review: This activity is Categorical exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15311(c) (Accessory Structures).

Fiscal Impact Statement: Costs associated with implementation of these regulations in the future will be covered by project applicants. The proposed permit fee for a mobile food truck permit would include standard permit costs per the City's adopted fee schedule including flat fees for general plan maintenance, mapping, records and permit issuance) and an hourly plan check fee (currently \$148 per hour for planning review) proposed to be capped at 4 hours maximum for mobile food truck permits. The estimated permit cost (\$491-\$935) is consistent with the cost of mobile food truck permits required by other cities.

Code Enforcement Impact: The ordinance will facilitate the legal operation of mobile food trucks within the City on private property and within the public right-of-way. See discussion section of report for additional analysis.

Housing Impact: The ordinance will not affect the creation of new dwelling units.

BACKGROUND

Mobile food truck businesses are part of an emerging local industry of creative and cutting edge food cuisine that has helped to create an active and social pedestrian environment in communities throughout the City. Mobile food trucks are motorized vehicles that function as transportable retail food facilities for the sale of food and beverages to the general public. They have relatively low start up costs and provide economic opportunity for entrepreneurial individuals with little capital.

Mobile food trucks are health regulated businesses subject to state and local health standards published in the California Retail Food Code (Health and Safety Code), County Code, and San Diego Municipal Code. Mobile food trucks operating within the City currently must obtain a City business tax certificate and a County health permit, pass health inspections, and display a certification sticker prominently on the mobile food truck. Mobile food trucks that prepare food must also display a County issued letter grade. The County of San Diego estimates there are approximately 500 mobile food vendors with active County health permits in the region.

Licensed food truck operators have recently experienced frustration and confusion upon learning there are no existing code provisions for food trucks to serve the general public on a daily basis (by right) on private property. The City's zoning code provides a regulatory process for approval of pushcarts (non-motorized transportable retail food facilities) on private property and in the public right-of-way, but currently does not provide for mobile food truck vending to occur on private property anywhere, except downtown in the Centre City Planned District where it is conditionally permitted if operators obtain a Conditional Use Permit. It is also problematic that the City's existing public right-of-way limitations on sales from vehicles and mobile food units are not consistent with the current desired mobile food vending business model.

Within the public right-of-way, mobile food vending is protected by state law (California Vehicle Code), and the City is able to adopt additional requirements to regulate the time, place, and manner of mobile food truck operations as needed in the interest of public health and safety. Amendments are proposed to help differentiate the City's mobile food/beverage vending regulations from other public safety regulations that limit the sale or distribution of merchandise and services from vehicles by creating new zoning regulations that accommodate mobile food truck activity in appropriate areas of the City.

On September 19, 2013, Interim Mayor Todd Gloria issued a memorandum requesting regulatory changes to allow food trucks to operate on private property in a manner that best balances safety community character, and economic interests (Attachment 1). A diverse mix of stakeholders have since shown an interest in this issue, which have generally included mobile

food truck operators, competing restaurant and push cart operators, and representatives for various neighborhood and business interests in communities throughout the City. Curbside Bites, representing various gourmet food trucks, and the United Association of Food Trucks San Diego Chapter, representing various Mexican seafood and taco trucks, have been the main participants on behalf of food truck operators. The California Restaurant Association and Business Improvement District representatives have generally represented other business interests during the outreach process.

On October 23, 2013, the Council Committee on Smart Growth and Land Use (formerly Land Use & Housing) held a public meeting to discuss various regulatory options related to a prospective permit approval process, limits on hours and vendor duration of stay, proximity to restaurants and special events, allowable locations, and other regulatory criteria. The general direction provided was to draft an ordinance that is fair to the various stakeholders involved. Staff has since generated a draft ordinance and conducted significant public outreach. The proposed ordinance would amend the municipal code to create a new land use category for mobile food trucks, clarify where mobile food trucks are allowed to operate and what land use regulations apply, and create a reasonable process for approval.

A request for public input was posted on the City webpage and distributed via e-mail (October 31, 2013) to food truck operators, community planning chairs, planning group members, and interested members of the public, including the Business Improvement Districts, the Small Business Advisory Board, the United Association of Food Trucks- San Diego Chapter, the California Restaurant Association, and the Institute for Justice (a legal advocacy group for food trucks). Staff also presented the item to a variety of organizations including the Code Monitoring Team, Community Planners Committee, Technical Advisory Committee, Small Business Advisory Board, and Business Improvement District Council Board. The ordinance has since been revised in consideration of input received throughout the outreach process (Attachment 2). Recommendations have been provided as follows:

Downtown Community Planning Council: On November 13, 2013, the Downtown Community Planning Association reviewed the draft ordinance and provided input regarding various provisions in the ordinance, including a request to amend the Centre City Planned District to change the mobile food truck use to apply the citywide separately regulated use criteria and change the use from conditional to a limited use.

Tierrasanta Community Council: On November 20, 2013, the Tierrasanta Community Council voted 12-0 to recommend approval.

Community Planners Committee (CPC): On November 26, 2013, the Community Planners Committee voted 23-0-1 (chair abstained) to recommend approval of the draft ordinance with two modifications (to remove the 8 foot minimum sidewalk requirement and remove the limit on pay-to-park lots), which have since been reflected in the draft ordinance.

Technical Advisory Committee (TAC): On December 11, 2013, the Technical Advisory Committee voted 7-0-3 to recommend approval.

Code Monitoring Team (CMT): On October 9, 2013, CMT provided input regarding the potential new land use category and helped staff better define and organize the main policy issues regarding criteria for presentation to the Council Committee on Land Use & Housing on October 23, 2013. On December 11, 2013, the Code Monitoring Team recommended approval of the ordinance by a vote of 7-0 as follows:

- Recommend that staff re-evaluate the threshold for the limit on hours of operation near residential to consider 500 feet instead of 1,000 feet
- Recommend that a prohibition in historic districts only apply based on specific characteristics of that district and not as a universal prohibition in all districts
- Recommend that the ordinance allow food trucks accessory to commercial development and churches in agricultural zones

A second motion passed by a vote of 7-0 to allow food trucks as a limited use with a ministerial permit where accessory to medium and high density multi dwelling units in RM-3-7 and higher residential zones which allow commercial, and to allow property owners to request a Neighborhood Use Permit to host food trucks in RM-2 zones.

La Jolla Shores Association: On December 11, 2013, the La Jolla Shores Association voted 8-0-1 to support the proposed regulations including those that prohibit activities in the beach parking impact overlay zone. The Association also supported application of the proposed regulations to food truck sales of pretzels and other pre-packaged food items.

Ocean Beach Main Street Association: On December 12, 2013, the Ocean Beach Main Street Association Board directed the Executive Director to submit a letter expressing opposition to the ordinance based on their view that mobile food trucks are temporary businesses without any personal investment in a neighborhood's success, and should not be allowed to operate in commercial districts, except as part of a special event. They cited concerns regarding prospective operations of mobile food trucks in small shopping, dining and entertainment districts that have limited parking availability and the difficulty of enforcement due to the transitory nature of such businesses.

Business Improvement District (BID) Council Board: On December 16, 2013, the BID Council Board discussed the proposed ordinance and expressed concerns regarding the potential for mobile food trucks to cause parking impacts to areas with limited parking such as the Old Town Historic District, Little Italy, Ocean Beach, and Pacific Beach (west of Lamont Street); and how code enforcement resources will be allocated to handle complaints. The Board also requested follow up from the City Attorney regarding potential impacts on Business Improvement Districts and Maintenance Assessment Districts related to Proposition 26 (enacted in 2011) if mobile food trucks will be non assessed businesses allowed to operate in geographic areas of defined special benefit.

The BID Council Board recommended approval of the ordinance by a vote of 10-0,

including a request that each food truck post a unique identification number to facilitate enforcement; and a request to remove the limit on days per week in commercial zones to encourage mobile food trucks to operate on private property instead of in the public right-of-way. The Board also suggested prohibiting mobile food trucks in all planned districts.

DISCUSSION

As proposed, a new use category would be created in the City's zoning code to regulate mobile food truck operations that involve sales of food and beverage (pre-packaged or prepared and served from the vehicle or an attached trailer) from a motorized vehicle to the general public for consumption on or off of the premises. Municipal Code Chapters 13 and 15 would identify the allowable zone locations, and regulatory criteria would be identified in Section 141.0612.

Locations

Mobile food trucks would generally be permitted in citywide industrial, commercial, open space park, agricultural residential, and multiple dwelling unit residential zones in accordance with specified criteria; and would not be permitted in environmentally sensitive lands or in low density open space, agricultural, and residential zones that do not allow commercial development. See table below for applicability to specific zones.

Base Zones- Mobile Food Trucks Permitted by Right:	
Industrial (IL, IP, IH, IS)	Permitted by right; no permit required of property owner to host food trucks in industrial zones
Base Zones- Permitted as Limited Use in accordance with Section 141.0612:	
Commercial (CC, CN, CV, CO, CP)	Permitted as a "limited use" in all commercial zones
Open Space-Park (OP)	Only permitted per an approved park development plan or master plan
Agricultural-Residential (AR)	Only where accessory to commercial development
Residential-Multiple Dwelling Unit (RM-2, RM-3, RM-4, RM-5)	Only where accessory to a development with at least 16 dwelling units (the threshold for requiring a leasing office), and where the food and beverage service is limited to the residents and their guests
Centre City Planned District Zones (Core, Neighborhood Mixed-Use Center, Employment Residential Mixed-Use, Ballpark Mixed-Use, Waterfront Marine, Mixed Commercial, Residential Emphasis, Public/Civic, Public Facilities, and Park/Open Space zones)	The listed CCPDO zones currently allow mobile food trucks via a conditional use permit and would be modified with the proposed ordinance to allow mobile food trucks as a "limited use".
Base Zones- Not Permitted:	
Open Space (OC, OR, OF)	Not permitted within environmentally sensitive

	lands areas (i.e. conservation areas for sensitive biological resources, hillsides, or flood plains)
Agricultural-General (AG)	Not permitted in areas reserved for farmland
Residential (RE, RS, RX, RT, RM-1)	Not permitted in low density residential zones
Centre City Planned District (Industrial, Transportation, Convention Center/Visitor)	Existing zones where the use is explicitly specified as “not permitted”
Gaslamp Quarter Planned District	Not permitted, except via Special Events Permit
Overlay Zones- Not Permitted:	
Beach Parking Impact Overlay Zone (Map C-731)	Not permitted within the public right-of-way within the mapped parking impacted areas typically within the first two to three blocks adjacent to the beach. For example, in Ocean Beach, the existing beach impact area applies from beach inward to Sunset Cliffs Boulevard. It also covers portions of Mission Beach, Pacific Beach, and La Jolla.
Campus Parking Impact Overlay Zone (Map C-795)	Not permitted within the public right-of-way within the mapped parking impacted neighborhoods surrounding San Diego State University, University of California San Diego, and University of San Diego

Consideration was given to protect the public health, safety, and welfare in areas with special characteristics such as the Gaslamp Quarter Planned District and existing parking impacted areas. The Gaslamp Quarter is the City’s historic central business district, which is characterized by vibrant retail and entertainment activity with associated high volumes of street traffic and pedestrian activity on constrained sidewalks. As proposed, mobile food trucks would continue to be “not permitted” within the Gaslamp Quarter Planned District, except via Special Events Permit (SDMC Section 22.4004). The proposed prohibition of mobile food trucks is consistent with the planned district purpose and intent to “protect and enhance the District’s aesthetic and historical attractions to residents, tourists, visitors and others, thereby serving as a stimulus and a support to business and industry” and with the adopted General Plan policy (UD-A.6) to “respect the context of historic streets, landmarks, and areas that give a community a sense of place or history.” Mobile food trucks would also not be permitted to operate within the public right-of-way in the Parking Impact Overlay Zone, including the beach impact area (Map C-731) and the campus impact area (Map C-795) in order to preserve needed on-street parking in identified parking impacted areas.

Proposed Performance Standards/Regulatory Criteria

Following is a summary of the proposed regulatory criteria in Section 141.0612:

General Requirements (applicable to all mobile food trucks):	
	Mobile food trucks would be limited to food and beverage sales. (No alcohol or general merchandise sales or other commercial services permitted).

	Equipment and operations must be self contained within the mobile food truck. No furniture, umbrellas, generators, extension cords, objects or structures shall be placed outside of the vehicle (except for required refuse and recycling containers). No signs except for those exhibited on or in the mobile food truck.
	Hours of Operation: Mobile food truck operations would not be permitted between the hours of 10:00 pm and 6:00 a.m. Sunday through Thursday, or between 11:00 p.m. and 6:00 a.m. Friday and Saturday, in any location within 500 feet of a dwelling unit.
	Trash: Mobile food trucks must provide one trash receptacle and one recycling receptacle conveniently located for use by patrons in a location that does not impede pedestrian or vehicular traffic. All litter or debris generated within a 25-foot radius of the food truck would need to be collected and removed by the mobile food truck operator before leaving the premises or changing locations.
	No amplified music or loudspeakers.
	Mobile food truck operations shall not obstruct pedestrian or vehicular traffic.
<i>Note: The City will continue to rely on County requirements for bathroom access within 200 feet for employees (mobile food trucks that operate for more than 60 minutes in one location), and County requirements that dictate when refrigeration systems in mobile food trucks must be upgraded to meet food safety standards without idling the engine for power.</i>	
Requirements applicable to operations in the public right-of-way:	
	Mobile food trucks must be legally parked and comply with all parking and California Vehicle Code provisions that apply to the location, including curb markings and signage.
	Operators are responsible for queuing customers in a manner that maintains a minimum 4 foot width, free and clear for pedestrian passage along the sidewalk.
	Not allowed within 25 feet of a street intersection with a crosswalk, traffic light, stop sign, bus stop or trolley stop.
	Not allowed within 500 hundred feet from any K-12 school, on regular school days between 7:00 a.m. and 4:00 p.m.
	Not allowed within 500 feet of a special event without authorization from the owner or proprietor of the special event or without an approved Special Event Permit.
	In commercial zones, mobile food trucks shall not exceed 30 feet in length or occupy more than two on-street spaces.
<i>Note: The requirement to be adjacent to a minimum 8 foot sidewalk was removed.</i>	

Requirements applicable to operations on private property (industrial zones exempt):	
	Limited to occupying no more than 25 percent of the premises.
	The maximum number of mobile food trucks allowed per site would be determined based on a ratio of paved area (at least 35 feet by 15 feet) per mobile food truck, and such area could not include any off-street parking spaces that are reserved, encumbered, or designated to satisfy the off-street parking requirement of a business or activity that is operating at the same time as the mobile food truck.
<i>Note: The limits within commercial zones to a maximum of 3 days per week and limit on operations within pay-to-park lots were removed.</i>	

Permit process

Mobile food truck operators would continue to be required to maintain a County Health permit and City issued business tax certificate. As proposed, no City permit would be required of mobile food truck operators unless operations would result in the assembly of 75 people or more on public property, which requires a Special Events Permit (SDMC Section 22.4004).

Property owners would be required to obtain a ministerial permit to host mobile food truck operations on private property, with exceptions provided for operations in industrial zones, catering of a private event, service to an active construction site, or operations on the property of a school, university or hospital. The ministerial permit would be issued by staff for applications that demonstrate compliance with the requirements. Application submittal requirements would be minimal (general application, site plan, “Agreement to Comply” affidavit and permit fees). The cost for the new ministerial permit type would range from \$491-\$935 based on the City’s existing fee schedule. The permit would expire annually.

In circumstances where flexibility on the hours of operation or other requirements is desirable and appropriate for a certain location, a Process Two Neighborhood Use Permit (staff decision appealable to the Planning Commission) could be requested via a discretionary permit process. Temporary use permits and special events permits are also a means for applicants to gain approval to operate for limited time events in locations the use may not otherwise be allowed.

Business Improvement Districts

Business Improvement Districts (Adams Avenue, City Heights, College Area, Diamond, Downtown, East Village, El Cajon Boulevard, Gaslamp Quarter, Hillcrest, La Jolla, Little Italy, Midway, Mission Hills, North Park, Ocean Beach, Old Town, Pacific Beach, and San Ysidro) are City designated geographic areas where business owners are assessed annually to fund activities and improvements to promote the district. The BID Council Board requested the ability to assess mobile food truck operators for operation within business improvement districts and maintenance assessment districts, and that the ordinance provide a 75 foot separation distance from restaurant entrances consistent with the City of San Francisco’s existing ordinance. Such provisions have been challenged by the Institute for Justice as unconstitutional (see letter dated December 13, 2013 in Attachment 3). The City Attorney is preparing a memorandum of law to address and respond to questions on this topic.

Enforcement

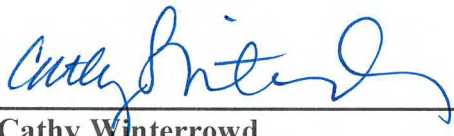
While enforcement of mobile food truck vending regulations is expected to be more challenging than typical enforcement for fixed locations; concern regarding repeat violators can best be addressed if witnesses document the violation, provide the vehicle license plate and/or health permit certification number, and report the violation to the City's code compliance division or the County as appropriate. Non-health permit related requirements will be enforced by the code enforcement division and police department, and all health permit related requirements will be enforced by the County of San Diego.

The County of San Diego requires that mobile food truck operators that prepare food provide their truck route to facilitate unannounced health inspections as part of the health letter grade rating similar to the County's health inspection system applicable to restaurants. Mobile food trucks must belong to a commissary where the vehicle must be parked and serviced in accordance with the County code when not in operation for mobile vending. Mobile food trucks also must post a County issued certification sticker on the left bumper and right front windshield of the vehicle that displays a unique identification number for each vehicle that can be referenced for potential violation cases. The County's certification sticker system is similar to the Department of Motor Vehicle car registration system where the color of the sticker changes with annual renewal. The stickers are currently about 3 inch by 5 inch size, which County Health staff indicated could be increased in size for future years if requested by the City to facilitate enforcement.

Conclusion:

The proposed code amendments are consistent with the standardized code framework and original goals of the Land Development Code to simplify development regulations, to make regulations more objective, to make the code more adaptable, to eliminate redundancies and contradictions, and to increase predictability in the application of land development regulations.

Respectfully submitted,



Cathy Winterrowd
Deputy Director,
Development Services Department



Amanda Lee
Senior Planner, Land Development Code
Development Services Department

WINTERROWD/AJL

Attachments:

1. Memorandum dated September 19, 2013
2. Draft Code language dated December 23, 2013
3. Letter from the Institute for Justice dated December 13, 2013



**OFFICE OF INTERIM MAYOR TODD GLORIA
CITY OF SAN DIEGO**

M E M O R A N D U M

DATE: September 19, 2013

TO: Tom Tomlinson, Interim Director, Development Services Department
Bill Fulton, Director, Planning

FROM: Interim Mayor Todd Gloria 

SUBJECT: Food Truck Regulations

I request that the Development Services Department prepare amendments to the Municipal Code which would allow for food trucks or mobile food facilities to operate on private property.

The previous administration stopped enforcing the City's current code prohibiting food truck operation on private property. While I understand the inspiration behind this action, it is more appropriate to amend our current code than to simply ignore it.

I request that staff research potential changes to the Municipal Code to legally allow food trucks to operate on private property in a manner that best balances safety, community character, and economic interests of the surrounding areas.

Options should be presented to community planning stakeholders for input, and final recommendations should be presented to the Land Use and Housing Committee.

Thank you for your consideration.

cc: Lorie Zapf, Chair, Land Use and Housing Committee
Walt Ekard, Chief Operating Officer
Scott Chadwick, Assistant Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst

DRAFT FOOD TRUCK REGULATIONS

§54.0122 Prohibitions and Regulations Applicable to the Sale or Distribution of Foods, Beverages, Merchandise or Services from Vehicles and Mobile Food Units

- (a) Purpose and Intent. The City Council hereby finds and declares that the unrestricted sale or distribution or the offering for sale or distribution of ~~food, beverages,~~ merchandise or services from vehicles, ~~or mobile food units~~ within or upon public streets, sidewalks and rights of way, public property or in the vicinity of school buildings, under certain circumstances, constitutes a danger to public safety because of the likelihood of injury to pedestrians thereby exposed to hazards from other vehicular traffic in the vicinity.

~~The City Council further finds that it is in the interest of the health, safety and welfare of the community that sales of products from mobile food units be limited to food items subject to regulation under the California Retail Food Code. The City Council further finds that the unauthorized use of public property for private commercial activity constitutes a misuse of public property and tax money and that similar activity on private property when not in conformity with health, safety, zoning and land use regulation is contrary to the public welfare.~~

- (b) Definitions.

- (1) The terms “vehicle,” “street” and “highway” are defined by the Vehicle Code of California.
- (2) “Public property” shall mean any real property owned or controlled by or leased or assigned to a governmental entity excluding such property as had been leased out by that entity for nongovernmental purposes. It shall also include unimproved streets and rights of way or similar easements for public access and use over which the public entity has a legal interest or right of control, other than a publicly maintained street or highway.
- ~~(3) The term “mobile food unit” is any non-self propelled or nonmotorized vehicle or similar vending device defined in Section 42.0160 of this Code.~~
- ~~(4) “Public school” shall refer to any public elementary school, middle school, junior high school or high school as defined in the Education Code of California.~~

- (c) Prohibitions. No ~~food, beverage,~~ merchandise or services shall be sold or distributed or offered for sale or distribution from a vehicle on a street or highway unless the vehicle is first lawfully parked, ~~or stopped and then remains for no longer a period of time than is necessary to complete the immediate sale. An operator is considered to be engaged in an “immediate sale” when there are patrons waiting in line for service. Operators of such vehicles shall maintain a minimum clear space of (10) feet both in front of and behind the vehicle to allow for pedestrian safety and safe sight distance for approaching motorists.~~

~~No sales or distribution shall be made when the designated minimum clear space of ten (10) feet does not exist.~~

- ~~(d)~~ No food or beverage shall be sold or distributed or offered for sale or distribution from a mobile food unit on a street or highway, on public property or upon a sidewalk without a permit from the City Manager or designee authorizing such sale or distribution pursuant to Section 42.0166 of this Code.
- ~~(e)~~(d) No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution, whether from a vehicle or otherwise, upon public property without the authorization of the public entity.
- ~~(f)~~(e) No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a vehicle or mobile food unit on private property without the express consent of the owner or lessee of the property and except in conformity with health, safety, zoning and land use regulations or permits pertaining to the site from which the sale or distribution is conducted.
- ~~(g)~~(f) No food, beverage, merchandise or services shall be sold or distributed or offered for sale or distribution from a vehicle in the public right-of-way within five hundred (500) feet from any public K-12 school (as defined by the Education Code including public, private and charter schools) building, measured in a straight line to the nearest point of the school building, between 7:00 a.m. and 4:00 p.m. on regular school days, except in a designated commercial loading zone in conformity with applicable restrictions thereto ~~or except on private property with the express consent of the owner or lessee of the property and in conformity with health, safety, zoning and land use regulations and permits pertaining to the site from which the sale or distribution is conducted.~~
- ~~(h)~~ Mobile food unit operations are limited to the sale of food items regulated under the California Retail Food Code. The sale or distribution of any other items is prohibited.
- ~~(i)~~(g) In addition to enforcing applicable federal, state and local laws, the City intends to strictly enforce any violations of the California Penal Code regarding the sale, distribution, or display of BB devices and Imitation Firearms. Violations of ~~mobile food unit sections~~ may be pursued as both a regulatory and a criminal violation.
- ~~(j)~~(h) Construction with other laws. Nothing in this section shall be deemed to excuse compliance with any law or regulation pertaining to health, zoning, public safety or land use under applicable state law or the municipal code, including the issuance of any permits thereunder.

Division 6: “Mobile Food Truck Permit Procedures” of Article 3 “Zoning”, Chapter 12 “Land Development Reviews” is added as follows:

§123.0601 Purpose of Mobile Food Truck Permit Procedures

The purpose of these procedures is to regulate mobile food trucks in a manner that protects the public health safety, and welfare, while also accommodating mobile food truck activity that promotes an active and social pedestrian environment within appropriate areas of the City. This Division describes the permitting procedures for mobile food trucks and is intended to operate in conjunction with Land Development Code Section 141.0612, which sets forth the zoning regulations and operating requirements for mobile food trucks.

§123.0602 When a Mobile Food Truck Permit Is Required

- (a) A Mobile Food Truck Permit is required for mobile food truck operations on private property, except where specifically exempted by Section 141.0612.
- (b) Once issued, the Mobile Food Truck Permit will allow the property owner to authorize individual mobile food truck operators to operate on the premises in accordance with the Mobile Food Truck Permit and Section 141.0612.

§123.0603 How to Apply for a Mobile Food Truck Permit

- (a) An applicant shall apply for a Mobile Food Truck Permit in accordance with Section 112.0102.
- (b) The application shall include:
 - (1) a site plan including details sufficient to demonstrate compliance with Section 141.0612(c); and
 - (2) a signed affidavit agreeing mobile food truck operations on the premises will comply with Section 141.0612.

§123.0604 Decision on a Mobile Food Truck Permit

A decision on an application for a Mobile Food Truck Permit shall be made in accordance with Process One. The City Manager shall approve a Mobile Food Truck Permit if the proposed mobile food truck operations comply with Section 141.0612.

§123.0605 Issuance of a Mobile Food Truck Permit

- (a) The City Manager shall issue a Mobile Food Truck Permit when the required fees have been paid and the permit has been approved. The permit shall become effective on the date of issuance.

- (b) A permit shall not be issued for a location where an enforcement action is in process for unlawful activity on the premises until the enforcement action has been concluded.

§123.0606 Expiration of a Mobile Food Truck Permit

The City Manager shall set a one year expiration date for each Mobile Food Truck Permit beginning from the date of issuance of the permit.

§131.0222 Use Regulations Table for Open Space Zones

The uses allowed in the open space zones are shown in Table 131-02B.

**Table 131-02B
Use Regulations Table of Open Space Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones							
	1st & 2nd >> 3rd >> 4th >>	OP-		OC-	OR ⁽¹⁾ -		OF ⁽¹¹⁾ -		
		1-	2-	1-	1-		1-		
		1	1	1	1	2	1		
Open Space through Retail Sales [No change]									
Commercial Services									
Building Services through Visitor Accommodations [No change]									
Separately Regulated Commercial Services Uses									
Adult Entertainment Establishments through Helicopter Landing Facilities [No change]									
<u>Mobile Food Trucks</u>		<u>L</u> ⁽²⁾	<u>L</u> ⁽²⁾	-	-		-		
Massage Establishments, Specialized Practice through Zoological Parks [No change]									
Offices through Signs [No change]									

Footnotes for Table 131-02B [No change]

2 This use is permitted only if consistent with an approved park general development plan or master plan and is subject to any requirements identified in the plan.

§131.0322 Use Regulations Table for Agricultural Zones

The uses allowed in the agricultural zones are shown in Table 131-03B.

Table 131-03B
Use Regulations Table of Agricultural Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through Retail Sales [No change]					
Commercial Services					
Building Services through Visitor Accommodations [No change]					
Separately Regulated Commercial Services Uses					
Adult Entertainment Establishments through Helicopter Landing Facilities [No change]					
Mobile Food Trucks		-		L ⁽¹²⁾	
Massage Establishments, Specialized Practice through Zoological Parks [No change]					
Offices through Signs [No change]					

Footnotes to Table 131-03B

12 This use is permitted only where accessory to commercial *development* and designed and operated in compliance with Section 141.0612.

§131.0422 Use Regulations Table for Residential Zones

The uses allowed in the residential zones are shown in the Table 131-04B.

Table 131-04B
Use Regulations Table of Residential Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of	Zone Designator	Zones			
	1st & 2nd >>	RE-	RS-	RX-	RT-

the Use Categories, Subcategories, and Separately Regulated Uses]	3rd >>	1-			1-										1-		1-								
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4	
Open Space through Retail Sales [No change]																									
Commercial Services																									
Building Services through Visitor Accommodations [No change]																									
Separately Regulated Commercial Services Uses Adult Entertainment Establishments through Helicopter Landing Facilities [No change]																									
<u>Mobile Food Trucks</u>				=		=														=		=			
Massage Establishments, Specialized Practice through Zoological Parks [No change]																									
Offices through Signs [No change]																									

Use Categories/ Subcategories	Zone Designator	Zones											
	1st & 2nd >>	RM-											
[See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Open Space through Retail Sales [No change]													
Commercial Services													
Building Services through Visitor Accommodations [No change]													
Separately Regulated Commercial Services Uses Adult Entertainment Establishments through Helicopter													

Use Categories/ Subcategories	Zone Designator	Zones											
	1st & 2nd >>	RM-											
	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Landing Facilities [No change]													
Mobile Food Trucks		-			N ⁽³⁷⁾			L ⁽³⁷⁾			L ⁽³⁷⁾		L ⁽³⁷⁾
Massage Establishments, Specialized Practice through Zoological Parks [No change]													
Offices through Signs [No change]													

Footnotes to Table 131-04B

(37) This use is permitted only in association with a multiple dwelling unit *development* with at least 16 *dwelling units* and only if the commercial service is limited to the residents and their guests and the use is designed and operated in compliance with Section 141.0612.

§131.0522 Use Regulations Table of Commercial Zones

The uses allowed in the commercial zones are shown in Table 131-05B.

Table 131-05B
Use Regulations Table for Commercial Zones

Use Categories/Subcategories	Zone Designator	Zones											
	1st & 2nd >>	CN ⁽¹⁾⁻			CR-		CO-		CV-		CP-		
	3rd >>	1-			1-	2-	1-		1-		1-		
	4th >>	1	2	3	1	1	1	2	1	2	1		
Open Space through Retail Sales [No change]													
Commercial Services													

Use Categories/Subcategories	Zone Designator	Zones										
	[See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	1st & 2nd >>	CN ⁽¹⁾⁻			CR-		CO-		CV-		CP-
		3rd >>	1-			1-	2-	1-		1-		1-
		4th >>	1	2	3	1	1	1	2	1	2	1
Building Services through Visitor Accommodations [No change]												
Separately Regulated Commercial Services Uses Adult Entertainment Establishments through Helicopter Landing Facilities [No change]												
<u>Mobile Food Trucks</u>		L			L		L		L		L	
Massage Establishments, Specialized Practice through Zoological Parks [No change]												
Offices through Signs [No change]												

Use Categories/Subcategories	Zone Designator	Zones																			
	1st & 2nd >>	CC-																			
	3rd >>	1-			2-			3-			4-					5-					
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5		
[See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]																					
Open Space through Retail Sales [No change]																					
Building Services through Visitor Accommodations [No change]																					
Separately Regulated Commercial Services Uses Adult Entertainment Establishments through Helicopter Landing Facilities [No change]																					
Mobile Food Trucks		L			L			L			L					L					
Massage Establishments, Specialized Practice through Zoological Parks [No change]																					
Offices through Signs [No change]																					

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in Table 131-06B.

Table 131-06B
Use Regulations Table for Industrial Zones

Use Categories/ Subcategories	Zone Designator	Zones							
	1st & 2nd >	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
Open Space through Retail Sales [No change]									
Building Services through Visitor Accommodations [No change]									
Separately Regulated Commercial Services Uses Adult Entertainment Establishments through Helicopter Landing Facilities [No change]									
<u>Mobile Food Trucks</u>		<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Massage Establishments, Specialized Practice through Zoological Parks [No change]									
Offices through Signs [No change]									

New Separately Regulated Use Regulations for Mobile Food Trucks:**§141.0612 Mobile Food Trucks**

Mobile food trucks are motorized vehicles that function as transportable retail food and beverage facilities. This use category includes mobile food trucks that provide sales to the general public of food and beverage (pre-packaged or prepared and served from the vehicle or an attached trailer) for consumption on or off of the premises. They are health regulated businesses subject to San Diego Municipal Code Chapter 4, Article 2, Division 1.

Mobile food trucks are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

Section 141.0612 does not apply to pushcarts (non-motorized mobile food vending) regulated by Section 141.0619, or to off-site food and beverage delivery services.

(a) General Regulations

- (1) Mobile food truck operators shall maintain a valid business tax certificate to operate within the City of San Diego (San Diego Municipal Code Chapter 3).
- (2) Mobile food truck operators shall obtain a County Health permit and operate in conformance with the following health standards, as currently exist or as may be amended: Municipal Code Sections 41.02, 41.03, 41.0701 through 41.0704, 42.0101 and 42.0102, County Code Title 6, Division 1, and the requirements of Land Development Code Section 141.0612. County issued Health Permit certification stickers shall be posted in public view, without obstruction, on the front right windshield and the back left bumper of the mobile food truck.
- (3) Mobile food truck operations shall be limited to the sale of food and beverage items regulated under the California Retail Food Code (California Health and Safety Code Division 104, Part 7, Section 113700 et. seq.) The sale or distribution of any other items is prohibited.
- (4) Mobile food truck operators shall not verbally solicit business from pedestrians or persons in vehicles and shall not sell to persons in vehicles.
- (5) No amplified music or loudspeakers shall be permitted. The operation shall at all times comply with the provisions of the City's Noise Ordinance.
- (6) No lighting shall be provided, except that localized lighting may be used on or in the mobile food trucks for the purpose of inside food preparation and menu illumination.
- (7) Mobile food trucks shall not display any *signs* other than those exhibited on or in the mobile food truck.
- (8) No sales or service of alcohol shall be allowed by mobile food trucks.
- (9) The mobile food truck operator shall provide one trash receptacle and one recycling receptacle for use by patrons and in a convenient location that does not impede pedestrian or vehicular traffic. All litter or debris generated within a minimum of a 25-foot radius of the food truck shall be collected and removed by the mobile food truck operator.
- (10) Except as required in accordance with Section 141.0612(a)(9), all associated equipment and operations shall be self contained within the mobile food truck. No furniture, umbrellas, generators, extension cords, objects or *structures* shall be

placed outside of the vehicle, or attached to any traffic signals or signs, light standards, parking meters, phone booths, newspaper stands, bus stops, trash receptacles, benches, trees, or similar objects.

- (11) Where located within 500 feet of a *dwelling unit*, mobile food trucks may only operate between 6 a.m. and 10 p.m. Sunday through Thursday and between 6 a.m. and 11 p.m. Friday and Saturday.
- (12) The mobile food truck shall not obstruct or interfere with the free flow of pedestrian or vehicular traffic, including but not limited to access to or from any business, public building, or *dwelling unit*, nor shall it restrict sight distance at driveways and intersections.

(b) Mobile food trucks in the *Public Right-of-Way*

Mobile food trucks may be permitted to operate in the *public right-of-way* as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (1) Mobile food truck operators shall maintain a liability insurance policy of at least \$1,000,000 that names the City as an additional insured. The liability insurance shall be provided in a form acceptable to the City Engineer.
- (2) The mobile food truck shall be legally parked in full compliance with all parking and California Vehicle Code provisions which apply to the location at which it is parked, including any curb marking prohibiting the parking or standing of a vehicle or indicating a parking time limit. Mobile food trucks shall not interfere with the passage of vehicles along the street, obstruct access to parked vehicles, impede the delivery of materials to adjoining property, nor preclude any existing curb space use.
- (3) Mobile food trucks shall not operate in the *public right-of-way* within 500 feet from any K-12 school building, as defined in the Education Code of California, between 7:00 a.m. and 4:00 p.m. on regular school days.
- (4) Mobile food trucks shall not be parked within 25 feet from a street intersection with a crosswalk, traffic light, or stop sign, or within 25 feet from a bus stop or trolley stop.
- (5) The mobile food truck operator shall be responsible for organizing customer queuing in a manner that maintains a path along the sidewalk that is at least 4 feet clear and does not interfere with or obstruct the free passage of pedestrians.
- (6) Food and beverage service shall be limited solely to that side of the mobile food truck facing away from the *street*.

- (7) The mobile food truck operator shall not encroach onto a public sidewalk with any part of the vehicle or any other equipment or furniture related to the operation of its business, except for required refuse and recycling receptacles.
- (8) Mobile food truck operators shall be responsible for controlling smoke and odors caused by food preparation so as to avoid a public nuisance.
- (9) Mobile food trucks are not permitted in the *public right-of-way* within the Parking Impact Overlay Zone as described in Section 132.0802.
- (10) Mobile food trucks greater than 30 feet in length, or that occupy more than two on-street parking spaces, are not permitted to operate in the *public right-of-way* in commercial zones.
- (11) Mobile food trucks shall not operate in the *public right-of-way* within 500 feet of an event on public property that has an approved Special Events Permit without notarized authorization from the owner or proprietor of the special event or without an approved Special Events Permit in accordance with Municipal Code Section 22.4004.

(c) Mobile food trucks on private property

Mobile food trucks may be permitted to operate on private property as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (1) Mobile food truck operations on private property shall require an approved Mobile Food Truck Permit in accordance with Section 123.0602, except where exempted per Section 141.0612(c)(1)(C).
 - (A) The Mobile Food Truck Permit shall apply only to the location designated on the permit.
 - (B) Prior to commencing operations, a copy of the approved Mobile Food Truck Permit shall be displayed in a prominent and visible place within each mobile food truck together with a notarized letter of permission from the property owner granting the operator the owner's express consent to operate on the site in accordance with the approved permit.
 - (C) A Mobile Food Truck Permit shall not be required for the following:
 - (i) Mobile food truck operations in accordance with Section 141.0612 (d) or (e);
 - (ii) Mobile food truck operations in industrial zones; or

- (iii) Mobile food truck operations on the property of a school, university, or hospital with the express written consent of the property owner or authorized principal, dean, or administrator.
- (2) Mobile food truck operations shall not occupy more than 25 percent of the area of the premises.
- (3) The maximum number of mobile food trucks permitted on a site shall be determined as follows:
 - (A) One mobile food truck may operate on the site for every 525 square foot paved area (at least 35 feet by 15 feet in dimension) available for mobile food truck operations; except that mobile food trucks greater than 30 feet in length require a space at least 70 ft by 15 ft.
 - (B) Mobile food truck operations shall occur within a paved, level parking area, where it can be demonstrated that any off-street parking spaces located in that area are not otherwise reserved, encumbered, or designated to satisfy the off-street parking requirement of a business or activity that is operating at the same time as the mobile food truck.
 - (C) Mobile food trucks may be parked within required parking areas. However, operation of the mobile food truck shall not create a parking impact or impede pedestrian or vehicle ingress or egress through the remainder of the parking area or adjacent public right-of-way. There shall be no reduction in the number of parking spaces required for on-site uses while those uses are in operation.
- (d) Private Catering

Mobile food trucks may operate as a private food and beverage caterer in accordance with Section 141.0612(a) and the following:

 - (1) The mobile food truck shall be parked entirely on private property.
 - (2) Service shall be limited to private guests of the catering event host only. No walk-up customers are permitted.
 - (3) Payment shall occur directly between the catering event host and the mobile food truck operator. No payment transactions shall occur for individual orders.
 - (4) A maximum of one catering event per week is permitted in commercial zones, and a maximum of one catering event per month is permitted in residential zones. More frequent catering activities shall be subject to a Mobile Food Truck Permit and the limited use regulations in Section 141.0612 (c).

(e) Mobile Food Trucks at Active Construction Sites

Mobile food trucks that serve a site that is actively under construction pursuant to a valid building permit or grading permit, and do not vend to the general public during their stop, shall be exempt from the requirement to obtain a Mobile Food Truck Permit.

(f) Special Events

Approval must be obtained from the City Manager in accordance with Municipal Code Section 22.4004 to conduct a special event with food trucks on public property anticipated to result in the public assembly of 75 or more people.

(g) Neighborhood Use Permit

A Process Two Neighborhood Use Permit may be requested in accordance with Section 126.0203 to deviate from the requirements in Section 141.0612.

Chapter 15: Planned Districts, Article 6, Division 3: The Centre City Planned District**§156.0302 Definitions**

Mobile Food Facilities are motorized vehicles from which food or drink (prepared on-site or pre-packaged) is sold or served to the general public, whether consumed on-site or elsewhere. *Mobile Food Facilities* do not include *pushcarts* as defined in Section 141.0619 of the San Diego Municipal Code.

§156.0308 Base District Use Regulations

[No change.]

Existing Table 156-0308A identifies that *Mobile Food Facilities* require a Conditional Use Permit in the Core, Neighborhood Mixed-Use Center, Employment Residential Mixed-Use, Ballpark Mixed-Use, Waterfront Marine, Mixed Commercial, Residential Emphasis, Public/Civic, Public Facilities, and Park/Open Space CCPDO zones, and are “not permitted” in the Industrial, Transportation, or Convention Center/Visitor CCPDO zones. Table 156-0308A will be modified to change the use category from a conditional use to a limited use.

Chapter 15: Planned Districts, Article 7: Gaslamp Planned District**§157.0304 Permitted Uses**

[Intro paragraph through (c) No change]

(d) Prohibited Uses

The following uses shall be prohibited in the entire District as both *primary* and *accessory uses*:

- (1) card rooms, defined as any establishment open to the public wherein games of any kind are played with cards for any consideration;
- (2) correctional placement facilities pursuant to Section 141.0406;
- (3) drive-through businesses; ~~and~~
- (4) mobile food trucks; and
- (5) pushcarts in the *public right-of-way*.



INSTITUTE FOR JUSTICE

December 13, 2013

City of San Diego
Development Services Department
202 C Street
San Diego, CA 92101

Re: Reject proposed food-truck regulations

Development Services Department:

The Institute for Justice ("IJ") is a public interest, civil liberties law firm that advocates in the courts of law and public opinion to vindicate the right to earn an honest living. As part of its National Street Vending Initiative, IJ has challenged laws in El Paso, Texas (which quickly repealed its proximity restriction in response to our lawsuit); Atlanta (which we recently won); Chicago; and Hialeah, Florida, that unconstitutionally restrict vendors' right to economic liberty, which is protected by the U.S. Constitution's 14th Amendment. IJ has published extensively on the benefits that street vendors provide, the barriers that too often stand in their way, and how cities can cultivate vibrant food truck scenes.¹ We also work with city councils and food truck operators across the country to reform local laws.

We write to encourage the Development Services Department to reject the proposed land use regulations and permit process for mobile food trucks. The proposal raises serious constitutional concerns and should be rejected in favor of narrowly tailored laws that are limited to protecting the public's health and safety and address only congestion, trash and licensure. Specifically, the Institute opposes the 75-foot proximity restriction (that is, the requirement that food trucks on the public right-of-way not operate within 75 feet of the entrance to a street-level eating establishment without permission), as well as the proposed regulations' prohibition on food trucks operating within the Gaslamp District and on public rights-of-way downtown, for the reasons detailed below.

The California Restaurant Association views the legislative process as a way to protect its members from competition, and is advocating for a ban on food trucks within a certain distance from their restaurants or in high-traffic areas for precisely that reason. However, protectionism is an illegitimate use of government power under the U.S. and California Constitutions. The Ninth Circuit Court of Appeals, whose jurisdiction includes San Diego, held as much in a lawsuit that challenged California's licensing of pest exterminators. In ruling that the government cannot impose protectionist regulations that restrict individuals' right to earn an honest living, **the Ninth Circuit ruled "that mere economic protectionism for the sake of economic protectionism is irrational."**² **Indeed, California courts have invoked this principle in striking down a Los Angeles restriction that prohibited food trucks from operating within 100 feet of a restaurant.**³ The recommended 75-foot proximity restriction is similarly unconstitutional and should be rejected.

¹ See, e.g., *Streets of Dreams: How Cities Can Create Economic Opportunity by Knocking Down Protectionist Barriers to Street Vending*; *Seven Myths and Realities About Food Trucks: Why the Facts Support Food-Truck Freedom*; and *Food Truck Freedom: How to Build Better Food-Truck Laws in Your City*, all available at www.ij.org/vending.

² *Merrifield v. Lockyer*, 547 F.3d 978, 992 n. 15 (9th Cir. 2008).

³ *People v. Ala Carte Catering Co.*, 98 Cal. App. 3d Supp. 1, 9 (Cal. App. Dep't Super. Ct. 1979).

Moreover, the Department should reject the proposed regulations that would prohibit food trucks from operating adjacent to sidewalks that are less than eight feet wide. Original research conducted by the Institute for Justice in Washington, D.C., revealed that food trucks do not have a demonstrable effect on sidewalk congestion.⁴ Furthermore, in researching street-vending laws across the country, the Institute has not come across any other city with a eight-foot minimum sidewalk width requirement. Instead, the most common requirement is one that simply tells food trucks not to operate in a way that blocks the sidewalk—a requirement that Section 141.0612(b)(5) of the proposed regulations would accomplish. For more information on how to write constitutional food-truck laws that are clear, narrowly tailored and outcome-based, we refer you to *Food-Truck Freedom: How to Build Better Food-Truck Laws in Your City*. The recommendations are based on the legislative best practices of Los Angeles and other cities that have experience regulating food trucks. You can access the guide at www.ij.org/food-truck-freedom.

San Diego should seize this exciting opportunity to create a law that will open your streets to the many benefits that food trucks have to offer your residents—and in doing so, lead the country in passing legislation that embraces both the street-food revolution and those aspiring entrepreneurs on the first rung of the economic ladder.

A vibrant food-truck industry benefits everyone. Food trucks put people to work, create opportunities for self-sufficiency, and enrich the communities in which they operate. They provide entry-level opportunities, allowing entrepreneurs to test ideas and accumulate capital needed to climb the economic ladder and realize their next opportunity: a brick-and-mortar restaurant. Vendors also contribute to the city's coffers by paying sales tax and payroll taxes, and can activate underused spaces, bring new life to communities and make them safer, more enjoyable places to live.

Moreover, the presence of food trucks actually boosts local businesses—including restaurants. Food trucks encourage people to come out onto the streets, increasing foot traffic for everyone. They also provide a new way to market and expand brick-and-mortar establishments. Claims that food trucks spell doom for local restaurants are not only unsupported, but are also contradicted by the experience of Los Angeles, which has enthusiastically welcomed mobile-food entrepreneurs and continues to experience growth and improvement in its restaurant industry.

San Diego's entrepreneurs, their employees and families, local businesses, and communities deserve to experience the benefits that food trucks provide. We encourage you to pass legislation that allows food trucks to operate freely, with regulations that are narrowly-tailored and limited to protecting the public's health and safety.

Please do not hesitate to contact me at (703) 682-9320 or cwalsh@ij.org. We look forward to working with you to ensure that *all* of San Diego's entrepreneurs are allowed the opportunity to thrive. Thank you.

Best,



Christina Walsh
Director of Activism and Coalitions

⁴ See *Streets of Dreams* pp. 33-34.